

is guilty of an aggravated misdemeanor when the person has had two or more convictions within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

Approved April 26, 1990

CHAPTER 1199

WETLANDS PROTECTION, TAX EXEMPTION, AND MEDIATION

H.F. 2407

AN ACT relating to the designation, inventory, and protection of wetlands, providing for mediation, providing a civil penalty for violations, and providing a property tax exemption for wetlands.

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

Section 1. Section 108.1, Code 1989, is amended by adding the following new subsections:
NEW SUBSECTION. 4. "Wetlands" means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

NEW SUBSECTION. 5. "Protected wetlands" means type 3, type 4, and type 5 wetlands as described in Circular 39, Wetlands of the United States, 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

Sec. 2. NEW SECTION. 108.12 INVENTORY OF PROTECTED WETLANDS.

The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

1. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

2. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

Sec. 3. NEW SECTION. 108.13 PROTECTION OF WETLANDS.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.

2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:

a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.

b. The protected wetland does not meet the criteria for continued designation as a protected wetland.

3. This section does not prevent a landowner from utilizing the bed of a protected wetland for pasture or cropland during a period of drought if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

Sec. 4. NEW SECTION. 108.14 CIVIL PENALTY.

A person who violates the permit requirement of section 108.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

Sec. 5. Section 427.1, subsection 36, unnumbered paragraphs 1 and 2, Code Supplement 1989, are amended to read as follows:

~~Wetlands, recreational~~ Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983 the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted; ~~except that an exemption granted for wetlands shall be for three fiscal years.~~ A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, ~~or if not located in a district, to the board of supervisors,~~ not later than April 15 of the assessment year, on forms provided by the department of revenue and finance. ~~However, in the case of an exemption granted for wetlands an application does not have to be filed for the second and third years of the three-year exemption period.~~ The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the commissioners ~~or the board of supervisors,~~ if the property is ~~not located in a soil and water conservation district,~~ shall certify whether the property is eligible to receive the exemption. The commissioners ~~or board~~ shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must

be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Sec. 6. Section 427.1, subsection 36, unnumbered paragraph 5, Code Supplement 1989, is amended to read as follows:

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is ~~wetlands~~, recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located ~~or the state soil conservation committee if not located in a district~~. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

Sec. 7. Section 427.1, subsection 36, paragraph a, Code Supplement 1989, is amended by striking the paragraph.

Sec. 8. Section 427.1, subsection 37, Code Supplement 1989, is amended to read as follows:

37. NATIVE PRAIRIE AND WETLAND. Land designated as native prairie by a county conservation board or by the department of natural resources in an area not served by a county conservation board or land designated as a protected wetland by the department of natural resources pursuant to section 108.12. Application for the exemption shall be made on forms provided by the department of revenue and finance. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the county conservation board serving the area in which the property is located or if none exists, the department of natural resources stating that the land is native prairie or protected wetland. The county conservation board or the department of natural resources shall issue the a certificate for the native prairie exemption if the board or department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 108.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial

review of a decision of a board or the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

Sec. 9. **NEW SECTION. 654A.16 WETLAND DESIGNATION.**

The farm mediation service shall provide for mediation between the department of natural resources and a landowner affected by the preliminary wetland designation provided in section 108.12. The department shall cease actions relating to inventorying or designating affected land until a mediation release is issued by the farm mediation service. The mediation process shall be conducted according to rules adopted by the attorney general after consultation with the farm mediation service. The rules shall to the extent practical be based on mediation provided under this chapter for borrowers and lenders.

Sec. 10. Section 654B.8, subsection 4, as enacted in 1990 Iowa Acts, House File 2404, section 22, is amended to read as follows:

4. If the parties waive mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation was waived or that the parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release. ~~Unless the farm resident waives mediation, the department shall not receive a mediation release until the party has participated in at least one mediation meeting.~~

Sec. 11. Section 654A.16 is repealed effective upon the repeal of sections 654A.1 through 654A.14.

Approved April 26, 1990

CHAPTER 1200

COMMUNITY CLUSTERS

H.F. 2560

AN ACT relating to the formation of community clusters by certain governmental units for the joint exercise of powers.

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

Section 1. **NEW SECTION. 28E.35 DEFINITIONS.**

As used in this division unless the context otherwise requires:

1. "Community cluster" means a cooperative community unit established pursuant to this chapter for the joint exercise of powers by two or more governmental units.
2. "Governmental unit" means a city, county, or special taxing district.