

established elementary and secondary schools before the first day of September. Such request shall be based upon the determination that a starting date on or after the first day of September would have a significant negative educational impact.

Sec. 3. Section 299.1, unnumbered paragraph 1, Code 1985, is amended to read as follows:

299.1 ATTENDANCE REQUIREMENT. A person having control of a child over seven and under sixteen years of age, in proper physical and mental condition to attend school, shall cause the child to attend some public school for at least one hundred twenty days in each school year, commencing with no sooner than the first week of school after the first day of September, unless the board of school directors establishes a later date, which date shall not be later than the first Monday in December.

Sec. 4. This Act takes effect July 1, 1986.

Approved March 5, 1985

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## CHAPTER 7

### REGULATION OF WATER USE AND ALLOCATION

*S.F. 163*

**AN ACT** relating to the authority of the department of water, air and waste management to regulate water use and embodying a general plan of water allocation priorities for this state.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 455B.261, subsection 8, Code 1985, is amended to read as follows:

8. "Nonregulated use" means the use of water for ordinary household purposes, use of water for poultry, livestock, and domestic animals, any beneficial use of surface flow from rivers bordering this state, any existing beneficial uses of water within the territorial boundaries of municipal corporations on May 16, 1957, and any other beneficial use of water by any person of less than twenty-five thousand gallons per day. However, industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when their water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957.

Sec. 2. Section 455B.262, subsections 2 and 3, Code 1985, are amended to read as follows:

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use to the fullest extent possible, and which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be encouraged required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other natural body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ~~encourage full utilization~~ ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

Sec. 3. Section 455B.263, subsection 1, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

Sec. 4. Section 455B.264, subsection 2, Code 1985, is amended to read as follows:

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the executive director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.263 and whether the use is consistent with the plan of water allocation priorities for this state principles and policies of beneficial use.

Sec. 5. Section 455B.265, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

**455B.265 PERMITS FOR DIVERSION, STORAGE AND WITHDRAWAL.**

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. Regardless of the request in the application, the executive director or the commission on appeal may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1985, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the commission. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

Sec. 6. Section 455B.266, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

**455B.266 PRIORITY ALLOCATION.**

1. After any event described in paragraphs "a" through "d" of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the office of disaster services of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph "c", the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs "g" through "i" or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the executive director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

Sec. 7. Section 455B.267, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

Sec. 8. Section 455B.268, subsection 1, Code 1985, is amended to read as follows:

1. A permit shall be required for the following:

~~a. A municipal corporation or a person supplying a municipal corporation which increases its water use in excess of one hundred thousand gallons or three percent, whichever is the greater, per day more than its highest per day beneficial use prior to May 16, 1957. The corporation or person shall make reasonable provision for the storage of water at times when the daily use of the water by the corporation or person is less than the amount specified in this subsection.~~

~~b. a. Except for a nonregulated use, a person using in excess of twenty five thousand gallons of water per day, diverted, stored, or withdrawn diverting, storing or withdrawing water from any surface or groundwater source of supply except a municipal water system or any other source specifically exempted under this part.~~

~~e. b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.~~

~~d. Industrial users of water having their own water supply within the territorial boundaries of municipal corporations when the water use exceeds three percent more than the highest per day beneficial use prior to May 16, 1957.~~

Sec. 9. Section 455B.271, subsection 2, paragraph d, Code 1985, is amended to read as follows:

d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.

Sec. 10. Section 455B.271, subsection 3, Code 1985, is amended to read as follows:

3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the executive director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent danger. The department may require the permittee to take measures necessary to prevent or remedy the injury, but an order shall not be in effect for more than thirty days from the date of issue without giving the permittee at least ten days' written notice of the order and an opportunity to be heard on the order. The emergency order shall

state the effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the commission or by a court.

Sec. 11. NEW SECTION. 455B.281 COMPENSATION FOR WELL INTERFERENCE.

If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good faith effort to negotiate a mutually agreeable compensation has been made and has failed.

Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.

The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.

Approved March 5, 1985

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## CHAPTER 8

### USE OF APPRAISED VALUE FOR SCHOOL PROPERTY

*H.F. 38*

**AN ACT** providing that appraised value determines when a school board has the power to sell, lease or dispose of school property.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 297.22, unnumbered paragraph 1, Code 1985, is amended to read as follows:

The board of directors of a school district may sell, lease, or dispose of, in whole or in part, a schoolhouse, site, or other property belonging to the district for which the appraised value