

House File 489 - Introduced

HOUSE FILE _____
BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

(SUCCESSOR TO HF 89)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to reimbursement of hazardous substance cleanup
2 costs.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 1203HV 83
5 tm/sc/14

PAG LIN

1 1 Section 1. Section 455B.381, subsection 2, Code 2009, is
1 2 amended to read as follows:
1 3 2. "Cleanup costs" means costs incurred by the state or
1 4 its political subdivisions or ~~their agents, or by any other~~
1 5 ~~person participating with the approval of the director the~~
1 6 ~~agents of the state or a political subdivision~~ in the
1 7 prevention or mitigation of damages from a hazardous condition
1 8 or the cleanup of a hazardous substance involved in a
1 9 hazardous condition.
1 10 Sec. 2. Section 455B.381, Code 2009, is amended by adding
1 11 the following new subsection:
1 12 NEW SUBSECTION. 7A. "Political subdivision" means any
1 13 municipality, township, or county, or district, or authority,
1 14 or any portion, or combination of two or more thereof,
1 15 including but not limited to any emergency services and
1 16 emergency management agency established pursuant to chapter
1 17 28E or 29C, and any municipal fire departments and ambulance
1 18 services and agents thereof.
1 19 Sec. 3. Section 455B.392, subsections 1, 5, 6, and 7, Code
1 20 2009, are amended to read as follows:
1 21 1. A person having control over a hazardous substance is
1 22 strictly liable to the state or a political subdivision for
1 23 all of the following:
1 24 a. The reasonable cleanup costs incurred by the state or
1 25 its political subdivisions, ~~by governmental subdivisions, or~~
1 26 ~~by any other persons participating in the prevention or~~
1 27 ~~mitigation of damages with the approval of the director, or~~
1 28 ~~the agents of the state or a political subdivision~~ as a result
1 29 of the failure of the person to clean up a hazardous substance
1 30 involved in a hazardous condition caused by that person.
1 31 b. The reasonable costs incurred by the state or its
1 32 political subdivisions or the agents of the state or a
1 33 political subdivision to evacuate people from the area
1 34 threatened by a hazardous condition caused by the person.
1 35 c. The reasonable damages to the state for the injury to,
2 1 destruction of, or loss of natural resources resulting from a
2 2 hazardous condition caused by that person including the costs
2 3 of assessing the injury, destruction, or loss.
2 4 d. The excessive and extraordinary cost, ~~excluding~~
2 5 ~~salaries,~~ incurred by the ~~department state or its political~~
2 6 ~~subdivisions or the agents of the state or a political~~
2 7 ~~subdivision~~ in responding at and to the scene of a hazardous
2 8 condition caused by that person.
2 9 If the failure is willful, the person is liable for
2 10 punitive damages not to exceed triple the cleanup costs
2 11 incurred by the state or its political subdivisions or the
2 12 agents of the state or a political subdivision. Prompt and
2 13 good faith notification to the ~~director state or a political~~
2 14 ~~subdivision~~ by the person having control over a hazardous
2 15 substance that the person does not have the resources or
2 16 managerial capability to begin or continue cleanup, or a good
2 17 faith effort to clean up, relieves the person of liability for

~~2 18 punitive damages, but not for actual cleanup costs. The
2 19 director shall keep a record of all expenses incurred in
2 20 carrying out a project or activity authorized by this part.
2 21 Claims by the state under this subsection may be appealed
2 22 to the commission by the person filing a written notice of
2 23 appeal within thirty days after receipt of the bill shall be
2 24 made by the state agency or the political subdivision that
2 25 incurred costs or damages under this subsection, and such
2 26 costs or damages will be subject to administrative and
2 27 judicial review, including the terms of chapter 17A when
2 28 appropriate. If administrative or judicial review is sought,
2 29 a political subdivision making a claim shall submit an
2 30 advisory request to the department to determine whether the
2 31 cleanup actions serving as the basis for the cleanup costs
2 32 were consistent with this chapter. The department shall
2 33 respond in writing to a request within thirty days of
2 34 receiving the request.~~

2 35 5. Money collected by the department pursuant to this
3 1 section shall be deposited in the hazardous waste remedial
3 2 fund created in section 455B.423. Moneys shall be used to
~~3 3 reimburse governmental subdivisions requested to assist in the
3 4 cleanup for which the moneys were collected. The remainder of
3 5 the moneys shall be used in the manner permitted for the fund.
3 6 Moneys collected by a state agency other than the department
3 7 of natural resources pursuant to this section are appropriated
3 8 to that agency for purposes of reimbursing costs of the agency
3 9 for emergency response activities described in subsection 1.
3 10 Moneys collected by a political subdivision pursuant to this
3 11 section shall be retained by the political subdivision and
3 12 shall be used for purposes of reimbursing costs of the
3 13 political subdivision for emergency response activities
3 14 described in subsection 1.~~

3 15 6. This section does not deny any person any legal or
3 16 equitable rights, remedies or defenses or affect any legal
3 17 relationship other than the legal relationship between the
3 18 state or a political subdivision and a person having control
3 19 over a hazardous substance pursuant to subsection 1.

3 20 7. a. There is no liability under this section for a
3 21 person who has satisfied the requirements of section 455B.381,
3 22 subsection 7, unnumbered paragraph 2, regardless of when that
3 23 person acquired title or right to title to the hazardous
3 24 condition site, except that a person otherwise exempt from
3 25 liability under this subsection shall be liable to the state
3 26 or a political subdivision for the lesser of:

3 27 (1) The total reasonable cleanup costs incurred by the
3 28 state to clean up a hazardous substance at the hazardous
3 29 condition site; or

3 30 (2) The amount representing the postcleanup fair market
3 31 value of the property comprising the hazardous condition site.

3 32 b. Liability under this subsection shall only be imposed
3 33 when the person holds title to the hazardous condition site at
3 34 the time the state or a political subdivision incurs
3 35 reasonable cleanup costs.

4 1 c. For purposes of this subsection, "postcleanup fair
4 2 market value" means the actual amount of consideration
4 3 received by such person upon sale or transfer of the hazardous
4 4 condition site which has been cleaned up by the state or a
4 5 political subdivision to a bona fide purchaser for value.

4 6 d. Cleanup expenses incurred by the state or a political
4 7 subdivision shall be a lien upon the real estate constituting
4 8 the hazardous condition site, recordable and collectable in
4 9 the same manner as provided for in section 424.11, subject to
4 10 the terms of this subsection. The lien shall attach at the
4 11 time the state or a political subdivision incurs expenses to
4 12 clean up the hazardous condition site. The lien shall be
4 13 valid as against subsequent mortgagees, purchasers, or
4 14 judgment creditors, for value and without notice of the lien,
4 15 only when a notice of the lien is filed with the recorder of
4 16 the county in which the property is located. Upon payment by
4 17 the person to the state or a political subdivision, of the
4 18 amount specified in this subsection, the state or a political
4 19 subdivision shall release the lien. If no lien has been
4 20 recorded at the time the person sells or transfers the
4 21 property, then the person shall not be liable for any cleanup
4 22 costs incurred by the state or a political subdivision.

4 23 Sec. 4. Section 455B.396, Code 2009, is amended to read as
4 24 follows:

4 25 455B.396 CLAIM OF STATE.

4 26 Liability to the state under this part or part 5 of this
4 27 division is a debt to the state. Liability to a political
4 28 subdivision under this part of this division is a debt to the

4 29 political subdivision. The debt, together with interest on
4 30 the debt at the maximum lawful rate of interest permitted
4 31 pursuant to section 535.2, subsection 3, paragraph "a" from
4 32 the date costs and expenses are incurred by the ~~department~~
4 33 state or a political subdivision is a lien on real property,
4 34 except single and multifamily residential property, on which
4 35 the department incurs costs and expenses creating a liability
5 1 and owned by the persons liable under this part or part 5. To
5 2 perfect the lien a statement of claim describing the property
5 3 subject to the lien, ~~signed by the director and approved by~~
5 4 ~~the commission~~ must be filed within one hundred twenty days
5 5 after the incurrence of costs and expenses by the ~~department~~
5 6 state or a political subdivision. The statement shall be
5 7 filed with, accepted by, and recorded by the county recorder
5 8 in the county in which the property subject to the lien is
5 9 located. The statement of claim may be amended to include
5 10 subsequent liabilities. To be effective the statement of
5 11 claim shall be amended and filed within one hundred twenty
5 12 days after the occurrence of the event resulting in the
5 13 amendment.
5 14 The lien may be dissolved by filing with the appropriate
5 15 recording officials a certificate, ~~signed by the director,~~
5 16 that the debt for which the lien is attached, together with
5 17 interest and costs on the debt, has been paid or legally
5 18 abated.

5 19 EXPLANATION

5 20 This bill relates to the reimbursement of hazardous
5 21 substance cleanup costs.

5 22 The bill requires a person having control over a hazardous
5 23 substance to be strictly liable to the state or a political
5 24 subdivision of the state for various costs incurred by and
5 25 damages to the state or a political subdivision associated
5 26 with a hazardous condition. The bill provides that claims
5 27 shall be made by a state agency or political subdivision for
5 28 costs or damages incurred and that the claims are subject to
5 29 administrative and judicial review. The bill provides that if
5 30 administrative or judicial review is sought, a political
5 31 subdivision making a claim shall submit an advisory request to
5 32 the department of natural resources to determine whether the
5 33 cleanup actions serving as the basis for the cleanup costs
5 34 were consistent with Code chapter 455B.

5 35 The bill provides that money collected by the department of
6 1 natural resources shall be deposited in the hazardous waste
6 2 remedial fund. The bill provides that moneys collected by a
6 3 state agency other than the department of natural resources
6 4 are appropriated to that agency for purposes of reimbursing
6 5 costs of the agency for emergency response activities related
6 6 to the hazardous condition. The bill provides that moneys
6 7 collected by a political subdivision shall be retained by the
6 8 political subdivision and shall be used for purposes of
6 9 reimbursing costs of the political subdivision for emergency
6 10 response activities related to the hazardous condition.

6 11 LSB 1203HV 83

6 12 tm/sc/14