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)

_____ and [= New Language by the Senate

* = Language Stricken by the Senate

A BILL FOR

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

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

DIVISION I

STORAGE TANK MANAGEMENT ACCOUNT

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

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

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

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

NEW SUBSECTION. 1C. *"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 account 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 account were made for corrective action or third-party liability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. *Claims against potentially responsible parties.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. The certification of groundwater professionals shall not impose liability on ~~the board,~~ the department~~,~~ or the ~~fund~~ account for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.

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

the following new subsection:

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

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

7. ~~The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part 8 of subchapter IV or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget.~~ Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the ~~fund~~ account created in section ~~455G.3 and allocated between fund accounts according to the fund budget~~ 455E.11, subsection 2, paragraph "d", unless such use would be contrary to federal law. The department shall ~~cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to~~ maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

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

follows:

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

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

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

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

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

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

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

(2) The moneys remaining in the account after the

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

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

DIVISION II

CONFORMING CHANGES

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

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

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

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

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

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

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

a responsible party.

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

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

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

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

DIVISION III

TRANSITION PROVISIONS

Sec. 21. TRANSITION PROVISIONS.

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

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

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

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

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

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

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