

Senate File 99 - Introduced

SENATE FILE _____
BY WARNSTADT

Passed Senate, Date _____ Passed House, 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 1203XS 83
5 tm/sc/14

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1 1 Section 1. Section 455B.392, subsections 1, 5, 6, and 7,
1 2 Code 2009, are amended to read as follows:
1 3 1. A person having control over a hazardous substance is
1 4 strictly liable to the state or a political subdivision for
1 5 all of the following:
1 6 a. The reasonable cleanup costs incurred by the state or
1 7 its political subdivisions, ~~by governmental subdivisions, or~~
~~1 8 by any other persons participating in the prevention or~~
~~1 9 mitigation of damages with the approval of the director, or~~
1 10 the agents of the state or a political subdivision as a result
1 11 of the failure of the person to clean up a hazardous substance
1 12 involved in a hazardous condition caused by that person.
1 13 b. The reasonable costs incurred by the state or its
1 14 political subdivisions or the agents of the state or a
1 15 political subdivision to evacuate people from the area
1 16 threatened by a hazardous condition caused by the person.
1 17 c. The reasonable damages to the state for the injury to,
1 18 destruction of, or loss of natural resources resulting from a
1 19 hazardous condition caused by that person including the costs
1 20 of assessing the injury, destruction, or loss.
1 21 d. The excessive and extraordinary cost, ~~excluding~~
~~1 22 salaries,~~ incurred by the ~~department~~ state or its political
1 23 subdivisions or the agents of the state or a political
1 24 subdivision in responding at and to the scene of a hazardous
1 25 condition caused by that person.
1 26 If the failure is willful, the person is liable for
1 27 punitive damages not to exceed triple the cleanup costs
1 28 incurred by the state or its political subdivisions or the
1 29 agents of the state or a political subdivision. Prompt and
1 30 good faith notification to the ~~director~~ state or a political
1 31 subdivision by the person having control over a hazardous
1 32 substance that the person does not have the resources or
1 33 managerial capability to begin or continue cleanup, or a good
1 34 faith effort to clean up, relieves the person of liability for
1 35 punitive damages, but not for actual cleanup costs. ~~The~~
~~2 1 director shall keep a record of all expenses incurred in~~
~~2 2 carrying out a project or activity authorized by this part.~~
2 3 Claims by the state under this subsection may be appealed
~~2 4 to the commission by the person filing a written notice of~~
~~2 5 appeal within thirty days after receipt of the bill shall be~~
2 6 made by the state agency or the political subdivision that
2 7 incurred costs or damages under this subsection, and such
2 8 costs or damages will be subject to administrative and
2 9 judicial review, including the terms of chapter 17A when
2 10 appropriate.
2 11 5. Money collected by the department pursuant to this
2 12 section shall be deposited in the hazardous waste remedial
2 13 fund created in section 455B.423. Moneys shall be used ~~to~~
~~2 14 reimburse governmental subdivisions requested to assist in the~~
2 15 cleanup for which the moneys were collected. The remainder of
~~2 16 the moneys shall be used in the manner permitted for the fund.~~
2 17 Moneys collected by a state agency other than the department
2 18 of natural resources pursuant to this section are appropriated

2 19 to that agency for purposes of reimbursing costs of the agency
2 20 for emergency response activities described in subsection 1.
2 21 Moneys collected by a political subdivision pursuant to this
2 22 section shall be retained by the political subdivision and
2 23 shall be used for purposes of reimbursing costs of the
2 24 political subdivision for emergency response activities
2 25 described in subsection 1.

2 26 6. This section does not deny any person any legal or
2 27 equitable rights, remedies or defenses or affect any legal
2 28 relationship other than the legal relationship between the
2 29 state or a political subdivision and a person having control
2 30 over a hazardous substance pursuant to subsection 1.

2 31 7. a. There is no liability under this section for a
2 32 person who has satisfied the requirements of section 455B.381,
2 33 subsection 7, unnumbered paragraph 2, regardless of when that
2 34 person acquired title or right to title to the hazardous
2 35 condition site, except that a person otherwise exempt from
3 1 liability under this subsection shall be liable to the state
3 2 or a political subdivision for the lesser of:

3 3 (1) The total reasonable cleanup costs incurred by the
3 4 state to clean up a hazardous substance at the hazardous
3 5 condition site; or

3 6 (2) The amount representing the postcleanup fair market
3 7 value of the property comprising the hazardous condition site.

3 8 b. Liability under this subsection shall only be imposed
3 9 when the person holds title to the hazardous condition site at
3 10 the time the state or a political subdivision incurs
3 11 reasonable cleanup costs.

3 12 c. For purposes of this subsection, "postcleanup fair
3 13 market value" means the actual amount of consideration
3 14 received by such person upon sale or transfer of the hazardous
3 15 condition site which has been cleaned up by the state or a
3 16 political subdivision to a bona fide purchaser for value.

3 17 d. Cleanup expenses incurred by the state or a political
3 18 subdivision shall be a lien upon the real estate constituting
3 19 the hazardous condition site, recordable and collectable in
3 20 the same manner as provided for in section 424.11, subject to
3 21 the terms of this subsection. The lien shall attach at the
3 22 time the state or a political subdivision incurs expenses to
3 23 clean up the hazardous condition site. The lien shall be
3 24 valid as against subsequent mortgagees, purchasers, or
3 25 judgment creditors, for value and without notice of the lien,
3 26 only when a notice of the lien is filed with the recorder of
3 27 the county in which the property is located. Upon payment by
3 28 the person to the state or a political subdivision, of the
3 29 amount specified in this subsection, the state or a political
3 30 subdivision shall release the lien. If no lien has been
3 31 recorded at the time the person sells or transfers the
3 32 property, then the person shall not be liable for any cleanup
3 33 costs incurred by the state or a political subdivision.

3 34 EXPLANATION

3 35 This bill relates to the reimbursement of hazardous
4 1 substance cleanup costs.

4 2 The bill requires a person having control over a hazardous
4 3 substance to be strictly liable to the state or a political
4 4 subdivision of the state for various costs incurred by and
4 5 damages to the state or a political subdivision associated
4 6 with a hazardous condition. The bill provides that claims
4 7 shall be made by a state agency or political subdivision for
4 8 costs or damages incurred and that the claims are subject to
4 9 administrative and judicial review.

4 10 The bill provides that money collected by the department of
4 11 natural resources shall be deposited in the hazardous waste
4 12 remedial fund. The bill provides that moneys collected by a
4 13 state agency other than the department of natural resources
4 14 are appropriated to that agency for purposes of reimbursing
4 15 costs of the agency for emergency response activities related
4 16 to the hazardous condition. The bill provides that moneys
4 17 collected by a political subdivision shall be retained by the
4 18 political subdivision and shall be used for purposes of
4 19 reimbursing costs of the political subdivision for emergency
4 20 response activities related to the hazardous condition.

4 21 LSB 1203XS 83

4 22 tm/sc/14.2