

Senate File 2414 - Reprinted

SENATE FILE 2414

BY COMMITTEE ON APPROPRIATIONS

(SUCCESSOR TO SF 2327)

(SUCCESSOR TO SSB 3177)

(As Amended and Passed by the Senate April 3, 2024)

A BILL FOR

1 An Act relating to underground storage tanks, including
2 repealing the Iowa comprehensive petroleum underground
3 storage tank fund and eliminating the Iowa comprehensive
4 petroleum underground storage tank fund board, making
5 appropriations, and including effective date and transition
6 provisions.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

STORAGE TANK MANAGEMENT ACCOUNT

1
2
3 Section 1. Section 455B.471, subsections 1 and 3, Code 2024,
4 are amended by striking the subsections.

5 Sec. 2. Section 455B.471, Code 2024, is amended by adding
6 the following new subsections:

7 NEW SUBSECTION. 1A. "*Account*" means the storage tank
8 management account created in the groundwater protection fund
9 created in section 455E.11.

10 NEW SUBSECTION. 1B. "*Claimant*" means an owner or operator
11 who has filed a claim for assistance under the account, and
12 that claim has been approved by the department, or the Iowa
13 comprehensive petroleum underground storage tank fund created
14 in section 455G.3, Code 2024.

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

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

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

34 NEW SUBSECTION. 7A. "*Potentially responsible party*" means a
35 person who may be responsible or liable for a release for which

1 payments from the account were made for corrective action or
2 third-party liability.

3 NEW SUBSECTION. 7B. "*Program*" means the storage tank
4 management account financing program created pursuant to
5 section 455B.472A.

6 NEW SUBSECTION. 10A. "*Third-party liability*" means any of
7 the following:

8 a. Property damage including physical injury to tangible
9 property, but not including loss of use. Property damage does
10 not include costs to remediate.

11 b. Bodily injury including sickness, physical injury, or
12 death.

13 **Sec. 3. NEW SECTION. 455B.472A Storage tank management**
14 **account financing program.**

15 1. The department shall establish and administer a storage
16 tank management account financing program for the purpose of
17 reimbursing eligible claimants for all or part of the costs of
18 corrective action for petroleum releases previously eligible
19 for payment from the Iowa comprehensive petroleum underground
20 storage tank fund pursuant to chapter 455G, Code 2024.

21 2. The department may enter into any agreements and provide
22 any documents, instruments, certificates, data, or information
23 necessary in connection with the operation, administration,
24 and financing of the program consistent with this part 8 of
25 subchapter IV, the federal Resource Conservation and Recovery
26 Act, 42 U.S.C. §6901 et seq., the rules of the commission, and
27 other applicable federal and state law.

28 3. The department may act to conform the program to the
29 applicable guidance and regulations adopted by the United
30 States environmental protection agency.

31 4. The department shall administer the moneys in the account
32 transferred pursuant to this Act to carry out the purposes
33 of the program and shall manage the revenue, administration,
34 restrictions, and disposition of the moneys in the account
35 transferred pursuant to this Act.

1 5. Moneys in the account transferred pursuant to this Act
2 are appropriated to the department for the purposes set forth
3 in section 455E.11, subsection 2, paragraph "d", subparagraph
4 (1A).

5 6. Payments for reimbursement or other costs relating to any
6 claim or cause of action in connection with a tank not owned or
7 operated by the state or an agency of the state shall be made
8 solely from the moneys in the account transferred pursuant to
9 this Act and no liability is otherwise imposed upon the state.
10 Moneys from the account transferred pursuant to this Act are
11 limited to the extent of coverage provided by the provisions
12 set forth in section 455E.11, subsection 2, paragraph "d",
13 subparagraph (1A). A court, an administrative law judge, the
14 department, or the commission shall not order or approve a
15 remedy that would require the account to exceed the account's
16 then current funding limitations to satisfy an award or that
17 would restrict the availability of moneys for higher priority
18 purposes described in section 455E.11, subsection 2, paragraph
19 "d", subparagraph (1A), subparagraph division (c). The state
20 is not otherwise liable for a claim related to the account
21 and moneys from the general fund shall not be used to pay for
22 reimbursement or other costs relating to any claim or cause of
23 action in connection with a tank not owned or operated by the
24 state or an agency of the state.

25 **Sec. 4. NEW SECTION. 455B.472B Cost recovery enforcement.**

26 1. *Full recovery sought by department.* The department
27 may seek full recovery from an owner, operator, or other
28 potentially responsible party liable for a release that is
29 the subject of a corrective action for which moneys from
30 the account are expended, or for which moneys from the Iowa
31 comprehensive petroleum underground storage tank fund created
32 in section 455G.3, Code 2024, were expended, including for
33 third-party liability and for all other costs. If federal
34 cleanup moneys are recovered, the federal cleanup moneys shall
35 be used solely for the purpose of future cleanup activities.

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

10 3. *Owner or operator not in compliance.* Notwithstanding
11 subsection 2, the liability of an owner or operator shall be
12 the full and total costs of corrective action and bodily injury
13 or property damage to third parties, as specified in subsection
14 1, if the owner or operator has not complied with the financial
15 responsibility or other underground storage tank rules of
16 the department or with this part 8 of subchapter IV or rules
17 adopted under this part.

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

26 5. *Joinder of parties.* The department has standing in
27 any case or contested action related to the account or a tank
28 to assert any claim that the department may have regarding
29 the tank at issue in the case or contested action. Upon
30 motion and sufficient showing by a party to a cost recovery or
31 subrogation action provided for under this section, the court
32 or the administrative law judge shall join to the action any
33 potentially responsible party who may be liable for costs and
34 expenditures of the type recoverable pursuant to this section.

35 6. *Third-party contracts.* An insurance, indemnification,

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

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

28 8. *Claims against potentially responsible parties.*

29 a. Upon payment from the account for corrective action or
30 third-party liability pursuant to this part 8 of subchapter
31 IV, the rights of the claimant to recover payment from any
32 potentially responsible party are assumed by the department to
33 the extent paid from the account. A claimant shall not receive
34 double compensation for the same injury.

35 b. In an action brought pursuant to this part 8 of

1 subchapter IV seeking damages for corrective action or
2 third-party liability, the court shall allow evidence and
3 argument as to the replacement or indemnification of actual
4 economic losses incurred or to be incurred in the future by the
5 claimant by reason of insurance benefits, governmental benefits
6 or programs, or other sources.

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

17 9. *Exclusion of punitive damages.* Moneys from the account
18 shall not be used to pay punitive damages.

19 Sec. 5. NEW SECTION. **455B.472C Discretionary rulemaking.**

20 1. The commission may adopt rules pursuant to chapter 17A
21 conditioning receipt of moneys from the account transferred
22 pursuant to this Act to those petroleum-contaminated properties
23 that present a higher degree of risk to the public health and
24 safety or the environment and providing for denial of moneys
25 from the account transferred pursuant to this Act to a person
26 who did not make a good-faith attempt to comply with this part
27 8 of subchapter IV. This subsection does not confer a legal
28 right to an owner of a petroleum-contaminated property, or an
29 owner or operator of an underground storage tank located on the
30 property, for receipt of moneys under this part 8 of subchapter
31 IV.

32 2. The commission may adopt rules pursuant to chapter
33 17A providing for the transfer of all or a portion of the
34 liabilities relating to the account. Notwithstanding any other
35 provision to the contrary, the department, upon such transfer,

1 shall not maintain any duty to reimburse claimants for those
2 liabilities transferred.

3 Sec. 6. Section 455B.474, subsection 1, paragraph a,
4 subparagraph (6), subparagraph divisions (g), (i), and (j),
5 Code 2024, are amended to read as follows:

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

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

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

28 Sec. 7. Section 455B.474, subsection 9, paragraph d, Code
29 2024, is amended to read as follows:

30 d. The certification of groundwater professionals shall
31 not impose liability on ~~the board~~, the department, or the
32 ~~fund~~ account for any claim or cause of action of any nature,
33 based on the action or inaction of a groundwater professional
34 certified pursuant to [this subsection](#).

35 Sec. 8. Section 455B.474, Code 2024, is amended by adding

1 the following new subsection:

2 NEW SUBSECTION. 11. Department practices and procedures
3 for implementing and administering the storage tank management
4 account financing program. The rules shall include but
5 are not limited to requirements for program eligibility,
6 investigating and settling claims made against the account,
7 appeal procedures, community remediation, prioritization of
8 account moneys, funding for tank operator training, additional
9 assessment and corrective action arising out of releases at
10 sites for which a certificate of no further action has been
11 issued, and reimbursement for the permanent closure of an
12 underground storage tank system.

13 Sec. 9. Section 455B.477, subsection 7, Code 2024, is
14 amended to read as follows:

15 ~~7. The civil penalties or other damages or moneys recovered~~
16 ~~by the state or the petroleum underground storage tank fund in~~
17 ~~connection with a petroleum underground storage tank under this~~
18 ~~part 8 of subchapter IV or [chapter 455G](#) shall be credited to~~
19 ~~the fund created in [section 455G.3](#) and allocated between fund~~
20 ~~accounts according to the fund budget. Any federal moneys,~~
21 including but not limited to federal underground storage tank
22 trust fund moneys, received by the state or the department of
23 natural resources in connection with a release occurring on
24 or after May 5, 1989, or received generally for underground
25 storage tank programs on or after May 5, 1989, shall be
26 credited to the fund account created in ~~section 455G.3~~ and
27 ~~allocated between fund accounts according to the fund budget~~
28 455E.11, subsection 2, paragraph "d", unless such use would
29 be contrary to federal law. The department shall ~~cooperate~~
30 ~~with the board of the Iowa comprehensive petroleum underground~~
31 ~~storage tank fund~~ to maximize the state's eligibility for and
32 receipt of federal funds for underground storage tank related
33 purposes.

34 Sec. 10. Section 455E.11, subsection 2, paragraph d,
35 unnumbered paragraph 1, Code 2024, is amended to read as

1 follows:

2 A storage tank management account. ~~All~~ The account shall
3 consist of moneys appropriated to, transferred to, or deposited
4 in the account, including fees collected pursuant to section
5 455B.473, subsection 5, section 455B.477, subsection 7, and
6 section 455B.479, shall be deposited in the storage tank
7 management account. Moneys deposited in the account shall be
8 expended for all of the following purposes:

9 Sec. 11. Section 455E.11, subsection 2, paragraph d, Code
10 2024, is amended by adding the following new subparagraph:

11 NEW SUBPARAGRAPH. (1A) Moneys transferred under this Act to
12 the account are appropriated for the following purposes until
13 such moneys are fully expended:

14 (a) For reimbursement to tank owners or operators for all
15 or part of the costs of a corrective action for a petroleum
16 release.

17 (b) For the annual appropriation to the department
18 of agriculture and land stewardship in the amount of two
19 hundred fifty thousand dollars for the purpose of inspecting
20 fuel quality at pipeline terminals and renewable fuel
21 production facilities, including associated salaries, support,
22 maintenance, and miscellaneous purposes.

23 (c) For permanent closure of an underground storage tank
24 system under a remedial program pursuant to chapter 455B,
25 subchapter IV, part 8, for additional assessment and corrective
26 action arising out of releases at sites for which a certificate
27 of no further action has been issued, and for tank operator
28 training. At least three million dollars of the total moneys
29 expended pursuant to this subparagraph shall be expended for
30 the purposes described in this subparagraph division, but not
31 more than fifty thousand dollars shall be utilized for operator
32 training each fiscal year.

33 Sec. 12. Section 455E.11, subsection 2, paragraph d,
34 subparagraph (2), Code 2024, is amended to read as follows:

35 (2) The moneys remaining in the account after the

1 ~~appropriation~~ appropriations in ~~subparagraph~~ subparagraphs (1)
2 and (1A) are appropriated ~~from the storage tank management~~
3 ~~account~~ to the department of natural resources for the
4 administration of a state storage tank program pursuant to
5 chapter 455B, subchapter IV, part 8, and for programs ~~which~~
6 that reduce the potential for harm to the environment and the
7 public health from storage tanks.

8 Sec. 13. REPEAL. Sections 455G.1, 455G.2, 455G.2A, 455G.3,
9 455G.4, 455G.5, 455G.6, 455G.7, 455G.8, 455G.9, 455G.12,
10 455G.12A, 455G.13, 455G.14, 455G.15, 455G.16, 455G.20, and
11 455G.21, Code 2024, are repealed.

12 DIVISION II

13 CONFORMING CHANGES

14 Sec. 14. Section 68B.35, subsection 2, paragraph e, Code
15 2024, is amended to read as follows:

16 e. Members of the state banking council, the Iowa ethics and
17 campaign disclosure board, the credit union review board, the
18 economic development authority, the employment appeal board,
19 the environmental protection commission, the health facilities
20 council, the Iowa finance authority, the Iowa public employees'
21 retirement system investment board, the Iowa lottery board
22 created in [section 99G.8](#), the natural resource commission,
23 the board of parole, ~~the petroleum underground storage tank~~
24 ~~fund board~~, the public employment relations board, the state
25 racing and gaming commission, the state board of regents, the
26 transportation commission, the office of consumer advocate, the
27 utilities board, the Iowa telecommunications and technology
28 commission, and any full-time members of other boards and
29 commissions as defined under [section 7E.4](#) who receive an annual
30 salary for their service on the board or commission. The Iowa
31 ethics and campaign disclosure board shall conduct an annual
32 review to determine if members of any other board, commission,
33 or authority should file a statement and shall require the
34 filing of a statement pursuant to rules adopted pursuant to
35 chapter 17A.

1 Sec. 15. Section 323.1, subsection 16, Code 2024, is amended
2 to read as follows:

3 16. *“Storage tank”* means a motor fuel storage tank as
4 defined in [section 214.1](#), including an underground storage
5 tank subject to regulation under chapter ~~455G~~ 455B, subchapter
6 IV, part 8, section 455E.11, subsection 2, paragraph “d”,
7 subparagraph (1A), or section 455G.31.

8 Sec. 16. Section 422.7, subsection 2, paragraph u, Code
9 2024, is amended by striking the paragraph.

10 Sec. 17. Section 455B.174, subsection 4, paragraph d, Code
11 2024, is amended to read as follows:

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

1 a responsible party.

2 Sec. 18. Section 455E.11, subsection 2, paragraph d,
3 subparagraph (3), Code 2024, is amended by striking the
4 subparagraph.

5 Sec. 19. Section 455I.2, subsection 5, paragraph a, Code
6 2024, is amended to read as follows:

7 a. A federal or state program that is subject to the
8 jurisdiction of an agency, including but not limited to
9 programs established by chapters 455B and 455G 455E, corrective
10 or response actions pursuant to 42 U.S.C. §6901 et seq., and
11 remedial actions under 42 U.S.C. §9601 et seq.

12 Sec. 20. REPEAL. Sections 427B.20, 427B.21, and 427B.22,
13 Code 2024, are repealed.

14 DIVISION III

15 TRANSITION PROVISIONS

16 Sec. 21. TRANSITION PROVISIONS.

17 1. Upon repeal of sections 455G.1, 455G.2, 455G.2A, 455G.3,
18 455G.4, 455G.5, 455G.6 455G.7, 455G.8, 455G.9, 455G.12,
19 455G.12A, 455G.13, 455G.14, 455G.15, 455G.16, 455G.20,
20 and 455G.21, pursuant to this Act, all moneys in all funds
21 administered by the Iowa comprehensive petroleum underground
22 storage tank fund board are transferred to the treasurer of
23 state for deposit in the storage tank management account
24 created in the groundwater protection fund created in section
25 455E.11. Any moneys credited to any fund administered by the
26 Iowa comprehensive petroleum underground storage tank fund
27 board on and after the effective date of divisions I and II
28 of this Act are transferred to the treasurer of state for
29 deposit in the storage tank management account created in the
30 groundwater protection fund created in section 455E.11.

31 2. Any rule, regulation, form, order, or directive
32 promulgated by the Iowa comprehensive petroleum underground
33 storage tank fund board as required to administer and enforce
34 the provisions relating to the Iowa comprehensive petroleum
35 underground storage tank fund shall continue in full force

1 and effect under the jurisdiction of the department of
2 natural resources until amended, repealed, or supplemented by
3 affirmative action of the department.

4 3. Any remaining liabilities, contracts, outstanding
5 claims, payments, or other obligations for open claims from
6 the comprehensive petroleum underground storage tank fund
7 existing on or before the effective date of divisions I and II
8 of this Act shall continue in full force and effect under the
9 jurisdiction of the department of natural resources. A claim
10 for a release filed on or after the effective date of divisions
11 I and II of this Act shall not be eligible for payment from the
12 Iowa comprehensive petroleum underground storage tank fund.

13 4. The department of natural resources may begin
14 implementation of subsections 2 and 3 prior to the effective
15 date of divisions I and II of this Act, to the extent necessary
16 to transition to full implementation of the provisions
17 relating to the storage tank management account created in the
18 groundwater protection fund created in section 455E.11 and
19 repeal of the Iowa comprehensive petroleum underground storage
20 tank fund created in section 455G.3, Code 2024.

21 5. All property tax credits provided under chapter 427B,
22 subchapter IV, existing upon the repeal of sections 427B.20,
23 427B.21, and 427B.22 shall continue until their expiration.

24 Sec. 22. EFFECTIVE DATE. This division of this Act, being
25 deemed of immediate importance, takes effect upon enactment.