

Maplewood 3/26/81
to 3/26/81 (p 474)

Reprinted 4/1/81

MAR 16 1981

SENATE FILE 420
BY COMMITTEE ON ENERGY
(FORMERLY SSB 280)
Approved 3/15 (p. 510)

Passed Senate, Date 3.31-81 (p 1031) Passed House, Date 4.21-81 (p 1298)
Vote: Ayes 47 Nays 2 Vote: Ayes 93 Nays 3
Approved May 11, 1981

A BILL FOR

1 An Act relating to the siting of hazardous waste treatment,
2 storage and disposal facilities, providing penalties and
3 imposing a surcharge on the fee for land burial of
4 hazardous waste.

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

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7

SENATE FILE 420
FISCAL NOTE

REQUESTED BY SENATOR CRAFT

In compliance with a written request there is hereby submitted a
Fiscal Note for Senate File 420 pursuant to Joint Rule 16.

S.F. 420, An Act relating to the siting of hazardous waste treatment, storage
and disposal facilities, providing penalties and imposing a surcharge on the
fee for land burial of hazardous waste.

Monies collected under S.F. 420 are to be deposited in the state general fund.
No estimate of the revenues under this bill can be provided.

FILED
MARCH 30, 1981

BY GERRY RANKIN, DIRECTOR
LEGISLATIVE FISCAL BUREAU

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1 Section 1. NEW SECTION. PURPOSE AND GUIDELINES. The
2 purpose of this Act is to protect the public health and the
3 environment by providing a procedure for establishing
4 appropriate sites and properly designed facilities for the
5 treatment, storage and disposal of hazardous waste. It is
6 the intent of the general assembly that in the implementation
7 of this Act the department of environmental quality shall
8 emphasize alternatives to land burial of hazardous waste
9 whenever possible with emphasis on the following management
10 methods in the following order: source reduction, reuse,
11 resource recovery, incineration, and detoxification.

12 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act
13 unless the context otherwise requires:

14 1. a. "Facility" means land and structures, other
15 appurtenances, and improvements on the land used for the
16 treatment, storage, or disposal of a hazardous waste required
17 to have a permit under section 455B.134.

18 b. "Facility" does not include land, structures, other
19 appurtenances and improvements contiguous to the source of
20 generation and owned and operated by and exclusively for the
21 treatment, storage, or disposal of hazardous waste of the
22 generator.

23 c. As used in this subsection property is contiguous if
24 it is divided only by a public or private way.

25 2. "Hazardous waste" means a hazardous waste as defined
26 in section 455B.130, subsection 2 and listed by the environ-
27 mental quality commission under section 455B.131, subsection
28 2.

29 3. "Commission" means the environmental quality commis-
30 sion.

31 4. "Executive director" means the executive director of
32 the department of environmental quality.

33 5. "Regulatory agency" means a state or local agency that
34 issues a license or permit required for the construction,
35 operation, or maintenance of a facility pursuant to state

1 statute or rule or local ordinance or resolution in effect
2 on the date the application for a site license is submitted
3 to the commission.

4 6. "Construct" means significant alteration of a site
5 to install permanent equipment or structures but does not
6 include activities incident to preliminary engineering,
7 environmental studies, or acquisition of a site for a facility.
8 "Construct" includes alteration to existing structures or
9 a land disposal facility to initially accommodate hazardous
10 waste but does not include any alteration to increase the
11 capacity or change the ability to accommodate hazardous waste.
12 However, any alteration to increase or change the ability
13 to accommodate hazardous waste is subject to section 455B.132.

14 Sec. 3. NEW SECTION. LICENSE REQUIRED.

15 1. A person shall not construct a facility until the per-
16 son obtains a site license issued under this Act by the commis-
17 sion. A person planning to construct a facility shall give
18 notice of the intent to construct the facility as provided
19 in this section. The notice shall be served on the executive
20 director and on the city council and board of supervisors
21 of each city and county in which the facility is located and
22 shall be published in a newspaper of general circulation in
23 each city and county in which the proposed site is located
24 once a week for two consecutive weeks. The notice shall con-
25 tain the following:

26 a. A description of the proposed location of the facility.

27 b. A description of the treatment, storage, or disposal
28 method to be used and the types of wastes to be handled, in-
29 cluding estimated volumes.

30 c. The names and addresses of the owners and the operators
31 of the facility.

32 2. Within fifteen days of the date the notice is last
33 published, the owners and operators of the facility shall
34 submit an application to the executive director requesting
35 that a site license be issued under this Act. The application

1 for a site license shall contain the name and residence of
2 the applicant, and the following additional information:

3 a. The location of the proposed facility and a plat of
4 the proposed location.

5 b. A description of the design and capacity of the proposed
6 facility.

7 c. The expected sources of hazardous wastes for the fa-
8 cility, the proposed methods and routes of transporting the
9 wastes to and from the facility.

10 d. The qualifications of the operator.

11 e. Other relevant information as the commission requires
12 by rule.

13 The application shall be accompanied by a nonrefundable
14 application fee determined by a schedule established by the
15 commission by rule, but which shall not exceed one thousand
16 dollars.

17 3. Within thirty days of the receipt of the application,
18 the executive director shall determine whether the application
19 is in substantial compliance with the information requirements,
20 and shall either accept the application or notify the appli-
21 cant of any deficiencies. An applicant who receives notifica-
22 tion of deficiencies in the application has ninety days from
23 the receipt of notice to remedy the deficiencies and resubmit
24 the application for consideration. The executive director
25 shall notify the applicant within thirty days of receipt of
26 a resubmitted application whether the application is accepted.

27 4. This Act does not apply to a facility that is subject
28 to subsection 2 of section 455B.134 and that has obtained
29 applicable local zoning permits and for which contracts have
30 been signed prior to January 1, 1982.

31 Sec. 4. NEW SECTION. TEMPORARY MEMBERS APPOINTED.

32 Immediately upon receipt of an application for a site license
33 the executive director shall notify the city council of the
34 city closest to the proposed facility and the county board
35 of supervisors of the county in which the facility is proposed

1 to be located that the application has been received. Within
2 thirty days of the receipt of notification the city council
3 or the county board of supervisors may make the following
4 appointments to the commission for purposes of consideration
5 of the site license application and if the city council or
6 the county board of supervisors chooses to make the temporary
7 appointments the executive director shall be notified of the
8 names of those persons appointed as follows:

9 1. The county board may appoint one temporary member who
10 is a resident of the county.

11 2. The city council may appoint one temporary member who
12 is a resident of the city.

13 Temporary members who may be appointed under this section
14 shall serve on the commission only during discussion and
15 proceedings relating to the application for a site license
16 which the temporary members were appointed to consider and
17 shall vote only on questions relating to the issuance of that
18 site license. Temporary members shall serve on the commission
19 until final action is taken on the application for the site
20 license which the temporary members were appointed to consider.
21 Temporary members who are not public employees shall receive
22 forty dollars per diem and actual and necessary expenses
23 incurred in performance of their official duties. Temporary
24 employees who are public employees shall receive reimbursement
25 for expenses only. Per diem and expenses under this section
26 shall be paid by the state.

27 Sec. 5. NEW SECTION. NOTIFICATION REQUIREMENTS. Upon
28 acceptance of a site license application under section 3 of
29 this Act the executive director shall mail copies of the
30 application to regulatory agencies. A regulatory agency
31 receiving a copy of the application shall conduct a preliminary
32 review of the contents and shall evaluate the application
33 for completeness and for compliance with the regulatory
34 agency's permit or licensing requirements.

35 Sec. 6. NEW SECTION. PROCEEDING.

1 1. Within thirty days after the acceptance of the applica-
2 tion for a site license, the commission shall establish a
3 timetable for consideration of the application. The timetable
4 for final action by the commission shall not exceed one hun-
5 dred eighty days after the date the application is accepted.

6 2. The proceeding for the issuance of a site license is
7 a contested case under chapter 17A.

8 3. The commission shall establish a date for the hearing
9 on the application and shall serve notice of the hearing on
10 interested agencies, as determined by the commission, and
11 regulatory agencies.

12 The commission shall notify all owners of record of real
13 property located within one linear mile of the proposed site
14 of the time and place of the hearing.

15 4. Notice of the hearing in the form provided in section
16 17A.12, subsection 2, shall be published in a newspaper of
17 general circulation in each city and county in which the pro-
18 posed site is located once a week for two consecutive weeks
19 with the second publication being at least twenty days prior
20 to the date of the hearing.

21 Sec. 7. NEW SECTION. PROCEEDING--ROLE OF REGULATORY
22 AGENCIES.

23 1. Regulatory agencies that appear on record at the pro-
24 ceeding shall state whether the application meets their permit
25 or licensing requirements. If the application does not meet
26 the requirements of a regulatory agency, the regulatory agency
27 shall state why the application is not in compliance.

28 2. Any person may present oral or written comments to
29 the commission at the hearing.

30 Sec. 8. NEW SECTION. DECISION BY COMMISSION.

31 1. The commission shall grant or deny the site license.
32 In making its decision, the commission shall consider the
33 following:

34 a. The need for the services to be offered by the fa-
35 cility.

1 b. The impact of the proposed facility on the area in
2 which it is to be located.

3 c. The zoning classification of the proposed site and
4 the extent to which a proposed site is by present or projected
5 use dedicated to industrial development.

6 d. The land uses and the density of population in areas
7 near the facility.

8 e. The density of population in areas adjacent to probable
9 transportation routes to the facility.

10 f. The risk and effect of accidents during the transporta-
11 tion of hazardous wastes to the site.

12 g. The geology of the site, where relevant, with reference
13 to factors which include, but are not limited to, the presence
14 of fault zones and the risk of contamination of ground and
15 surface waters by leaching and runoff from the facility.

16 h. The risk of fires or explosions from improper storage
17 and disposal methods.

18 i. The impact of the facility on the local government
19 units in which the facility is to be sited.

20 j. Local ordinances, permits, or other requirements and
21 their relationship to the proposed facility.

22 k. Other criteria the commission finds relevant to the
23 siting of a facility which are consistent with this Act.

24 2. The commission shall grant the license if it finds
25 that the facility will meet the requirements imposed by rules
26 adopted by the commission under section 455B.131, subsection
27 3, and the permit requirement of section 455B.134, that
28 operation of the facility at the proposed location will be
29 in the public interest and that the public health and welfare
30 and the environment will be adequately protected. The failure
31 of the proposed facility to meet zoning requirements
32 established under chapters 329, 358A, and 414, and the
33 licensing requirements of regulatory agencies except the
34 requirements imposed by sections 455B.131, subsection 3 and
35 455B.134 shall not preclude the commission from issuing the

1 license and to that extent this subsection supersedes the
2 licensing requirements of regulatory agencies and the
3 requirements of chapters 329, 358A, and 414. However the
4 commission may preempt only that portion of a licensing
5 requirement of a regulatory agency or a zoning requirement
6 that conflicts with construction and operation of the facility
7 according to the terms of the license.

8 Sec. 9. NEW SECTION. ISSUANCE OF LICENSE--EFFECT. Issu-
9 ance of a license by the commission authorizes construction
10 of the facility on the site designated in the license according
11 to the terms and conditions stated in the license. A license
12 may be transferred, subject to the rules and approval of the
13 commission, to a person who agrees to comply with the terms
14 of the license.

15 Sec. 10. NEW SECTION. COST OF PROCEEDINGS. The cost
16 of the proceeding for the issuance of a license shall be paid
17 by the applicant for the license. The executive director
18 shall notify the applicant upon the issuance or denial of
19 the license or upon termination of the proceeding at any point
20 during the process of the cost of the proceeding to the
21 applicant. The application fee paid under section 3 shall
22 be deducted from the total cost computed under this section.
23 Moneys collected shall be deposited in the general fund of
24 the state.

25 Sec. 11. NEW SECTION. FURTHER APPROVALS PROHIBITED--
26 EXCEPTION. Upon the issuance of a license under this Act,
27 notwithstanding any provision of law or ordinance except
28 statutory requirements relating to the protection of employees
29 engaged in the construction of the facility, no further
30 approval, permit, or license for the construction, operation,
31 or maintenance of the facility as stated in the license shall
32 be required. However, this section does not limit the
33 authority of the executive director under sections 455B.132
34 and 455B.134. A local unit of government shall not prohibit
35 or unduly restrict the transportation of hazardous waste to

1 a facility for which a license has been issued under this
2 Act.

3 Sec. 12. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW.
4 Notwithstanding chapter 17A:

5 1. Any proceeding or oral presentation held before the
6 commission on an application for a license shall be held in
7 lieu of any other proceeding or oral presentation required
8 for a license or permit necessary for the construction,
9 maintenance, or operation of a facility.

10 2. The issuance or denial of the license is a final agency
11 action, and the date for determining whether any person is
12 aggrieved or adversely affected by the action is the date
13 of the issuance or denial of the license.

14 Sec. 13. NEW SECTION. RULES. The commission shall adopt
15 rules under chapter 17A necessary to implement this Act in-
16 cluding but not limited to the form for an application for
17 a license and the description of information to be furnished
18 by the applicant.

19 Sec. 14. NEW SECTION. PENALTIES. A person required to
20 obtain a site license under this Act who constructs a facility
21 without having first obtained the license is subject to a
22 civil penalty of not more than ten thousand dollars for each
23 violation or for each day of continuing violation. Civil
24 penalties collected pursuant to this subsection shall be
25 forwarded by the clerk of court to the treasurer of state
26 for deposit in the general fund of the state.

27 Sec. 15. NEW SECTION. SURCHARGE IMPOSED. A land burial
28 surcharge tax of two percent is imposed on the fee for land
29 burial of a hazardous waste. The owner of the land burial
30 facility shall remit the tax collected to the director of
31 revenue after consultation with the executive director
32 according to rules that the director shall adopt. Taxes
33 collected by the director of revenue under this section shall
34 be deposited in the general fund of the state.

35

EXPLANATION

1 This bill requires the environmental quality commission
2 to review and approve or deny applications for a site license
3 which the bill requires for off-site hazardous waste treatment,
4 storage, or disposal facilities. On-site facilities owned
5 and operated by and on property contiguous to the source of
6 generation are excluded from the bill. However, an on-site
7 facility would be required to obtain all necessary construction
8 and operating permits from the commission and local
9 authorities.

10 The process for obtaining a site license is patterned after
11 the current procedure for issuance of a certificate of con-
12 venience and necessity for electric generating facilities.
13 A single hearing is held by the commission at which all other
14 state and local agencies required to issue permits for the
15 facility appear. The objective is to consolidate all of the
16 permit processes into a single action. The authority of the
17 commission extends to questions concerning the need for the
18 facility and its probable impact on the locality. The fa-
19 cility must meet the hazardous waste permit requirements for
20 construction and operation under chapter 455B, however, the
21 license can be issued even if the facility does not meet the
22 requirements of other regulatory agencies including zoning
23 authorities. Local input is considered by allowing the city
24 council for or nearest to the city where the facility is
25 proposed to be located and the county board of supervisors
26 to each appoint one local person to serve on the commission
27 during the proceedings on the application. However, the city
28 council or county board or both may decline to make the
29 appointment and the nine-member state commission alone would
30 consider the application.

31 The bill also imposes a surcharge of two percent on the
32 fee land burial of hazardous waste. Moneys collected go to
33 the general fund. Penalties are included.

34 The bill takes effect July 1 following enactment.

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S-3287

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2 Amend Senate File 420 as follows:

3 1. Page 8, by inserting after line 34 the
4 following:5 "Sec. 16. Section 422.12, Code 1981, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. A hazardous waste investment
8 credit equal to seven percent of the actual amount
9 paid or to be paid by the taxpayer for the purchase,
10 construction, or installation of machinery or
11 equipment, in which the taxpayer has an ownership
12 interest, used solely for the treatment or recycling
13 of hazardous waste. The credit is applicable to the
14 tax year in which the machinery or equipment is first
15 operated for the treatment or recycling of hazardous
16 waste. This credit is not allowed on machinery or
17 equipment used for the land burial of hazardous waste.
18 This credit shall be deducted after the deduction
19 of other credits provided in this section. If this
20 credit exceeds the remaining tax liability of the
21 taxpayer, the excess credit shall be carried forward
22 to subsequent tax years.

23 For purposes of this subsection, "hazardous waste"
24 and "treatment" have the same meaning ascribed to
25 them in section 455B.130.

26 Sec. 17. Section 422.33, Code 1981, is amended
27 by adding the following new subsection:

28 NEW SUBSECTION. A hazardous waste investment
29 credit equal to seven percent of the actual amount
30 paid or to be paid by the taxpayer for the purchase,
31 construction, or installation of machinery or
32 equipment, in which the taxpayer has an ownership
33 interest, used solely for the treatment or recycling
34 of hazardous waste. The credit applies to the tax
35 year in which the machinery or equipment is first
36 operated for the treatment or recycling of hazardous
37 waste. This credit is not allowed on machinery or
38 equipment used for the land burial of hazardous waste.
39 If this credit exceeds the tax liability of the
40 taxpayer, the excess credit shall be carried forward
41 to subsequent tax years.

42 For purposes of this subsection, "hazardous waste"
43 and "treatment" have the same meaning ascribed to
44 them in section 455B.130.

45 Sec. 18. Chapter 422, division VI, Code 1981,
46 is amended by adding the following new section:

47 NEW SECTION. If the taxpayer disposes of or ceases
48 to use solely for the treatment or recycling of
49 hazardous waste the machinery or equipment for which
50 the taxpayer received a credit under section 16 or

S-3287

PAGE 2

1 17 of this Act within the six years following the
 2 tax year for which the credit was first received,
 3 the taxpayer's tax liability under division II, III,
 4 or V for the tax year in which the taxpayer disposes
 5 of or ceases to use solely for the treatment or
 6 recycling of hazardous waste the machinery or equipment
 7 is increased by an amount equal to the excess of the
 8 amount of credit the taxpayer received under section
 9 16 or 17 of this Act over the amount of credit the
 10 taxpayer would have received if the credit had been
 11 computed by substituting for the seven percent in
 12 section 16 or 17 of this Act a percentage equal to
 13 the number of years the taxpayer had an ownership
 14 interest in and used the machinery or equipment solely
 15 for the treatment or recycling of hazardous waste.
 16 Sec. 19. Sections 16, 17, and 18 of this Act take
 17 effect July 1 following enactment for tax years
 18 beginning on or after the effective date."

S-3287 FILED & LGST

BY DICK RAMSEY

MARCH 31, 1981 (p. 1031)

SENATE FILE 420

S-3277

1 Amend Senate File 420 as follows:

- 2 1. Page 7,, by striking lines 3 through 7 and
 3 inserting in lieu thereof the words "requirements of
 4 chapters 329, 358A and 414."
 5 2. Page 7,, line 32, by inserting after the word
 6 "required." the words "The commission may incorporate
 7 in the license the licensing requirements of a
 8 regulatory agency to the extent that those requirements
 9 are consistent with the construction and operation of
 10 the facility according to the requirements of the
 11 commission."

S-3277 FILED & ADOPTED

BY DICK RAMSEY

MARCH 31, 1981 (p. 1026)

SENATE FILE 420

S-3281

1 Amend Senate File 420 as follows:

- 2 1. Page 8, by inserting after line 34 the
 3 following:
 4 "Sec. ____ . NEW SECTION. RECIPROCITY. Effective
 5 three years from the effective date of this Act, a
 6 facility licensed under this Act shall not accept
 7 hazardous waste originating in another state unless
 8 that state has in operation a facility approved under
 9 the provisions of the federal Resource Conservation
 10 and Recovery Act which does not restrict its acceptance
 11 of hazardous waste from this state on the basis of
 12 the origin of the waste."

S-3281 FILED & LOST

BY DICK RAMSEY

MARCH 31, 1981 (p. 1028)

SENATE FILE 420

S-3264

- 1 Amend Senate File 420 as follows:
- 2 1. Page 6, line 22, by inserting after the word
- 3 "criteria" the words "adopted by rule which".

S-3264 FILED
MARCH 30, 1981

BY DICK RAMSEY

Adopted 3/31/81 (p. 1025)

SENATE FILE 420

S-3265

- 1 Amend Senate File 420 as follows:
- 2 1. Page 7, line 17, by inserting after the word
- 3 "license" the words "until the cost exceeds nine thousand
- 4 dollars".
- 5 2. Page 7, by striking lines 21 and 22 and inserting
- 6 in lieu thereof the following: "applicant. These costs
- 7 include the costs of providing notices, holding the
- 8 hearing and the per diem of the commissioners in the
- 9 proceeding for the license."

S-3265 FILED
MARCH 30, 1981

BY DICK RAMSEY

Adopted 3/31/81 (p. 1025)

SENATE FILE 420

S-3276

- 1 Amend Senate File 420 as follows:
- 2 1. Page 4, lines 9 and 10, by striking the
- 3 words "one temporary member who is a resident" and
- 4 inserting in lieu thereof the words "two temporary
- 5 members who are residents".
- 6 2. Page 4, lines 11 and 12, by striking the
- 7 words "one temporary member who is a resident" and
- 8 inserting in lieu thereof the words "two temporary
- 9 members who are residents".

S-3276 FILED & ADOPTED
MARCH 31, 1981 (*p. 1026*)

BY PATRICK J. DELUHERY

SENATE FILE 420

S-3273

- 1 Amend Senate File 420 as follows:
2 1. Page 7, lines 34 and 35, by striking the words
3 "prohibit or".

S-3273 FILED & ADOPTED BY DICK RAMSEY
MARCH 31, 1981 (p. 1025)

SENATE FILE 420

S-3274

- 1 Amend Senate File 420 as follows:
2 1. Page 7, by inserting after line 7 the following:
3 "A municipality as defined in section 613A.1(1),
4 is not liable in an action for damages arising out
5 of the construction, operation, or maintenance of
6 a hazardous waste facility which is licensed by the
7 commission under this Act unless the municipality
8 is responsible for or in control of the facility.
9 However, a municipality may be subject to liability
10 for damages caused by hazardous waste in connection
11 with an act or omission which would otherwise subject
12 the municipality to liability."

S-3274 FILED & ADOPTED BY DAVID READINGER
MARCH 31, 1981 (p. 1025) DICK RAMSEY

SENATE FILE 420

S-3269

- 1 Amend Senate File 420 as follows:
2 1. Page 4, by striking lines 9 through 12 and
3 inserting in lieu thereof the following:
4 "1. The county board may appoint four temporary
5 members who are residents of the county.
6 2. The city council may appoint four temporary
7 members who are residents of the city."
8 2. Page 6, by inserting after line 23 the
9 following:
10 "____. If the facility is owned or operated by
11 a generator in this state, whether it is feasible
12 for the facility to be established as a facility under
13 section 2, subsection 1, paragraphs b and c, of this
14 Act."
15 3. Page 8, by striking line 34 and inserting in
16 lieu thereof the following: "be remitted to the
17 counties and cities of counties in which a facility
18 licensed under this Act is located. The taxes shall
19 be deposited in the general funds of the counties
20 and cities after distribution on a per capita basis.
21 For the purpose of this section the population of
22 a county is the population residing in the
23 unincorporated areas of the county."

S-3269 FILED BY ROLF V. CRAFT
MARCH 31, 1981

DIV A - LOST (p. 1024)
DIV B - WITHDRAWN (p. 1024)
Div C - LOST (p. 1025)

SENATE FILE 420

S-3205

Amend Senate File 420 as follows:

1. Page 8, by inserting after line 34 the following:

"Sec. _____. Section 422.12, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. A hazardous waste investment credit equal to ten percent of the actual amount paid or to be paid by the taxpayer for the purchase, construction, or installation of machinery or equipment, in which the taxpayer has an ownership interest, used solely for the treatment, recycling, or disposal, except land burial, of hazardous waste. The credit is applicable to the tax year in which the machinery or equipment is first operated for the treatment, recycling, or disposal, except land burial, of hazardous waste. This credit shall be deducted after the deduction of other credits provided in this section. If this credit exceeds the remaining tax liability of the taxpayer, the excess credit shall be carried forward to subsequent tax years.

For purposes of this subsection, "hazardous waste", "disposal", and "treatment" have the same meaning ascribed to them in section 455B.130.

Sec. _____. Section 422.33, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. A hazardous waste investment credit equal to ten percent of the actual amount paid or to be paid by the taxpayer for the purchase, construction, or installation of machinery or equipment, in which the taxpayer has an ownership interest, used solely for the treatment, recycling, or disposal, except land burial, of hazardous waste. The credit applies to the tax year in which the machinery or equipment is first operated for the treatment, recycling, or disposal, except land burial, of hazardous waste. If this credit exceeds the tax liability of the taxpayer, the excess credit shall be carried forward to subsequent tax years. For purposes of this subsection, "hazardous waste", "disposal", and "treatment" have the same meaning ascribed to them in section 455B.130."

SENATE 7
MARCH 25, 1981

SENATE FILE 420

S-3247

1 Amend Senate File 420 as follows:

2 1. Page 7, lines 8 and 9, by striking the word
3 "Issuance" and inserting in lieu thereof the words
4 "Except as otherwise provided in section 10 of this
5 Act, issuance".

6 2. Page 7, by inserting after line 14 the
7 following:

8 "Sec. 10. NEW SECTION. DELAY--REVOCATION BY
9 GOVERNOR. Upon issuance of a license by the commission
10 for a facility the governor may delay construction
11 of the facility for thirty days by notifying the
12 person named in the license within five days of the
13 date of issuance notwithstanding section 9 of this
14 Act. A person receiving notice under this section
15 shall not begin to construct a facility for which
16 a license has been issued under this Act for thirty
17 days following the date of issuance of a license.
18 The governor may revoke a license for a facility
19 issued by the commission if the governor determines
20 that construction of the facility at the site listed
21 in the license is a threat to the public health and
22 welfare. The governor shall either notify the person
23 named in the license within five days of the date
24 of issuance that the license is revoked or the governor
25 shall first delay construction of the facility as
26 provided in this section and shall notify the person
27 named in the license within the thirty days that the
28 license is revoked."

S-3247 FILED

BY BOB RUSH

MARCH 24, 1981

Withdrawn 2/21/81 (g 1025)

SENATE FILE 420

S-3248

1 Amend Senate File 420 as follows:

2 1. Page 1, line 14, by striking the letter "a."

3 2. Page 1, by striking lines 18 through 24.

S-3248 FILED

BY PATRICK J. DELUHERY

MARCH 24, 1981

Lost 3/31/81 (g 1024)

Ways and Means: Ritsema, Chair; Poffenberger and Howell.

Amended per 36578 Do Pass 4/15/81 (p.1254)

SENATE FILE

420

By Committee on Energy

(AS AMENDED AND PASSED BY THE SENATE MARCH 31, 1981)

Passed Senate, Date 4-27-81 (p.1437) Passed House, Date 4-21-81 (p.1298)

Vote: Ayes 43 Nays 1 Vote: Ayes 93 Nays 3

Approved May 11, 1981

A BILL FOR

1 An Act relating to the siting of hazardous waste treatment,
2 storage and disposal facilities, providing penalties and
3 imposing a surcharge on the fee for land burial of
4 hazardous waste.

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

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————— = New Language
by the Senate

* = Language Stricken
by the Senate

1 Section 1. NEW SECTION. PURPOSE AND GUIDELINES. The
2 purpose of this Act is to protect the public health and the
3 environment by providing a procedure for establishing
4 appropriate sites and properly designed facilities for the
5 treatment, storage and disposal of hazardous waste. It is
6 the intent of the general assembly that in the implementation
7 of this Act the department of environmental quality shall
8 emphasize alternatives to land burial of hazardous waste
9 whenever possible with emphasis on the following management
10 methods in the following order: source reduction, reuse,
11 resource recovery, incineration, and detoxification.

12 Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act
13 unless the context otherwise requires:

14 1. a. "Facility" means land and structures, other
15 appurtenances, and improvements on the land used for the
16 treatment, storage, or disposal of a hazardous waste required
17 to have a permit under section 455B.134.

18 b. "Facility" does not include land, structures, other
19 appurtenances and improvements contiguous to the source of
20 generation and owned and operated by and exclusively for the
21 treatment, storage, or disposal of hazardous waste of the
22 generator.

23 c. As used in this subsection property is contiguous if
24 it is divided only by a public or private way.

25 2. "Hazardous waste" means a hazardous waste as defined
26 in section 455B.130, subsection 2 and listed by the environ-
27 mental quality commission under section 455B.131, subsection
28 2.

29 3. "Commission" means the environmental quality commis-
30 sion.

31 4. "Executive director" means the executive director of
32 the department of environmental quality.

33 5. "Regulatory agency" means a state or local agency that
34 issues a license or permit required for the construction,
35 operation, or maintenance of a facility pursuant to state

1 statute or rule or local ordinance or resolution in effect
2 on the date the application for a site license is submitted
3 to the commission.

4 6. "Construct" means significant alteration of a site
5 to install permanent equipment or structures but does not
6 include activities incident to preliminary engineering,
7 environmental studies, or acquisition of a site for a facility.
8 "Construct" includes alteration to existing structures or
9 a land disposal facility to initially accommodate hazardous
10 waste but does not include any alteration to increase the
11 capacity or change the ability to accommodate hazardous waste.
12 However, any alteration to increase or change the ability
13 to accommodate hazardous waste is subject to section 455B.132.

14 Sec. 3. NEW SECTION. LICENSE REQUIRED.

15 1. A person shall not construct a facility until the per-
16 son obtains a site license issued under this Act by the commis-
17 sion. A person planning to construct a facility shall give
18 notice of the intent to construct the facility as provided
19 in this section. The notice shall be served on the executive
20 director and on the city council and board of supervisors
21 of each city and county in which the facility is located and
22 shall be published in a newspaper of general circulation in
23 each city and county in which the proposed site is located
24 once a week for two consecutive weeks. The notice shall con-
25 tain the following:

26 a. A description of the proposed location of the facility.

27 b. A description of the treatment, storage, or disposal
28 method to be used and the types of wastes to be handled, in-
29 cluding estimated volumes.

30 c. The names and addresses of the owners and the operators
31 of the facility.

32 2. Within fifteen days of the date the notice is last
33 published, the owners and operators of the facility shall
34 submit an application to the executive director requesting
35 that a site license be issued under this Act. The application

1 for a site license shall contain the name and residence of
2 the applicant, and the following additional information:

3 a. The location of the proposed facility and a plat of
4 the proposed location.

5 b. A description of the design and capacity of the proposed
6 facility.

7 c. The expected sources of hazardous wastes for the fa-
8 cility, the proposed methods and routes of transporting the
9 wastes to and from the facility.

10 d. The qualifications of the operator.

11 e. Other relevant information as the commission requires
12 by rule.

13 The application shall be accompanied by a nonrefundable
14 application fee determined by a schedule established by the
15 commission by rule, but which shall not exceed one thousand
16 dollars.

17 3. Within thirty days of the receipt of the application,
18 the executive director shall determine whether the application
19 is in substantial compliance with the information requirements,
20 and shall either accept the application or notify the appli-
21 cant of any deficiencies. An applicant who receives notifica-
22 tion of deficiencies in the application has ninety days from
23 the receipt of notice to remedy the deficiencies and resubmit
24 the application for consideration. The executive director
25 shall notify the applicant within thirty days of receipt of
26 a resubmitted application whether the application is accepted.

27 4. This Act does not apply to a facility that is subject
28 to subsection 2 of section 455B.134 and that has obtained
29 applicable local zoning permits and for which contracts have
30 been signed prior to January 1, 1982.

31 Sec. 4. NEW SECTION. TEMPORARY MEMBERS APPOINTED.

32 Immediately upon receipt of an application for a site license
33 the executive director shall notify the city council of the
34 city closest to the proposed facility and the county board
35 of supervisors of the county in which the facility is proposed

1 to be located that the application has been received. Within
2 thirty days of the receipt of notification the city council
3 or the county board of supervisors may make the following
4 appointments to the commission for purposes of consideration
5 of the site license application and if the city council or
6 the county board of supervisors chooses to make the temporary
7 appointments the executive director shall be notified of the
8 names of those persons appointed as follows:

9 1. The county board may appoint two temporary members
10 who are residents of the county.

11 2. The city council may appoint two temporary members
12 who are residents of the city.

13 Temporary members who may be appointed under this section
14 shall serve on the commission only during discussion and
15 proceedings relating to the application for a site license
16 which the temporary members were appointed to consider and
17 shall vote only on questions relating to the issuance of that
18 site license. Temporary members shall serve on the commission
19 until final action is taken on the application for the site
20 license which the temporary members were appointed to consider.
21 Temporary members who are not public employees shall receive
22 forty dollars per diem and actual and necessary expenses
23 incurred in performance of their official duties. Temporary
24 employees who are public employees shall receive reimbursement
25 for expenses only. Per diem and expenses under this section
26 shall be paid by the state.

27 Sec. 5. NEW SECTION. NOTIFICATION REQUIREMENTS. Upon
28 acceptance of a site license application under section 3 of
29 this Act the executive director shall mail copies of the
30 application to regulatory agencies. A regulatory agency
31 receiving a copy of the application shall conduct a preliminary
32 review of the contents and shall evaluate the application
33 for completeness and for compliance with the regulatory
34 agency's permit or licensing requirements.

35 Sec. 6. NEW SECTION. PROCEEDING.

1 1. Within thirty days after the acceptance of the applica-
2 tion for a site license, the commission shall establish a
3 timetable for consideration of the application. The timetable
4 for final action by the commission shall not exceed one hun-
5 dred eighty days after the date the application is accepted.

6 2. The proceeding for the issuance of a site license is
7 a contested case under chapter 17A.

8 3. The commission shall establish a date for the hearing
9 on the application and shall serve notice of the hearing on
10 interested agencies, as determined by the commission, and
11 regulatory agencies.

12 The commission shall notify all owners of record of real
13 property located within one linear mile of the proposed site
14 of the time and place of the hearing.

15 4. Notice of the hearing in the form provided in section
16 17A.12, subsection 2, shall be published in a newspaper of
17 general circulation in each city and county in which the pro-
18 posed site is located once a week for two consecutive weeks
19 with the second publication being at least twenty days prior
20 to the date of the hearing.

21 Sec. 7. NEW SECTION. PROCEEDING--ROLE OF REGULATORY
22 AGENCIES.

23 1. Regulatory agencies that appear on record at the pro-
24 ceeding shall state whether the application meets their permit
25 or licensing requirements. If the application does not meet
26 the requirements of a regulatory agency, the regulatory agency
27 shall state why the application is not in compliance.

28 2. Any person may present oral or written comments to
29 the commission at the hearing.

30 Sec. 8. NEW SECTION. DECISION BY COMMISSION.

31 1. The commission shall grant or deny the site license.
32 In making its decision, the commission shall consider the
33 following:

34 a. The need for the services to be offered by the fa-
35 cility.

1 b. The impact of the proposed facility on the area in
2 which it is to be located.

3 c. The zoning classification of the proposed site and
4 the extent to which a proposed site is by present or projected
5 use dedicated to industrial development.

6 d. The land uses and the density of population in areas
7 near the facility.

8 e. The density of population in areas adjacent to probable
9 transportation routes to the facility.

10 f. The risk and effect of accidents during the transporta-
11 tion of hazardous wastes to the site.

12 g. The geology of the site, where relevant, with reference
13 to factors which include, but are not limited to, the presence
14 of fault zones and the risk of contamination of ground and
15 surface waters by leaching and runoff from the facility.

16 h. The risk of fires or explosions from improper storage
17 and disposal methods.

18 i. The impact of the facility on the local government
19 units in which the facility is to be sited.

20 j. Local ordinances, permits, or other requirements and
21 their relationship to the proposed facility.

22 k. Other criteria adopted by rule which the commission
23 finds relevant to the siting of a facility which are consistent
24 with this Act.

25 2. The commission shall grant the license if it finds
26 that the facility will meet the requirements imposed by rules
27 adopted by the commission under section 455B.131, subsection
28 3, and the permit requirement of section 455B.134, that
29 operation of the facility at the proposed location will be
30 in the public interest and that the public health and welfare
31 and the environment will be adequately protected. The failure
32 of the proposed facility to meet zoning requirements
33 established under chapters 329, 358A, and 414, and the
34 licensing requirements of regulatory agencies except the
35 requirements imposed by sections 455B.131, subsection 3 and

1 455B.134 shall not preclude the commission from issuing the
2 license and to that extent this subsection supersedes the
3 licensing requirements of regulatory agencies and the
4 requirements of chapters 329, 358A and 414.

5 A municipality as defined in section 613A.1(1), is not
6 liable in an action for damages arising out of the
7 construction, operation, or maintenance of a hazardous waste
8 facility which is licensed by the commission under this Act
9 unless the municipality is responsible for or in control of
10 the facility. However, a municipality may be subject to
11 liability for damages caused by hazardous waste in connection
12 with an act or omission which would otherwise subject the
13 municipality to liability.

14 Sec. 9. NEW SECTION. ISSUANCE OF LICENSE--EFFECT. Issu-
15 ance of a license by the commission authorizes construction
16 of the facility on the site designated in the license according
17 to the terms and conditions stated in the license. A license
18 may be transferred, subject to the rules and approval of the
19 commission, to a person who agrees to comply with the terms
20 of the license.

21 Sec. 10. NEW SECTION. COST OF PROCEEDINGS. The cost
22 of the proceeding for the issuance of a license shall be paid
23 by the applicant for the license until the cost exceeds nine
24 thousand dollars. The executive director shall notify the
25 applicant upon the issuance or denial of the license or upon
26 termination of the proceeding at any point during the process
27 of the cost of the proceeding to the applicant. These costs
28 include the costs of providing notices, holding the hearing
29 and the per diem of the commissioners in the proceeding for
30 the license. Moneys collected shall be deposited in the general
31 fund of the state.

32 Sec. 11. NEW SECTION. FURTHER APPROVALS PROHIBITED--
33 EXCEPTION. Upon the issuance of a license under this Act,
34 notwithstanding any provision of law or ordinance except
35 statutory requirements relating to the protection of employees

1 engaged in the construction of the facility, no further
 2 approval, permit, or license for the construction, operation,
 3 or maintenance of the facility as stated in the license shall
 4 be required. The commission may incorporate in the license
 5 the licensing requirements of a regulatory agency to the
 6 extent that those requirements are consistent with the
 7 construction and operation of the facility according to the
 8 requirements of the commission. However, this section does
 9 not limit the authority of the executive director under
 10 sections 455B.132 and 455B.134. A local unit of government
 * 11 shall not unduly restrict the transportation of hazardous
 12 waste to a facility for which a license has been issued under
 13 this Act.

14 Sec. 12. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW.
 15 Notwithstanding chapter 17A:

16 1. Any proceeding or oral presentation held before the
 17 commission on an application for a license shall be held in
 18 lieu of any other proceeding or oral presentation required
 19 for a license or permit necessary for the construction,
 20 maintenance, or operation of a facility.

21 2. The issuance or denial of the license is a final agency
 22 action, and the date for determining whether any person is
 23 aggrieved or adversely affected by the action is the date
 24 of the issuance or denial of the license.

25 Sec. 13. NEW SECTION. RULES. The commission shall adopt
 26 rules under chapter 17A necessary to implement this Act in-
 27 cluding but not limited to the form for an application for
 28 a license and the description of information to be furnished
 29 by the applicant.

30 Sec. 14. NEW SECTION. PENALTIES. A person required to
 31 obtain a site license under this Act who constructs a facility
 32 without having first obtained the license is subject to a
 33 civil penalty of not more than ten thousand dollars for each
 34 violation or for each day of continuing violation. Civil
 35 penalties collected pursuant to this subsection shall be

1 forwarded by the clerk of court to the treasurer of state
2 for deposit in the general fund of the state.

3 Sec. 15. NEW SECTION. SURCHARGE IMPOSED. A land burial
4 surcharge tax of two percent is imposed on the fee for land
5 burial of a hazardous waste. The owner of the land burial
6 facility shall remit the tax collected to the director of
7 revenue after consultation with the executive director
8 according to rules that the director shall adopt. Taxes
9 collected by the director of revenue under this section shall
10 be deposited in the general fund of the state.

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SF 420
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SENATE FILE 420

H.S. 13

1 Amend Senate File 420 as amended, passed and
2 reprinted by the Senate as follows:

3 1. Page 9, by inserting after line 10 the
4 following:

5 "Sec. 16. Section 422.12, Code 1981, is amended
6 by adding the following new subsection:

7 NEW SUBSECTION. A hazardous waste investment
8 credit equal to seven percent of the actual amount
9 paid or to be paid by the taxpayer for the purchase,
10 construction, or installation of machinery or
11 equipment, in which the taxpayer has an ownership
12 interest, used solely for the treatment or recycling
13 of hazardous waste. The credit is applicable to the
14 tax year in which the machinery or equipment is first
15 operated for the treatment or recycling of hazardous
16 waste. This credit is not allowed on machinery or
17 equipment used for the land burial of hazardous waste.
18 This credit shall be deducted after the deduction
19 of other credits provided in this section. If this
20 credit exceeds the remaining tax liability of the
21 taxpayer, the excess credit shall be carried forward
22 to subsequent tax years.

23 For purposes of this subsection, "hazardous waste"
24 and "treatment" have the same meaning ascribed to
25 them in section 455B.130.

26 Sec. 17. Section 422.35, Code 1981, is amended
27 by adding the following new subsection:

28 NEW SUBSECTION. After the adjustments to net
29 income provided in this section and computation of
30 the tax under section 422.33, there shall be allowed
31 a hazardous waste investment credit equal to seven
32 percent of the actual amount paid or to be paid by
33 the taxpayer for the purchase, construction, or
34 installation of machinery or equipment, in which the
35 taxpayer has an ownership interest, used solely for
36 the treatment or recycling of hazardous waste. The
37 credit applies to the tax year in which the machinery
38 or equipment is first operated for the treatment or
39 recycling of hazardous waste. This credit is not
40 allowed on machinery or equipment used for the land
41 burial of hazardous waste. If this credit exceeds
42 the tax liability of the taxpayer, the excess credit
43 shall be carried forward to subsequent tax years.

44 For purposes of this subsection, "hazardous waste"
45 and "treatment" have the same meaning ascribed to
46 them in section 455B.130.

47 Sec. 18. Chapter 422, division VI, Code 1981,
48 is amended by adding the following new section:

49 NEW SECTION. If the taxpayer disposes of or ceases
50 to use solely for the treatment or recycling of

H-3713
Page Two

1 hazardous waste the machinery or equipment for which
2 the taxpayer received a credit under section 16 or
3 17 of this Act within the six years following the
4 tax year for which the credit was first received,
5 the taxpayer's tax liability under division II, III,
6 or V for the tax year in which the taxpayer disposes
7 of or ceases to use solely for the treatment or
8 recycling of hazardous waste the machinery or equipment
9 is increased by an amount equal to the excess of the
10 amount of credit the taxpayer received under section
11 16 or 17 of this Act over the amount of credit the
12 taxpayer would have received if the credit had been
13 computed by substituting for the seven percent in
14 section 16 or 17 of this Act a percentage equal to
15 the number of years the taxpayer had an ownership
16 interest in and used the machinery or equipment solely
17 for the treatment or recycling of hazardous waste.
18 Sec. 19. Sections 16, 17, and 18 of this Act
19 take effect July 1 following enactment for tax years
20 beginning on or after the effective date."

H-3713 FILED APRIL 16, 1981 BY POFFENBERGER of Dallas
Bill not germane 4/21/81 (p. 1297)

SENATE FILE 420

H-3705

1 Amend Senate File 420 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 9, by inserting after line 10 the
4 following section:
5 "Sec. ____ . Section 455B.131, Code 1981, is amended
6 by adding the following new subsection:
7 NEW SUBSECTION. Adopt rules prohibiting the disposal
8 of any hazardous waste without prior treatment to neutral-
9 ize or render the waste non-hazardous. Whenever any
10 hazardous waste is disposed of, the commission may
11 request, and the generator or disposer of that hazardous
12 waste shall supply the commission with, a formal, complete,
13 and detailed statement justifying why the hazardous waste
14 was not treated to neutralize or render the waste
15 non-hazardous.

H-3705 FILED APRIL 16, 1981 BY HOWELL of Floyd
Lost 4/21/81 (p. 1295)

SENATE FILE 420

H-3704

1 Amend Senate File 420 as amended, passed and
2 reprinted by the Senate as follows:
3 1. Page 9, line 4, by striking the word "two"
4 and inserting in lieu thereof the word "ten".

H-3704 FILED APRIL 16, 1981 BY HOWELL of Floyd
Lost 4/21/81 (p. 1293)

1 Amend Senate File 420 as amended, passed and
 2 reprinted by the Senate, as follows:
 3 1. Page 3, line 26, by inserting after the word
 4 "accepted." the words "An application rejected under
 5 this subsection may be resubmitted only once. If
 6 a resubmitted application is rejected the applicant
 7 may reapply for a license by giving notice and
 8 resubmitting an application as provided in subsections
 9 1 and 2, including payment of the nonrefundable
 10 application fee."
 11 2. Page 5, line 13, by striking the words "linear
 12 mile" and inserting in lieu thereof the words "mile
 13 from the boundaries".
 14 3. Page 6, line 16, by inserting after the word
 15 "risk" the words "and effect".
 16 4. Page 6, by striking lines 18 and 19 and
 17 inserting in lieu thereof the words:
 18 "i. The impact of the facility on the operations
 19 and responsibilities of the city and county in which
 20 the facility is proposed to be located and on cities
 21 and counties near the proposed site."
 22 5. Page 7, line 5, by inserting before the word
 23 "A" the number "3."
 24 6. Page 7, line 13, by inserting after the word
 25 "liability." the words "A municipality shall not be
 26 required to pay any portion of the costs associated
 27 with the response to a release or threatened release
 28 of a hazardous waste from a facility into the land,
 29 air, or water that threatens or may threaten human
 30 health or the environment unless the municipality
 31 is responsible for or in control of the facility or
 32 unless the municipality is otherwise subject to
 33 liability under this subsection."
 34 7. Page 7, line 19, by inserting after the word
 35 "agrees" the words "and is able".
 36 8. Page 9, line 8, by inserting after the period
 37 the words: "The executive director shall forward
 38 a copy of the site license to the director of revenue
 39 which shall be the appropriate license for the
 40 collection of the land burial surcharge tax and shall
 41 be subject to suspension or revocation if the site
 42 license holder fails to collect or remit the tax
 43 collected under section 15 of this Act. The provisions
 44 of sections 422.25, subsection 4, 422.30, 422.48 to
 45 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69,
 46 subsection 1, and 422.70 to 422.75, consistent with
 47 the provisions of this Act, shall apply with respect
 48 to the taxes authorized under this Act, in the same
 49 manner and with the same effect as if the land burial
 50 surcharge tax were retail sales taxes within the

H-3657

Page Two

1 meaning of those statutes. Notwithstanding the
 2 provisions of this paragraph, the director shall
 3 provide for only quarterly filing of returns as
 4 prescribed in section 422.51."

H-3657 FILED
 APRIL 15, 1981

BY COMMITTEE ON WAYS AND MEANS
 SCHNEKLOTH, Chair

Adopted 4/21/81 (p. 1294)

SENATE FILE 420

H-3723

1 Amend amendment H-3657 to Senate File 420 as
2 amended, passed and reprinted by the Senate as follows:
3 1. Page 1, line 21, by inserting after the word
4 "site." the words "The commission may require the
5 applicant to remit to a host city or county or a city
6 or county near the proposed site an amount determined
7 by the commission as necessary to pay the costs of
8 additional equipment or personnel training the
9 commission determines is necessary for the city or
10 county to protect their citizens from potential adverse
11 effects caused by the proposed facility."
12 2. Page 1, by inserting after line 35 the
13 following:
14 " . Page 7, line 20, by inserting after the
15 word "License." the words "Any amount to be paid by
16 the applicant to a city or county under section 8,
17 subsection 1, paragraph i, shall not be included in
18 computing the cost of the proceeding under this section
19 and to that extent the cost to the applicant may
20 exceed the limits prescribed in this section."

H-3723 FILED APRIL 21, 1981 BY KREWSON of Polk

LOST (p. 1294)

HOUSE AMENDMENT TO SENATE FILE 420

S-3544

1 Amend Senate File 420 as amended, passed and
2 reprinted by the Senate, as follows:

3 1. Page 3, line 26, by inserting after the word
4 "accepted." the words "An application rejected under
5 this subsection may be resubmitted only once. If
6 a resubmitted application is rejected the applicant
7 may reapply for a license by giving notice and
8 resubmitting an application as provided in subsections
9 1 and 2, including payment of the nonrefundable
10 application fee."

11 2. Page 5, line 13, by striking the words "linear
12 mile" and inserting in lieu thereof the words "mile
13 from the boundaries".

14 3. Page 6, line 16, by inserting after the word
15 "risk" the words "and effect".

16 4. Page 6, by striking lines 18 and 19 and
17 inserting in lieu thereof the words:

18 "i. The impact of the facility on the operations
19 and responsibilities of the city and county in which
20 the facility is proposed to be located and on cities
21 and counties near the proposed site."

22 5. Page 7, line 5, by inserting before the word
23 "A" the number "3."

24 6. Page 7, line 13, by inserting after the word
25 "liability." the words "A municipality shall not be
26 required to pay any portion of the costs associated
27 with the response to a release or threatened release
28 of a hazardous waste from a facility into the land,
29 air, or water that threatens or may threaten human
30 health or the environment unless the municipality
31 is responsible for or in control of the facility or
32 unless the municipality is otherwise subject to
33 liability under this subsection."

34 7. Page 7, line 19, by inserting after the word
35 "agrees" the words "and is able".

36 8. Page 9, line 8, by inserting after the period
37 the words: "The executive director shall forward
38 a copy of the site license to the director of revenue
39 which shall be the appropriate license for the
40 collection of the land burial surcharge tax and shall
41 be subject to suspension or revocation if the site
42 license holder fails to collect or remit the tax
43 collected under section 15 of this Act. The provisions
44 of sections 422.25, subsection 4, 422.30, 422.48 to
45 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69,
46 subsection 1, and 422.70 to 422.75, consistent with
47 the provisions of this Act, shall apply with respect
48 to the taxes authorized under this Act, in the same
49 manner and with the same effect as if the land burial
50 surcharge tax were retail sales taxes within the

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1 meaning of those statutes. Notwithstanding the
2 provisions of this paragraph, the director shall
3 provide for only quarterly filing of the returns as
4 prescribed in section 422.51."

Senate concurred 4/27/81

SENATE FILE 420

AN ACT

RELATING TO THE SITING OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES, PROVIDING PENALTIES AND IMPOSING A SURCHARGE ON THE FEE FOR LAND BURIAL OF HAZARDOUS WASTE.

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

Section 1. NEW SECTION. PURPOSE AND GUIDELINES. The purpose of this Act is to protect the public health and the environment by providing a procedure for establishing appropriate sites and properly designed facilities for the treatment, storage and disposal of hazardous waste. It is the intent of the general assembly that in the implementation of this Act the department of environmental quality shall emphasize alternatives to land burial of hazardous waste whenever possible with emphasis on the following management methods in the following order: source reduction, reuse, resource recovery, incineration, and detoxification.

Sec. 2. NEW SECTION. DEFINITIONS. As used in this Act unless the context otherwise requires:

1. a. "Facility" means land and structures, other appurtenances, and improvements on the land used for the treatment, storage, or disposal of a hazardous waste required to have a permit under section 455B.134.

b. "Facility" does not include land, structures, other appurtenances and improvements contiguous to the source of generation and owned and operated by and exclusively for the treatment, storage, or disposal of hazardous waste of the generator.

c. As used in this subsection property is contiguous if it is divided only by a public or private way.

2. "Hazardous waste" means a hazardous waste as defined in section 455B.130, subsection 2 and listed by the environmental quality commission under section 455B.131, subsection 2.

3. "Commission" means the environmental quality commission.

4. "Executive director" means the executive director of the department of environmental quality.

5. "Regulatory agency" means a state or local agency that issues a license or permit required for the construction, operation, or maintenance of a facility pursuant to state statute or rule or local ordinance or resolution in effect on the date the application for a site license is submitted to the commission.

6. "Construct" means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies, or acquisition of a site for a facility. "Construct" includes alteration to existing structures or a land disposal facility to initially accommodate hazardous waste but does not include any alteration to increase the capacity or change the ability to accommodate hazardous waste. However, any alteration to increase or change the ability to accommodate hazardous waste is subject to section 455B.132.

Sec. 3. NEW SECTION. LICENSE REQUIRED.

1. A person shall not construct a facility until the person obtains a site license issued under this Act by the commission. A person planning to construct a facility shall give notice of the intent to construct the facility as provided in this section. The notice shall be served on the executive director and on the city council and board of supervisors of each city and county in which the facility is located and shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks. The notice shall contain the following:

- a. A description of the proposed location of the facility.
- b. A description of the treatment, storage, or disposal method to be used and the types of wastes to be handled, including estimated volumes.

c. The names and addresses of the owners and the operators of the facility.

2. Within fifteen days of the date the notice is last published, the owners and operators of the facility shall submit an application to the executive director requesting that a site license be issued under this Act. The application for a site license shall contain the name and residence of the applicant, and the following additional information:

a. The location of the proposed facility and a plat of the proposed location.

b. A description of the design and capacity of the proposed facility.

c. The expected sources of hazardous wastes for the facility, the proposed methods and routes of transporting the wastes to and from the facility.

d. The qualifications of the operator.

e. Other relevant information as the commission requires by rule.

The application shall be accompanied by a nonrefundable application fee determined by a schedule established by the commission by rule, but which shall not exceed one thousand dollars.

3. Within thirty days of the receipt of the application, the executive director shall determine whether the application is in substantial compliance with the information requirements, and shall either accept the application or notify the applicant of any deficiencies. An applicant who receives notification of deficiencies in the application has ninety days from the receipt of notice to remedy the deficiencies and resubmit the application for consideration. The executive director shall notify the applicant within thirty days of receipt of a resubmitted application whether the application is accepted. An application rejected under this subsection may be resubmitted only once. If a resubmitted application is rejected the applicant may reapply for a license by giving notice and resubmitting an application as provided in

subsections 1 and 2, including payment of the nonrefundable application fee.

4. This Act does not apply to a facility that is subject to subsection 2 of section 455B.134 and that has obtained applicable local zoning permits and for which contracts have been signed prior to January 1, 1982.

Sec. 4. NEW SECTION. TEMPORARY MEMBERS APPOINTED. Immediately upon receipt of an application for a site license the executive director shall notify the city council of the city closest to the proposed facility and the county board of supervisors of the county in which the facility is proposed to be located that the application has been received. Within thirty days of the receipt of notification the city council or the county board of supervisors may make the following appointments to the commission for purposes of consideration of the site license application and if the city council or the county board of supervisors chooses to make the temporary appointments the executive director shall be notified of the names of those persons appointed as follows:

1. The county board may appoint two temporary members who are residents of the county.

2. The city council may appoint two temporary members who are residents of the city.

Temporary members who may be appointed under this section shall serve on the commission only during discussion and proceedings relating to the application for a site license which the temporary members were appointed to consider and shall vote only on questions relating to the issuance of that site license. Temporary members shall serve on the commission until final action is taken on the application for the site license which the temporary members were appointed to consider. Temporary members who are not public employees shall receive forty dollars per diem and actual and necessary expenses incurred in performance of their official duties. Temporary employees who are public employees shall receive reimbursement for expenses only. Per diem and expenses under this section shall be paid by the state.

Sec. 5. NEW SECTION. NOTIFICATION REQUIREMENTS. Upon acceptance of a site license application under section 3 of this Act the executive director shall mail copies of the application to regulatory agencies. A regulatory agency receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and for compliance with the regulatory agency's permit or licensing requirements.

Sec. 6. NEW SECTION. PROCEEDING.

1. Within thirty days after the acceptance of the application for a site license, the commission shall establish a timetable for consideration of the application. The timetable for final action by the commission shall not exceed one hundred eighty days after the date the application is accepted.

2. The proceeding for the issuance of a site license is a contested case under chapter 17A.

3. The commission shall establish a date for the hearing on the application and shall serve notice of the hearing on interested agencies, as determined by the commission, and regulatory agencies.

The commission shall notify all owners of record of real property located within one mile from the boundaries of the proposed site of the time and place of the hearing.

4. Notice of the hearing in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each city and county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing.

Sec. 7. NEW SECTION. PROCEEDING--ROLE OF REGULATORY AGENCIES.

1. Regulatory agencies that appear on record at the proceeding shall state whether the application meets their permit or licensing requirements. If the application does not meet the requirements of a regulatory agency, the regulatory agency shall state why the application is not in compliance.

2. Any person may present oral or written comments to the commission at the hearing.

Sec. 8. NEW SECTION. DECISION BY COMMISSION.

1. The commission shall grant or deny the site license. In making its decision, the commission shall consider the following:

- a. The need for the services to be offered by the facility.
 - b. The impact of the proposed facility on the area in which it is to be located.
 - c. The zoning classification of the proposed site and the extent to which a proposed site is by present or projected use dedicated to industrial development.
 - d. The land uses and the density of population in areas near the facility.
 - e. The density of population in areas adjacent to probable transportation routes to the facility.
 - f. The risk and effect of accidents during the transportation of hazardous wastes to the site.
 - g. The geology of the site, where relevant, with reference to factors which include, but are not limited to, the presence of fault zones and the risk of contamination of ground and surface waters by leaching and runoff from the facility.
 - h. The risk and effect of fires or explosions from improper storage and disposal methods.
 - i. The impact of the facility on the operations and responsibilities of the city and county in which the facility is proposed to be located and on cities and counties near the proposed site.
 - j. Local ordinances, permits, or other requirements and their relationship to the proposed facility.
 - k. Other criteria adopted by rule which the commission finds relevant to the siting of a facility which are consistent with this Act.
2. The commission shall grant the license if it finds that the facility will meet the requirements imposed by rules

adopted by the commission under section 455B.131, subsection 3, and the permit requirement of section 455B.134, that operation of the facility at the proposed location will be in the public interest and that the public health and welfare and the environment will be adequately protected. The failure of the proposed facility to meet zoning requirements established under chapters 329, 358A, and 414, and the licensing requirements of regulatory agencies except the requirements imposed by sections 455B.131, subsection 3 and 455B.134 shall not preclude the commission from issuing the license and to that extent this subsection supersedes the licensing requirements of regulatory agencies and the requirements of chapters 329, 358A and 414.

3. A municipality as defined in section 613A.1(1), is not liable in an action for damages arising out of the construction, operation, or maintenance of a hazardous waste facility which is licensed by the commission under this Act unless the municipality is responsible for or in control of the facility. However, a municipality may be subject to liability for damages caused by hazardous waste in connection with an act or omission which would otherwise subject the municipality to liability. A municipality shall not be required to pay any portion of the costs associated with the response to a release or threatened release of a hazardous waste from a facility into the land, air, or water that threatens or may threaten human health or the environment unless the municipality is responsible for or in control of the facility or unless the municipality is otherwise subject to liability under this subsection.

Sec. 9. NEW SECTION. ISSUANCE OF LICENSE--EFFECT. Issuance of a license by the commission authorizes construction of the facility on the site designated in the license according to the terms and conditions stated in the license. A license may be transferred, subject to the rules and approval of the commission, to a person who agrees and is able to comply with the terms of the license.

Sec. 10. NEW SECTION. COST OF PROCEEDINGS. The cost of the proceeding for the issuance of a license shall be paid by the applicant for the license until the cost exceeds nine thousand dollars. The executive director shall notify the applicant upon the issuance or denial of the license or upon termination of the proceeding at any point during the process of the cost of the proceeding to the applicant. These costs include the costs of providing notices, holding the hearing and the per diem of the commissioners in the proceeding for the license. Moneys collected shall be deposited in the general fund of the state.

Sec. 11. NEW SECTION. FURTHER APPROVALS PROHIBITED--EXCEPTION. Upon the issuance of a license under this Act, notwithstanding any provision of law or ordinance except statutory requirements relating to the protection of employees engaged in the construction of the facility, no further approval, permit, or license for the construction, operation, or maintenance of the facility as stated in the license shall be required. The commission may incorporate in the license the licensing requirements of a regulatory agency to the extent that those requirements are consistent with the construction and operation of the facility according to the requirements of the commission. However, this section does not limit the authority of the executive director under sections 455B.132 and 455B.134. A local unit of government shall not unduly restrict the transportation of hazardous waste to a facility for which a license has been issued under this Act.

Sec. 12. NEW SECTION. SINGLE HEARING--JUDICIAL REVIEW. Notwithstanding chapter 17A:

1. Any proceeding or oral presentation held before the commission on an application for a license shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance, or operation of a facility.

2. The issuance or denial of the license is a final agency action, and the date for determining whether any person is aggrieved or adversely affected by the action is the date of the issuance or denial of the license.

Sec. 13. NEW SECTION. RULES. The commission shall adopt rules under chapter 17A necessary to implement this Act including but not limited to the form for an application for a license and the description of information to be furnished by the applicant.

Sec. 14. NEW SECTION. PENALTIES. A person required to obtain a site license under this Act who constructs a facility without having first obtained the license is subject to a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the general fund of the state.

Sec. 15. NEW SECTION. SURCHARGE IMPOSED. A land burial surcharge tax of two percent is imposed on the fee for land burial of a hazardous waste. The owner of the land burial facility shall remit the tax collected to the director of revenue after consultation with the executive director according to rules that the director shall adopt. The executive director shall forward a copy of the site license to the director of revenue which shall be the appropriate license for the collection of the land burial surcharge tax and shall be subject to suspension or revocation if the site license holder fails to collect or remit the tax collected under section 15 of this Act. The provisions of sections 422.25, subsection 4, 422.30, 422.48 to 422.52, 422.54 to 422.58, 422.67, 422.68, 422.69, subsection 1, and 422.70 to 422.75, consistent with the provisions of this Act, shall apply with respect to the taxes authorized under this Act, in the same manner and with the same effect as if the land burial surcharge tax were retail sales taxes within the meaning of those statutes. Notwithstanding the provisions of this

paragraph, the director shall provide for only quarterly filing of returns as prescribed in section 422.51. Taxes collected by the director of revenue under this section shall be deposited in the general fund of the state.

TERRY E. BRANSTAD
President of the Senate

DELWYN STROMER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 420, Sixty-ninth General Assembly.

LINDA HOWARTH MACKAY
Secretary of the Senate

Approved May 11, 1981

ROBERT D. RAY
Governor