

Senate File 2490

H-8450

1 Amend Senate File 2490, as passed by the Senate, as follows:

2 1. Page 1, line 11, by striking <section 458A.29> and
3 inserting <section 458A.30>

4 2. Page 1, after line 11 by inserting:

5 <Sec. _____. Section 458A.1, Code 2026, is amended to read as
6 follows:

7 **458A.1 Declaration of policy — interpretation — well**
8 **prohibitions.**

9 1. It is declared to be in the public interest to foster,
10 to encourage, and to promote the development, production, and
11 utilization of natural resources of oil and gas and metallic
12 minerals in the state in such a manner as will prevent waste;
13 to authorize and to provide for the operation and development
14 of oil and gas and metallic minerals properties in such a
15 manner that a greater ultimate recovery of oil and gas and
16 metallic minerals be had and that the correlative rights of all
17 owners be fully protected; and to encourage and to authorize
18 such measures as will result in the greatest possible economic
19 recovery of oil and gas and metallic minerals within the
20 state to the end that the landowners, the royalty owners,
21 the producers, and the general public realize and enjoy the
22 greatest possible good from these vital natural resources. It
23 is further declared that the general welfare of the people
24 requires ~~that~~ the underground and surface water of the state to
25 be protected from pollution and conserved in the best interests
26 of the people of the state.

27 2. Ambiguities in this chapter and in rules adopted under
28 this chapter shall be construed in favor of landowners,
29 mineral-interest owners, and royalty-interest owners. For
30 purposes of this subsection, "landowner" means a person holding
31 legal or equitable title to the surface of land, a person
32 holding a mineral interest severed from the surface, or a
33 person holding a royalty or overriding royalty interest;
34 and "ambiguity" is to be determined without deference to an
35 administrative agency's construction of the provision at issue.

1 3. Notwithstanding any other provision of this chapter
2 or other Iowa law, no well or similar activity shall be dug
3 or placed on the real property of any person who does not
4 expressly consent to its placement.>

5 3. Page 2, line 1, by striking <the following>

6 4. Page 2, line 2, after <year> by inserting <, which
7 filings the department shall maintain in an online, searchable
8 registry, accessible to the public without fee or registration
9 and updated promptly upon receipt of each filing, the following
10 information>

11 5. Page 2, after line 14 by inserting:

12 <(6) A list of all active and pending oil, gas, and metallic
13 minerals leases held by the filer, by location and acreage.

14 (7) Summary financial information sufficient to evaluate
15 the filer's ability to perform surface damage, restoration, and
16 abandonment obligations under this chapter.

17 (8) Confirmation of all bonds posted by the filer under
18 this chapter or under rules adopted by the department, with
19 documentation sufficient to establish current effectiveness.>

20 6. Page 3, by striking lines 1 through 4 and inserting
21 <shall provide notice of the variance request to each landowner
22 whose property is within one-half mile of the operation that
23 is the subject of the request, and shall allow a public
24 comment period of not less than fourteen days before issuing
25 a decision. The director shall issue a written decision,
26 supported by a contemporaneously public statement of reasons,
27 not later than forty-five days after receipt of the request.
28 The director shall report any variance granted at the
29 subsequent hearing and shall contemporaneously make public any
30 variance granted. A variance granted under this subsection
31 is appealable to the district court by an affected landowner
32 under the procedure set forth in section 458A.14 within thirty
33 days of the date of issuance. The filing of a notice of appeal
34 shall stay the effect of the variance pending the court's final
35 disposition of the appeal.>

1 7. Page 3, line 16, after <good cause.> by inserting
2 <Notwithstanding any designation of confidentiality under
3 this section, information subject to this section shall be
4 disclosed to a landowner within the affected area upon written
5 request, subject to execution of a nondisclosure agreement
6 sufficient to protect the information from further disclosure
7 to competitors of the submitting owner. For purposes of this
8 section, "affected area" means the lands subject to the pooling
9 order, spacing unit, or exploratory spacing unit that is the
10 subject of the submission, together with lands within one-half
11 mile thereof.>

12 8. Page 3, line 33, after <information.> by inserting
13 <Notwithstanding any other provision of this section,
14 information reported pursuant to rules adopted by the
15 commission concerning fires, breaks, leaks, or blowouts,
16 and any other information concerning safety incidents,
17 environmental contamination, or spills, shall not be designated
18 confidential under this section, regardless of any claim of
19 commercial sensitivity.>

20 9. Page 4, line 3, by striking <the permitted> and inserting
21 <~~the permitted~~>

22 10. Page 5, line 7, after <relevant.> by inserting <An
23 application for establishment of an exploratory spacing unit
24 under this subsection shall be subject to all of the following
25 conditions:>

26 11. Page 5, after line 7 by inserting:

27 <a. The department shall provide not less than sixty days'
28 notice of the hearing to each landowner within the proposed
29 exploratory spacing unit and to each landowner whose property
30 is within one-half mile of the proposed exploratory spacing
31 unit.

32 <b. The applicant's supporting evidence shall be made
33 publicly available not later than thirty days before the
34 hearing.

35 <c. Each affected landowner shall have the right to

1 cross-examine the applicant's technical witnesses at the
2 hearing.

3 d. The department shall make specific written findings of
4 the evidentiary basis for any determination to establish an
5 exploratory spacing unit.

6 e. An exploratory spacing unit established under this
7 subsection shall expire two years after the date of the
8 department's order establishing the unit, unless the
9 department, upon a new application and a full evidentiary
10 hearing, determines that the existence of a pool has been
11 established and converts the exploratory spacing unit into a
12 spacing unit under subsection 1. Upon written application and
13 a showing of good cause, the department may extend the life of
14 an exploratory spacing unit for one additional period not to
15 exceed one year.>

16 12. Page 6, line 15, after <subsection 1,> by inserting <and
17 only if the producer has identified pools of existing hydrogen
18 within the spacing unit,>

19 13. Page 6, line 16, by striking <not less than twenty-five>
20 and inserting <more than seventy>

21 14. Page 6, line 17, after <spacing unit> by inserting <and
22 constituting more than seventy percent of the number of the
23 owners in the spacing unit>

24 15. Page 6, line 22, after <reasonable> by inserting <,
25 provided that no application for a pooling order shall be
26 considered by the department unless the applicant certifies,
27 under oath, that the applicant has engaged in not less than
28 ninety days of good faith negotiation with each nonconsenting
29 owner on commercially reasonable lease terms prior to the
30 filing of the application>

31 16. Page 7, line 28, by striking <two hundred> and inserting
32 <one hundred ten>

33 17. Page 7, line 31, by striking <two hundred> and inserting
34 <one hundred ten>

35 18. Page 8, line 8, by striking <twelve and one-half> and

1 inserting <twenty-five>

2 19. Page 8, line 9, after <percent.> by inserting
3 <Notwithstanding any other provision of this section, the
4 producer's right to recover costs against a nonconsenting owner
5 under subsection 3 shall terminate five years after the date
6 of first production from the well. Upon termination of cost
7 recovery under this subsection, an unleased nonconsenting
8 owner shall be deemed to have elected to participate as a
9 working interest owner on a pro rata basis for all subsequent
10 production, net of costs actually recovered to the date of
11 termination.>

12 20. Page 8, line 15, after <notice shall> by inserting
13 <include a certified accounting of all receipts, costs, and
14 projected costs attributable to the well through the date of
15 notice, and shall>

16 21. Page 8, line 16, after <order> by inserting <as a
17 working interest owner>

18 22. Page 8, line 19, by striking <sixty> and inserting <one
19 hundred eighty>

20 23. Page 8, line 19, after <notice> by inserting <and a
21 certified accounting under paragraph "a">

22 24. Page 8, line 23, after <subsection 4.> by inserting
23 <The accounting shall be certified by an independent certified
24 public accountant at the producer's expense.>

25 25. Page 8, lines 26 and 27, by striking <continue
26 receiving the royalty specified in subsection 4> and inserting
27 <participate as a working interest owner>

28 26. Page 8, after line 32 by inserting:

29 <6. During the time the producer is recovering costs from
30 a nonconsenting owner under subsection 3, the producer shall
31 deliver to each nonconsenting owner, on a quarterly basis, a
32 written statement setting forth all of the following:

33 a. Production volumes and prices attributable to the well
34 during the reporting period.

35 b. Costs incurred and recovered to date.

1 c. The producer's good faith projection of the date on which
2 cost recovery will be completed.

3 d. A computation of royalty amounts due to the nonconsenting
4 owner under subsection 4.>

5 27. Page 8, line 33, by striking <6.> and inserting <7.>

6 28. Page 9, line 20, by striking <7.> and inserting <8.>

7 29. Page 9, line 20, before <An> by inserting <Notice of a
8 pooling application shall inform each nonconsenting owner of
9 the right to be represented at the hearing by the office of
10 landowner advocacy established under section 458A.31.>

11 30. Page 9, line 27, by striking <penalty.> and inserting
12 <penalty, which shall include all of the following:

13 (1) Documented calculations of dry-hole risk based on
14 geological data and data from comparable wells in the same or
15 analogous formations.

16 (2) A sworn certification by an officer of the applicant
17 that the applicant engaged in at least ninety days of good
18 faith negotiation with the nonconsenting owner on commercially
19 reasonable lease terms prior to filing the application and
20 attaching copies of all written offers made during that period.

21 (3) A specific factual finding by the department regarding
22 the risk actually borne by the producer with respect to the
23 well.>

24 31. Page 9, before line 31 by inserting:

25 <1. Subsections 2 through 8 shall apply only if the surface
26 owner does not own mineral rights in the spacing unit that
27 is subject to a pooling order. An operator may only enter a
28 site that is subject to a pooling order if the operator has
29 a contract with the owner of the mineral rights of the real
30 property on which the site is located.>

31 32. Page 9, line 31, by striking <1.> and inserting <2.>

32 33. Page 10, line 2, after <drill> by inserting <upon
33 payment of the agreed damages>

34 34. Page 10, line 3, by striking <2.> and inserting <3.>

35 35. Page 10, line 4, by striking <subsection 1> and

1 inserting <subsection 2>

2 36. Page 10, lines 9 and 10, by striking <After the operator
3 has petitioned for appointment of appraisers, the operator may
4 enter the site to drill.> and inserting <The operator shall not
5 enter the site with heavy equipment for the purpose of drilling
6 until the appraisers have filed their report under subsection 4
7 and the producer has either paid the recommended compensation
8 to the surface owner or deposited the recommended compensation
9 with the clerk of the district court for the benefit of the
10 surface owner.>

11 37. Page 10, line 20, after <publication.> by inserting
12 <As a condition of entry, the producer shall post a bond with
13 the clerk of the district court, payable to the surface owner,
14 in an amount equal to the greater of two hundred percent of
15 the appraisers' recommended compensation or fifteen thousand
16 dollars per acre of surface area subject to the drilling
17 operation. The bond shall remain in effect until the drilling
18 operation is completed and all compensation, including any
19 compensation awarded upon reassessment under subsection 8, has
20 been paid. Upon producer default, insolvency, or failure to
21 remediate damages, the bond shall be available to satisfy the
22 surface owner's claim.>

23 38. Page 10, line 21, by striking <3.> and inserting <4.>

24 39. Page 11, line 11, after <paid.> by inserting
25 <Compensable damages under this section include but are not
26 limited to the loss of use of land during drilling; diminution
27 of market value of the land; crop damage; livestock loss and
28 injury; damage to springs, wells, and other water sources;
29 soil compaction and restoration costs; damage to improvements,
30 fences, and drainage; lost quality of life during active
31 operations; and consequential damages to adjoining or related
32 operations.>

33 40. Page 11, line 16, by striking <4.> and inserting <5.>

34 41. Page 11, line 17, by striking <subsection 3> and
35 inserting <subsection 4>

1 42. Page 11, line 29, by striking <subsection 3> and
2 inserting <subsection 4>

3 43. Page 12, line 8, by striking <5.> and inserting <6.>

4 44. Page 12, line 10, by striking <subsection 3> and
5 inserting <subsection 4>

6 45. Page 12, line 21, by striking <6.> and inserting <7.>

7 46. Page 12, line 22, by striking <subsection 3> and
8 inserting <subsection 4>

9 47. Page 12, by striking lines 31 through 35 and inserting
10 <of damages. If the damages meet or exceed ninety percent of
11 the compensation recommended in the report of the>

12 48. Page 13, line 2, after <owner.> by inserting <If
13 the damages awarded are less than ninety percent of the
14 compensation recommended in the report of the appraisers, each
15 party shall bear its own court costs and attorney fees.>

16 49. Page 13, after line 2 by inserting:

17 <8. When operations continue beyond one year from the date
18 of the appraisers' report under subsection 4, the surface owner
19 may petition the court annually for reassessment of continuing
20 damages. A reassessment petition shall be subject to the
21 procedures set forth in subsections 4 through 7.>

22 50. Page 13, before line 3 by inserting:

23 <Sec. _____. NEW SECTION. **458A.27 Groundwater and aquifer**
24 **protection.**

25 1. The requirements of this section are in addition to,
26 and not in substitution for, the water strata sealing and
27 artesian water protection requirements prescribed by rule of
28 the department at 561 IAC 17.6, as in effect on the effective
29 date of this Act.

30 2. Not later than sixty days before commencing drilling of
31 any well subject to this chapter, the operator shall arrange,
32 at the operator's sole expense, for a baseline water-quality
33 test of every domestic, livestock, and irrigation water well
34 located within a radius of two thousand five hundred feet
35 of the proposed well pad. Testing shall be performed by a

1 laboratory certified by the department and shall include, at a
2 minimum, tests for methane, total dissolved solids, chlorides,
3 sulfates, arsenic, barium, iron, manganese, and such other
4 parameters as the department shall specify by rule. The
5 operator shall deliver the baseline test results in writing to
6 the owner of each tested water well and shall file the results
7 with the department.

8 3. The operator shall arrange, at the operator's sole
9 expense, for follow-up water quality testing of each water well
10 tested under subsection 2 at six months, twelve months, and
11 twenty-four months after completion or plugging of the subject
12 oil or gas well. Results shall be delivered to the water well
13 owner and filed with the department within thirty days of
14 testing.

15 4. When a water well tested under subsection 2 or 3
16 experiences a material decline in quality, or is newly shown to
17 be contaminated with any constituent typically associated with
18 oil and gas drilling or hydraulic stimulation, the water well
19 is located within a radius of two thousand five hundred feet of
20 an oil or gas well, and the contamination is first identified
21 within five years after spudding of the oil or gas well, there
22 shall be a rebuttable presumption that the drilling operation
23 caused the contamination. The presumption may be rebutted
24 only by clear and convincing evidence. In any proceeding when
25 the presumption applies, the operator shall bear the burden of
26 providing to the affected landowner a replacement water supply,
27 adequate in quantity and quality, pending final determination.

28 5. Every operator shall post, as a condition of permit
29 issuance, financial assurance in the form of a surety bond,
30 letter of credit, or cash deposit, in an amount determined
31 by the department by rule but not less than one million
32 dollars per well, to be available for remediation of aquifer
33 contamination, provision of replacement water supplies,
34 and plugging and abandonment of contaminated water wells.
35 Financial assurance under this subsection shall be in addition

1 to, and not in substitution for, the compliance bond required
2 by section 458A.4, subsection 1, paragraph "d", or any other
3 bonding or financial assurance requirement of this chapter.>

4 51. Page 13, line 3, by striking <458A.27> and inserting
5 <458A.28>

6 52. Page 13, line 10, after <wellhead.> by inserting
7 <Production attributable to the cost-free royalty interest
8 of an unleased nonconsenting owner under section 458A.8,
9 subsection 5, shall be exempt from the tax imposed by this
10 section.>

11 53. Page 13, by striking lines 13 through 20 and inserting:

12 <4. The severance tax shall be paid by the producer as a
13 cost of doing business. Notwithstanding any agreement to the
14 contrary, a producer shall not deduct the severance tax paid
15 under this section from any royalty payment, lease bonus, or
16 other payment due or to become due to an interest owner of oil
17 or gas production, and shall not otherwise pass the economic
18 incidence of the tax to an interest owner.>

19 54. Page 13, line 23, by striking <458A.28> and inserting
20 <458A.29>

21 55. Page 13, line 25, by striking <section 458A.27> and
22 inserting <section 458A.28>

23 56. Page 13, line 32, by striking <Five> and inserting
24 <Thirty-five>

25 57. Page 16, line 18, by striking <Seventy and one-tenth>
26 and inserting <Thirty and six-tenths>

27 58. Page 16, after line 20 by inserting:

28 <e. (1) Seven and five-tenths percent of severance tax
29 revenue each year shall be deposited in the surface owner
30 compensation fund created in subparagraph (2).

31 (2) A surface owner compensation fund is created within the
32 state treasury under the control of the department.

33 (3) Moneys in the surface owner compensation fund shall
34 be available to pay awards of surface damages under section
35 458A.26 when the producer has defaulted, become insolvent,

1 cannot be located, or is otherwise unable to satisfy the award.
2 Upon payment from the fund, the fund shall be subrogated to the
3 surface owner's claim against the producer.

4 (4) The department shall administer the surface owner
5 compensation fund and adopt rules pursuant to chapter 17A for
6 the disposition of claims against the fund.

7 *f.* Two percent of severance tax revenue each year shall
8 be deposited in an account within the state treasury for the
9 exclusive use of the office of landowner advocacy established
10 under section 458A.31.>

11 59. Page 16, line 21, by striking <*e.*> and inserting <*g.*>

12 60. Page 17, line 4, by striking <458A.29> and inserting
13 <458A.30>

14 61. By striking page 18, line 21, through page 19, line 28,
15 and inserting:

16 <Sec. ____ . NEW SECTION. 458A.31 Office of landowner
17 advocacy.

18 1. There is established within the department the office
19 of landowner advocacy. The office shall be independent of the
20 divisions of the department responsible for permitting and
21 enforcement under this chapter.

22 2. The office shall have all of the following powers and
23 duties:

24 *a.* To intervene, on behalf of affected landowners, in
25 pooling, spacing, variance, and other proceedings before the
26 department under this chapter.

27 *b.* To review, on request of a landowner, any report of
28 appraisers filed under section 458A.26, and to assist the
29 landowner in evaluating and, where appropriate, contesting the
30 report.

31 *c.* To provide counsel, or lay representation where lawful,
32 to unrepresented landowners in proceedings under this chapter.

33 *d.* To maintain public records of producer performance on
34 surface damage, restoration, and abandonment obligations.

35 *e.* To publish an annual report on industry practices and

1 emerging issues affecting landowners.

2 3. The office shall be funded by a dedicated allocation
3 of two percent of severance tax revenues pursuant to section
4 458A.29, subsection 1, paragraph "f".

5 Sec. ____ . NEW SECTION. **458A.32 Landowner private right of**
6 **action.**

7 1. For purposes of this section:

8 a. "*Landowner*" means a person holding legal or equitable
9 title to the surface of land affected by an oil and gas
10 operation; a person holding a mineral interest that is or may
11 be affected by an oil and gas operation, whether or not severed
12 from the surface; a person holding a royalty or overriding
13 royalty interest in production from an oil and gas operation;
14 and a successor in interest to any of the foregoing.

15 b. "*Producer*" means the same as defined in section 458A.2
16 and includes any person acting as a principal or agent for a
17 producer in the production, storage, transportation, refining,
18 marketing, or processing of oil or gas.

19 c. "*Violation*" means a failure to comply with any provision
20 of this chapter, any rule adopted under this chapter, any order
21 of the department, any bond required under this chapter, any
22 pooling order, any surface damage award, any lease or surface
23 use agreement filed with or known to the department, or any
24 local ordinance not preempted under this chapter.

25 2. A landowner aggrieved by a violation may bring a civil
26 action against any producer responsible for the violation in
27 the district court of the county in which the oil and gas
28 operation is located, or in the district court of any county
29 in which the producer transacts business. The action may be
30 brought without regard to whether the department has taken any
31 enforcement action with respect to the violation and without
32 regard to whether administrative remedies have been exhausted.

33 3. In an action under this section, the court may grant
34 any of the following forms of relief, cumulatively or in the
35 alternative:

1 *a.* Injunctive relief, including temporary restraining
2 orders, preliminary injunctions, and permanent injunctions, to
3 restrain the violation or to compel compliance.

4 *b.* Compensatory damages for harm caused by the violation,
5 including all categories of compensable damages enumerated in
6 section 458A.26, subsection 4.

7 *c.* Restitution and disgorgement of any profit, royalty, or
8 other economic benefit obtained by the producer in connection
9 with the violation.

10 *d.* Civil penalties of not less than five hundred dollars
11 and not more than twenty-five thousand dollars per violation,
12 payable to the aggrieved landowner, with each day of continued
13 violation constituting a separate violation for penalty
14 purposes.

15 *e.* Declaratory relief.

16 *f.* Any other relief the court deems appropriate, including
17 appointment of a receiver when necessary to secure compliance
18 or the preservation of landowner rights.

19 4. The court shall award reasonable attorney fees, expert
20 witness fees, and costs of suit to a prevailing landowner. A
21 producer shall not recover attorney fees or costs in an action
22 under this section unless the court specifically finds that
23 the landowner's action was frivolous, unreasonable, or without
24 foundation.

25 5. An action under this section shall be commenced within
26 six years after the violation is discovered or, in the exercise
27 of reasonable diligence, should have been discovered.

28 6. The right of action established by this section is in
29 addition to, and does not supplant, any other remedy available
30 at law or in equity, including remedies available under
31 section 458A.17, remedies available at common law, and remedies
32 available under any lease, surface use agreement, or other
33 contract. Nothing in this section shall be construed to limit
34 the remedies of the department, the attorney general, or any
35 other public officer with enforcement authority under this

1 chapter.

2 7. Any agreement purporting to waive, limit, or restrict a
3 landowner's right of action under this section, whether entered
4 into before or after the violation giving rise to the action,
5 is void and unenforceable as against public policy.>

6 62. Page 19, after line 29 by inserting:

7 <Sec. _____. FUTURE REPEAL AND REAUTHORIZATION.

8 1. Section 458A.8, subsections 3 through 9, and sections
9 458A.26, 458A.27, 458A.28, 458A.29, 458A.30, and 458A.31, as
10 enacted or amended by this Act or as subsequently amended, are
11 repealed July 1, 2031.

12 2. The general assembly may affirmatively reauthorize each
13 provision listed in subsection 1 prior to its repeal.

14 Sec. _____. REPORT — LEGISLATIVE SERVICES AGENCY. The
15 legislative services agency shall prepare for delivery to the
16 general assembly not later than January 15, 2031, a report
17 evaluating the operation of section 458A.8, subsections 3
18 through 9, and sections 458A.26, 458A.27, 458A.28, 458A.29,
19 458A.30, and 458A.31, as enacted or amended by this Act,
20 including information concerning the number and outcome of
21 proceedings under each section, economic effects on landowners
22 and producers, and any recommended modifications.>

23 63. Title page, line 5, by striking <and jurisdiction> and
24 inserting <a private right of action for landowners, and an
25 office of landowner advocacy>

26 64. By renumbering as necessary.

THOMSON of Floyd