

# House Amendment 3510

## Amendment Text

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1 1 Amend the amendment, [H-3327](#), to [House File 166](#) as  
1 2 follows:  
1 3 #1. By striking page 1, line 4, through page 3,  
1 4 line 49, and inserting the following:  
1 5 "Section 1. NEW SECTION. 17B.1 SHORT TITLE.  
1 6 This chapter shall be known and may be cited as the  
1 7 "Agricultural Property Protection Act."  
1 8 Sec. 2. NEW SECTION. 17B.2 DEFINITIONS.  
1 9 As used in this section, unless the context  
1 10 otherwise requires:  
1 11 1. "Buffer zone" means a permanent area, including  
1 12 an erosion control structure or an erosion control  
1 13 practice, which separates agricultural uses from a  
1 14 water source, in order to mitigate the effects of  
1 15 concentrated runoff on water quality.  
1 16 2. "Department" means the department of natural  
1 17 resources as created pursuant to section 455A.2.  
1 18 3. "Owner" means a person other than a  
1 19 governmental entity, who holds a fee simple interest  
1 20 in real farm property.  
1 21 4. "Proposed departmental action" means an action  
1 22 which an agency proposes to initiate by filing a  
1 23 notice of intended action pursuant to section 17A.4,  
1 24 or by issuing an order pursuant to chapter 17A,  
1 25 regardless of whether the action has general or  
1 26 specific applicability, if the action implements,  
1 27 interprets, or prescribes law or policy, and is within  
1 28 the department's statutory authority.  
1 29 5. "Real farm property" means real property which  
1 30 is privately owned and used for agricultural purposes.  
1 31 Sec. 3. NEW SECTION. 17B.3 LEGISLATIVE FINDINGS  
1 32 AND PURPOSE.  
1 33 It is the policy of this state that an action taken  
1 34 by the department which affects real property which is  
1 35 privately owned and used for agricultural purposes is  
1 36 subject to the full protection afforded by the  
1 37 Constitution of the United States and the Constitution  
1 38 of the State of Iowa. The general assembly intends  
1 39 that the department follow all procedures required to  
1 40 ensure constitutional protection of real farm property  
1 41 rights and reduce the burden on citizens, local  
1 42 governments, and this state caused by actions  
1 43 affecting real farm property, while also meeting its  
1 44 obligation to protect the quality of this state's  
1 45 natural environment.  
1 46 The purpose of this chapter is to establish an  
1 47 orderly, consistent process that better enables the  
1 48 department to evaluate how a potential administrative  
1 49 action may affect real farm property. It is not the  
1 50 purpose of this chapter to reduce or expand the scope  
2 1 of private property protection provided in the  
2 2 Constitution of the United States and the Constitution  
2 3 of the State of Iowa, as those provisions have been  
2 4 and may in the future be interpreted by state and  
2 5 federal courts of competent jurisdiction.  
2 6 Sec. 4. NEW SECTION. 17B.4 ACTIONS REQUIRING  
2 7 DEPARTMENTAL ASSESSMENT.

2 8 1. If the department proposes taking any action  
2 9 that is reasonably likely to deprive an owner of a fee  
2 10 simple interest in real farm property, or deprives an  
2 11 owner of all productive use of the real farm property,  
2 12 the department shall prepare an assessment that  
2 13 includes all of the following:

2 14 a. An identification of the risk created by the  
2 15 use of the owner's real farm property to the public,  
2 16 and a description of the goal achieved by the proposed  
2 17 departmental action, which may include advancing a  
2 18 public benefit or preventing a risk to the public  
2 19 welfare, including preservation of the natural  
2 20 environment, or protection of public health or safety.

2 21 b. The anticipated effects, if any, on the public,  
2 22 including other persons holding an interest in real  
2 23 property, or on the natural environment, if the  
2 24 department does not take the proposed departmental  
2 25 action.

2 26 c. An explanation justifying why the proposed  
2 27 departmental action advances a public benefit or  
2 28 prevents a risk to the public welfare.

2 29 d. An explanation justifying why the proposed  
2 30 departmental action is likely to result in requiring  
2 31 the state, under applicable constitutional principles  
2 32 and judicial opinions, to compensate the owner of the  
2 33 real farm property, including a description of how the  
2 34 proposed departmental action affects the use or value  
2 35 of the real farm property.

2 36 e. Alternatives, if any, to the proposed  
2 37 departmental action that the department believes will  
2 38 fulfill the legal obligations of the department,  
2 39 reduce the impact on the real farm property, and  
2 40 reduce the likelihood of requiring compensation.

2 41 f. An estimate of the cost to the state for  
2 42 compensation in the event such compensation is  
2 43 required.

2 44 2. An assessment is not required under this  
2 45 section, unless the Iowa supreme court, the Iowa court  
2 46 of appeals, or the United States supreme court has,  
2 47 under similar factual circumstances, required  
2 48 compensation to be paid.

2 49 3. If the department finds an immediate threat to  
2 50 human health or safety that constitutes an emergency  
3 1 and requires an immediate response, the assessment  
3 2 required by this section may be delayed until after  
3 3 the emergency response is completed. As used in this  
3 4 subsection, "emergency response" includes a rule of an  
3 5 emergency nature adopted under section 17A.4,  
3 6 subsection 2, or made effective under the provisions  
3 7 of section 17A.5, subsection 2, paragraph "b", or an  
3 8 order issued by the department requiring the owner to  
3 9 cease and desist. The rule or order shall provide an  
3 10 explanation for the emergency response.

3 11 4. This section shall not apply to a proposed  
3 12 departmental action which is one of the following:

3 13 a. A licensing or permitting condition,  
3 14 requirement, or limitation involving the use of real  
3 15 farm property, required pursuant to state or federal  
3 16 statute, a federal regulation, or a rule adopted  
3 17 pursuant to chapter 17A.

3 18 b. The adoption of rules under chapter 17A that is  
3 19 reasonably likely to limit the use of real farm  
3 20 property, required pursuant to a state or federal  
3 21 statute, a federal regulation, or a rule adopted  
3 22 pursuant to chapter 17A.

3 23 c. An enforcement action carried out by the  
3 24 department pursuant to a state or federal statute, a

3 25 federal regulation, or a rule adopted pursuant to  
3 26 chapter 17A.

3 27 5. An assessment made pursuant to this section is  
3 28 a public record as provided in chapter 22.

3 29 Sec. 5. NEW SECTION. 17B.5 SPECIAL REQUIREMENTS  
3 30 &ndash; CREATION OF BUFFER ZONES.

3 31 1. If a proposed departmental action requires the  
3 32 creation of a buffer zone, the department shall  
3 33 prepare a report which shall identify the public  
3 34 purpose or policy which is serviced by the creation of  
3 35 the buffer zone and how the creation and maintenance  
3 36 of the buffer zone will promote or meet that public  
3 37 purpose or policy. The report shall be in addition to  
3 38 any other assessment required pursuant to this  
3 39 chapter.

3 40 2. If the department finds an immediate threat to  
3 41 human health or safety that constitutes an emergency  
3 42 and requires an immediate response, the report  
3 43 required by this section may be delayed until after  
3 44 the emergency response is completed. As used in this  
3 45 subsection, "emergency response" includes a rule of an  
3 46 emergency nature adopted under section 17A.4,  
3 47 subsection 2, or made effective under the provisions  
3 48 of section 17A.5, subsection 2, paragraph "b", or an  
3 49 order issued by the department requiring the owner to  
3 50 cease and desist. The rule or order shall provide an  
4 1 explanation for the emergency response.

4 2 3. An assessment made pursuant to this section is  
4 3 a public record as provided in chapter 22.

4 4 Sec. 6. NEW SECTION. 17B.6 REMEDIES.

4 5 If a court determines that an owner is entitled to  
4 6 be compensated under the Constitution of the United  
4 7 States or the Constitution of the State of Iowa,  
4 8 because of a departmental action affecting real farm  
4 9 property, the court shall order the department to pay  
4 10 the owner court costs, including reasonable attorney  
4 11 fees, if the court determines either of the following  
4 12 applies:

4 13 1. The department failed to perform an assessment  
4 14 required pursuant to section 17B.4.

4 15 2. The department completed the assessment  
4 16 required in section 17B.4, but unreasonably failed to  
4 17 conclude that its action was reasonably likely to  
4 18 require compensation to be paid to the owner.

4 19 Sec. 7. APPLICABILITY DATE. This Act applies to  
4 20 governmental action taken or proposed on or after  
4 21 ninety days following the effective date of this Act."

4 22 #2. Title page, by striking lines 1 through 4 and  
4 23 inserting the following: "An Act relating to property  
4 24 used for farming which is impacted by government  
4 25 action and providing for the Act's applicability.""

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4 29 WEIGEL of Chickasaw

4 30 HF 166.204 76

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