

Senate Study Bill 3062 - Introduced

SENATE/HOUSE FILE _____
BY (PROPOSED UNDERGROUND
STORAGE TANK FUND BOARD
BILL)

A BILL FOR

1 An Act relating to underground storage tanks, including by
2 creating the Iowa tanks fund and Iowa tanks fund financing
3 program, repealing the Iowa comprehensive petroleum
4 underground storage tank fund, and eliminating the Iowa
5 comprehensive petroleum underground storage tank fund board,
6 and including effective date and transition provisions.
7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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DIVISION I

IOWA TANKS FUND

Section 1. Section 455B.471, subsection 1, Code 2020, is amended by striking the subsection.

Sec. 2. Section 455B.471, Code 2020, is amended by adding the following new subsections:

NEW SUBSECTION. 1A. "*Claimant*" means an owner or operator who has received assistance under the Iowa tanks fund or its predecessor, the Iowa comprehensive petroleum underground storage tank fund created in section 455G.3, Code 2019.

NEW SUBSECTION. 1B. "*Community remediation*" means a curriculum of coordinated testing, planning, or remediation involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the commission under section 455B.474. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

NEW SUBSECTION. 2A. "*Costs*" means all costs, charges, expenses, or other indebtedness incurred by a claimant that are determined by the department to be reasonable for carrying out all works and undertakings necessary or incidental to the accomplishment of any project. "*Costs*" includes reasonable attorney fees and costs of litigation for which moneys are expended from the fund in connection with a release.

NEW SUBSECTION. 3A. "*Insurance*" means any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or the department's underground storage tank financial responsibility rules.

NEW SUBSECTION. 7A. "*Potentially responsible party*" means a person who may be responsible or liable for a release for which payments from the fund were made for corrective action or third-party liability.

NEW SUBSECTION. 7B. "*Program*" means the Iowa tanks fund financing program created pursuant to section 455B.472A.

1 NEW SUBSECTION. 10A. *“Third-party liability”* means any of
2 the following:

3 a. Property damage including physical injury to tangible
4 property, but not including loss of use. Property damage does
5 not include costs to remediate.

6 b. Bodily injury including sickness, physical injury, or
7 death.

8 Sec. 3. Section 455B.471, subsection 3, Code 2020, is
9 amended to read as follows:

10 3. *“Fund”* means the Iowa ~~comprehensive petroleum underground~~
11 ~~storage tank tanks~~ fund created in section 455B.472A.

12 Sec. 4. Section 455B.472, Code 2020, is amended to read as
13 follows:

14 **455B.472 Declaration of policy.**

15 The general assembly finds that the release of regulated
16 substances from underground storage tanks constitutes a
17 threat to the public health and safety and to the natural
18 resources of the state, and that existing regulatory programs
19 of the department and other agencies do not adequately or
20 appropriately address this substantial public concern.

21 Additionally, the general assembly recognizes that because the
22 appropriation of moneys to the Iowa comprehensive petroleum
23 underground storage tank fund created in section 455G.3, Code
24 2019, ended on December 31, 2016, it is in the public interest
25 to expeditiously use any remaining moneys from the Iowa
26 comprehensive petroleum underground storage tank fund to assist
27 as many owners as possible with financing all or part of the
28 costs of corrective action for petroleum releases from leaking
29 underground storage tanks through the establishment of the Iowa
30 tanks fund financing program. The financing program shall last
31 as long as moneys remain available, and the general assembly
32 recognizes that moneys available for the financing program will
33 eventually be depleted.

34 Sec. 5. NEW SECTION. **455B.472A Iowa tanks fund financing**
35 **program — fund created.**

1 1. The department shall establish and administer an Iowa
2 tanks fund financing program for the purpose of reimbursing
3 eligible claimants for all or part of the costs of corrective
4 action for petroleum releases previously eligible for payment
5 from the Iowa comprehensive petroleum underground storage tank
6 fund pursuant to chapter 455G, Code 2019.

7 2. The department shall distribute financial assistance, up
8 to one million dollars total, for work conducted by eligible
9 entities that comply with the requirements of the program. The
10 department shall determine if work completed is eligible for
11 reimbursement under the program.

12 3. The department may enter into and provide any agreements,
13 documents, instruments, certificates, data, or information
14 necessary in connection with the operation, administration, and
15 financing of the program consistent with this part, the federal
16 Resource Conservation and Recovery Act, 42 U.S.C. §6901 et
17 seq., the rules of the commission, and other applicable federal
18 and state law.

19 4. The department may act to conform the program to the
20 applicable guidance and regulations adopted by the United
21 States environmental protection agency.

22 5. The Iowa tanks fund is created in the state treasury
23 under the control of the department. The fund shall consist
24 of moneys appropriated or transferred to the fund, interest
25 attributable to moneys in the fund, moneys in the form of
26 a devise, gift, bequest, donation, federal or other grant,
27 reimbursement, repayment, judgment, or payment from any source
28 intended to be used for the purposes of the fund, all receipts
29 by the fund, and any other moneys credited to the fund from any
30 public or private source. Notwithstanding section 8.33, any
31 moneys in the fund shall not revert to the general fund of the
32 state. Notwithstanding section 12C.7, subsection 2, interest
33 or earnings on moneys in the fund shall be credited to the
34 fund.

35 6. The department shall administer the fund to carry out

1 the purposes of the program and shall manage the revenue,
2 administration, restrictions, and disposition of the fund.

3 7. Moneys in the fund shall be used to reimburse tank owners
4 for all or part of the costs of a corrective action for a
5 petroleum release and for permanent closure of an underground
6 storage tank system under the program, for tank operator
7 training, and for administrative costs of the department
8 associated with the program.

9 8. Moneys in the fund are not considered part of the general
10 fund of the state and are not subject to appropriation for any
11 other purpose by the general assembly. The fund is a separate
12 dedicated fund under the administration and control of the
13 department.

14 9. Payments for reimbursement or other costs relating to any
15 claim or cause of action in connection with a tank not owned or
16 operated by the state or an agency of the state shall be made
17 solely from the fund and no liability is otherwise imposed upon
18 the state. Moneys from the fund are limited to the extent of
19 coverage provided by the applicable account within the fund
20 under which a claim is submitted, subject to the terms and
21 conditions of that coverage. A court, an administrative law
22 judge, the department, or the commission shall not order or
23 approve a remedy that would require the fund to exceed the
24 fund's then current funding limitations to satisfy an award
25 or that would restrict the availability of moneys for higher
26 priority sites. The state is not otherwise liable for a claim
27 related to the fund and moneys from the general fund shall not
28 be used to pay for reimbursement or other costs relating to any
29 claim or cause of action in connection with a tank not owned or
30 operated by the state or an agency of the state.

31 Sec. 6. NEW SECTION. **455B.472B Cost recovery enforcement.**

32 1. *Full recovery sought by department.* The department
33 may seek full recovery from an owner, operator, or other
34 potentially responsible party liable for a release that is the
35 subject of a corrective action for which moneys from the fund

1 are expended, or for which moneys from the Iowa comprehensive
2 petroleum underground storage tank fund created in section
3 455G.3, Code 2019, were expended, including for third-party
4 liability and for all other costs. If federal cleanup moneys
5 are recovered, the federal cleanup moneys shall be used solely
6 for the purpose of future cleanup activities.

7 2. *Limitation of liability of owner or operator.* Except
8 as provided in subsection 3, the department shall not seek
9 recovery for expenses in connection with corrective action for
10 a release from an owner or operator eligible for assistance
11 under the program, except for any unpaid portion of the
12 deductible or copayment. This section does not affect any
13 authorization of the department to impose or collect civil or
14 administrative fines, penalties, or fees. Moneys from the fund
15 shall not be used to pay for any third-party liability.

16 3. *Owner or operator not in compliance.* Notwithstanding
17 subsection 2, the liability of an owner or operator shall be
18 the full and total costs of corrective action and bodily injury
19 or property damage to third parties, as specified in subsection
20 1, if the owner or operator has not complied with the financial
21 responsibility or other underground storage tank rules of the
22 department or with this part or rules adopted under this part.

23 4. *Lien on tank site.* Any amount for which an owner or
24 operator is required to pay to the fund by statute, rule,
25 contract, or determination of liability by the department after
26 hearing, if not paid when due, shall constitute a lien upon the
27 real property where the tank that was the subject of corrective
28 action is located, and the payment shall be collected in the
29 same manner as the environmental protection charge pursuant to
30 section 424.11, Code 2016.

31 5. *Joinder of parties.* The department has standing in
32 any case or contested action related to the fund or a tank
33 to assert any claim that the department may have regarding
34 the tank at issue in the case or contested action. Upon
35 motion and sufficient showing by a party to a cost recovery or

1 subrogation action provided for under this section, the court
2 or the administrative law judge shall join to the action any
3 potentially responsible party who may be liable for costs and
4 expenditures of the type recoverable pursuant to this section.

5 6. *Third-party contracts.* An insurance, indemnification,
6 hold-harmless, conveyance, or similar risk-sharing or
7 risk-shifting agreement shall not be effective to transfer
8 any liability for costs recoverable under this section. The
9 department may proceed directly against the owner, operator, or
10 other potentially responsible party. This section does not bar
11 any agreement to insure, hold harmless, or indemnify a party to
12 the agreement for any costs or expenditures under this part,
13 and does not modify rights between the parties to an agreement,
14 except to the extent the agreement shifts liability to an owner
15 or operator eligible for assistance under the program for any
16 damages or other costs in connection with a corrective action
17 for which another potentially responsible party is or may be
18 liable. Any such provision is void and of no further force and
19 effect.

20 7. *Later proceedings permitted against other parties.* The
21 entry of judgment against a party to the action does not
22 bar a future action by the department against another person
23 who is later alleged to be or discovered to be liable for
24 costs and expenditures paid from the fund. Notwithstanding
25 section 668.5, a potentially responsible party shall not seek
26 contribution or any other recovery from an owner or operator
27 eligible for assistance under the program for damages or other
28 costs in connection with corrective action for a release for
29 which the potentially responsible party is or may be liable.
30 Subsequent successful proceedings against another party shall
31 not modify or reduce the liability of a party against whom
32 judgment has been previously entered.

33 8. *Claims against potentially responsible parties.*

34 a. Upon payment from the fund for corrective action or
35 third-party liability pursuant to this part, the rights of the

1 claimant to recover payment from any potentially responsible
2 party are assumed by the department to the extent paid from the
3 fund. A claimant shall not receive double compensation for the
4 same injury.

5 **b.** In an action brought pursuant to this part seeking
6 damages for corrective action or third-party liability, the
7 court shall allow evidence and argument as to the replacement
8 or indemnification of actual economic losses incurred or to be
9 incurred in the future by the claimant by reason of insurance
10 benefits, governmental benefits or programs, or other sources.

11 **c.** A claimant may elect to authorize the department
12 to pursue the claimant's cause of action for any injury
13 not compensated from the fund against any potentially
14 responsible party, provided the attorney general determines
15 such representation would not be a conflict of interest. If
16 a claimant so elects, the department's litigation expenses
17 shall be shared on a pro rata basis with the claimant, but the
18 claimant's share of litigation expenses is payable exclusively
19 from any share of the settlement or judgment payable to the
20 claimant.

21 **9. Exclusion of punitive damages.** Moneys from the fund
22 shall not be used to pay punitive damages.

23 **Sec. 7. NEW SECTION. 455B.472C Discretionary rulemaking.**

24 **1.** The commission may adopt rules pursuant to chapter
25 17A conditioning receipt of moneys from the fund to those
26 petroleum-contaminated properties that present a higher degree
27 of risk to the public health and safety or the environment and
28 providing for denial of moneys from the fund to a person who
29 did not make a good-faith attempt to comply with this part.
30 This subsection does not confer a legal right to an owner of a
31 petroleum-contaminated property, or an owner or operator of an
32 underground storage tank located on the property, for receipt
33 of moneys under this part.

34 **2.** The commission may adopt rules pursuant to chapter
35 17A providing for the transfer of all or a portion of the

1 liabilities relating to the fund. Notwithstanding any other
2 provision to the contrary, the department, upon such transfer,
3 shall not maintain any duty to reimburse claimants for those
4 liabilities transferred.

5 Sec. 8. Section 455B.474, subsection 1, paragraph a,
6 subparagraph (6), subparagraph divisions (g), (i), and (j),
7 Code 2020, are amended to read as follows:

8 (g) An owner or operator may elect to proceed with
9 additional corrective action on the site. However, any
10 action taken in addition to that required pursuant to this
11 subparagraph (6), shall be solely at the expense of the owner
12 or operator and shall not be considered corrective action
13 for purposes of [section 455G.9 455B.472A](#), unless otherwise
14 previously agreed to by the ~~board~~ department and the owner or
15 operator pursuant to ~~section 455G.9, subsection 7~~ [455B.472A](#).
16 Corrective action taken by an owner or operator due to the
17 department's failure to meet the time requirements provided in
18 subparagraph division (e) shall be considered corrective action
19 for purposes of [section 455G.9 455B.472A](#).

20 (i) Replacement or upgrade of a tank on a site classified
21 as a high or low risk site shall be equipped with a secondary
22 containment system with monitoring of the space between the
23 primary and secondary containment structures or other ~~board~~
24 ~~approved~~ tank system or methodology approved by the department.

25 (j) The commission and the ~~board~~ department shall cooperate
26 to ensure that remedial measures required by the corrective
27 action rules adopted pursuant to this subparagraph (6) are
28 reasonably cost-effective and shall, to the fullest extent
29 possible, avoid duplicating and conflicting requirements.

30 Sec. 9. Section 455B.474, subsection 2, unnumbered
31 paragraph 1, Code 2020, is amended to read as follows:

32 The maintenance of evidence of financial responsibility as
33 the director determines to be feasible and necessary for taking
34 corrective action and for compensating third parties for bodily
35 injury and property damage caused by release of a regulated

1 substance from ~~an underground storage~~ a tank.

2 Sec. 10. Section 455B.474, subsection 9, paragraph d, Code
3 2020, is amended to read as follows:

4 *d.* The certification of groundwater professionals shall not
5 impose liability on ~~the board,~~ the department, or the fund for
6 any claim or cause of action of any nature, based on the action
7 or inaction of a groundwater professional certified pursuant
8 to [this subsection](#).

9 Sec. 11. Section 455B.474, Code 2020, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 11. Department practices and procedures
12 for implementing and administering the Iowa tanks fund
13 financing program. The rules shall include but are not limited
14 to requirements for program eligibility, investigating and
15 settling claims made against the fund, appeal procedures,
16 community remediation, prioritization of fund moneys,
17 funding for tank operator training, additional assessment
18 and corrective action arising out of releases at sites for
19 which a certificate of no further action has been issued, and
20 reimbursement for the permanent closure of an underground
21 storage tank system.

22 Sec. 12. Section 455B.477, subsection 7, Code 2020, is
23 amended to read as follows:

24 7. ~~The civil penalties or other damages or moneys recovered~~
25 ~~by the state or the petroleum underground storage tank fund~~
26 ~~in connection with a petroleum underground storage tank under~~
27 ~~this part of [this division](#) or [chapter 455G](#) shall be credited~~
28 ~~to the fund created in [section 455G.3](#) and allocated between~~
29 ~~fund accounts according to the fund budget.~~ Any federal
30 moneys, including but not limited to federal underground
31 storage tank trust fund moneys, received by the state or the
32 department of natural resources in connection with a release
33 occurring on or after May 5, 1989, or received generally for
34 underground storage tank programs on or after May 5, 1989,
35 shall be credited to the fund created in [section 455G.3](#) and

1 ~~allocated between fund accounts according to the fund budget~~
2 455B.472A, unless such use would be contrary to federal law.
3 The department shall ~~cooperate with the board of the Iowa~~
4 ~~comprehensive petroleum underground storage tank fund to~~
5 maximize the state's eligibility for and receipt of federal
6 funds for underground storage tank related purposes.

7 Sec. 13. EFFECTIVE DATE. This division of this Act takes
8 effect July 1, 2021.

9 DIVISION II

10 CONFORMING CHANGES

11 Sec. 14. Section 68B.35, subsection 2, paragraph e, Code
12 2020, is amended to read as follows:

13 e. Members of the state banking council, the Iowa ethics
14 and campaign disclosure board, the credit union review board,
15 the economic development authority, the employment appeal
16 board, the environmental protection commission, the health
17 facilities council, the Iowa finance authority, the Iowa public
18 employees' retirement system investment board, the board of
19 the Iowa lottery authority, the natural resource commission,
20 the board of parole, ~~the petroleum underground storage tank~~
21 ~~fund board~~, the public employment relations board, the state
22 racing and gaming commission, the state board of regents, the
23 transportation commission, the office of consumer advocate, the
24 utilities board, the Iowa telecommunications and technology
25 commission, and any full-time members of other boards and
26 commissions as defined under [section 7E.4](#) who receive an annual
27 salary for their service on the board or commission. The Iowa
28 ethics and campaign disclosure board shall conduct an annual
29 review to determine if members of any other board, commission,
30 or authority should file a statement and shall require the
31 filing of a statement pursuant to rules adopted pursuant to
32 chapter 17A.

33 Sec. 15. Section 159A.11, subsection 10, Code 2020, is
34 amended by striking the subsection.

35 Sec. 16. Section 159A.13, subsection 6, Code 2020, is

1 amended by striking the subsection.

2 Sec. 17. Section 159A.14, subsection 2, Code 2020, is
3 amended to read as follows:

4 2. A person may apply to the department to receive financial
5 incentives on a cost-share basis. The department shall forward
6 the applications ~~to the underground storage tank fund board as~~
7 ~~required by that board for evaluation and recommendation. The~~
8 ~~underground storage tank fund board may rank the applications~~
9 ~~with comments and shall forward them~~ to the infrastructure
10 board for approval or disapproval. The department shall award
11 financial incentives on a cost-share basis to an eligible
12 person whose application was approved by the infrastructure
13 board.

14 Sec. 18. Section 159A.15, subsection 1, Code 2020, is
15 amended to read as follows:

16 1. A person may apply to the department to receive financial
17 incentives on a cost-share basis. The department shall forward
18 the applications ~~to the underground storage tank fund board as~~
19 ~~required by that board for evaluation and recommendation. The~~
20 ~~underground storage tank fund board may rank the applications~~
21 ~~with comments and shall forward them~~ to the infrastructure
22 board for approval or disapproval. The department shall award
23 financial incentives on a cost-share basis to an eligible
24 person whose application was approved by the infrastructure
25 board.

26 Sec. 19. Section 323.1, subsection 16, Code 2020, is amended
27 to read as follows:

28 16. "*Storage tank*" means a motor fuel storage tank as
29 defined in [section 214.1](#), including an underground storage tank
30 subject to regulation under chapter ~~455G~~ 455B, division IV,
31 part 8, or section 455G.31.

32 Sec. 20. Section 422.7, subsection 2, paragraph u, Code
33 2020, is amended by striking the paragraph.

34 Sec. 21. Section 455B.174, subsection 4, paragraph d, Code
35 2020, is amended to read as follows:

1 *d.* If a public water supply has a groundwater source
2 that contains petroleum, a fraction of crude oil, or their
3 degradation products, or is located in an area deemed by the
4 department as likely to be contaminated by such materials, and
5 after consultation with the public water supply system and
6 consideration of all applicable rules relating to remediation,
7 the department may require the public water supply system to
8 replace that groundwater source in order to receive a permit
9 to operate. The requirement to replace the source shall only
10 be made by the department if the public water supply system
11 is fully compensated for any additional design, construction,
12 operation, and monitoring costs ~~from the Iowa comprehensive~~
13 ~~petroleum underground storage tank fund created by chapter~~
14 ~~455G~~ or from any other funds that do not impose a financial
15 obligation on the part of the public water supply system.
16 Funds available to or provided by the public water supply
17 system may be used for system improvements made in conjunction
18 with replacement of the source. The department cannot require
19 a public water supply system to replace its water source with a
20 less reliable water source or with a source that does not meet
21 federal primary, secondary, or other health-based standards
22 unless treatment is provided to ensure that the drinking water
23 meets these standards. Nothing in this paragraph shall affect
24 the public water supply system's right to pursue recovery from
25 a responsible party.

26 Sec. 22. Section 455E.11, subsection 2, paragraph *d*,
27 subparagraph (3), Code 2020, is amended by striking the
28 subparagraph.

29 Sec. 23. Section 455I.2, subsection 5, paragraph *a*, Code
30 2020, is amended to read as follows:

31 *a.* A federal or state program that is subject to the
32 jurisdiction of an agency, including but not limited to
33 programs established by chapters chapter 455B and 455G,
34 corrective or response actions pursuant to 42 U.S.C. §6901 et
35 seq., and remedial actions under 42 U.S.C. §9601 et seq.

1 payments, or other obligations for open comprehensive petroleum
2 underground storage tank fund claims existing on or before June
3 30, 2021.

4 4. The department of natural resources may begin
5 implementation of this Act prior to July 1, 2021, to the
6 extent necessary to transition to full implementation of the
7 provisions relating to the Iowa tanks fund and repeal of the
8 Iowa comprehensive petroleum underground storage tank fund.

9 EXPLANATION

10 The inclusion of this explanation does not constitute agreement with
11 the explanation's substance by the members of the general assembly.

12 Currently, the Iowa comprehensive petroleum underground
13 storage tank fund exists under the control of the Iowa
14 comprehensive petroleum underground storage tank fund board.
15 The Iowa comprehensive petroleum underground storage tank fund
16 contains an account with moneys available to fund corrective
17 action for petroleum releases. The Iowa comprehensive
18 petroleum underground storage tank fund also contains a loan
19 guarantee account and a marketability fund.

20 This bill repeals the Iowa comprehensive petroleum
21 underground storage tank fund and eliminates the Iowa
22 comprehensive petroleum underground storage tank fund board
23 on July 1, 2021. The bill requires the department of natural
24 resources (department) to establish and administer the Iowa
25 tanks fund financing program to distribute financial assistance
26 for work conducted by eligible entities. The bill creates the
27 Iowa tanks fund within the state treasury under the control
28 of the department and requires the department to administer
29 the fund. The program allows a claimant who has previously
30 received assistance under the Iowa tanks fund or the Iowa
31 comprehensive petroleum underground storage tank fund to
32 receive reimbursement from the Iowa tanks fund for all or part
33 of the costs of corrective action for a petroleum release.
34 The bill allows for cost recovery efforts from potentially
35 responsible parties when moneys from the Iowa tanks fund are

1 used during the cleanup of contamination at a tank site. The
2 bill directs the environmental protection commission to adopt
3 rules for program eligibility, investigating and settling
4 claims made against the fund, appeal procedures, community
5 remediation, prioritization of fund moneys, funding for tank
6 operator training, additional assessment and corrective action
7 arising out of a release at a site for which a no further
8 action certificate has been issued, and reimbursement for
9 the permanent closure of an underground storage tank system.
10 The bill provides that claims for releases filed on or after
11 January 1, 2021, are not eligible for payment from the Iowa
12 comprehensive petroleum underground storage tank fund.

13 The bill includes transition provisions retaining the
14 effectiveness of rules, regulations, forms, orders, or
15 directives promulgated by the Iowa comprehensive petroleum
16 underground storage tank fund board until amended, repealed,
17 or supplemented by affirmative action of the department. Any
18 moneys credited to the Iowa comprehensive petroleum underground
19 storage tank fund on and after July 1, 2021, are transferred to
20 the department for deposit in the Iowa tanks fund.

21 The divisions of the bill establishing the Iowa tanks fund
22 and making conforming Code changes take effect July 1, 2021.