

Senate File 2363 - Enrolled

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SENATE FILE 2363

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AN ACT
RELATING TO WATER QUALITY STANDARDS.

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

1 8 Section 1. Section 455B.173, subsection 2, unnumbered
1 9 paragraph 1, Code 2005, is amended to read as follows:
1 10 Establish, modify, or repeal water quality standards,
1 11 pretreatment standards and effluent standards, in accordance
1 12 with the provisions of this chapter. The effluent standards
1 13 may provide for maintaining the existing quality of the water
1 14 of the state that is a navigable water of the United States
1 15 under the federal Water Pollution Control Act where the
1 16 quality thereof exceeds the requirements of the water quality
1 17 standards.

1 18 Sec. 2. WATER QUALITY STANDARDS. The general assembly
1 19 makes the following findings:

1 20 1. The federal Water Pollution Control Act provides that
1 21 the state is responsible for implementation of the federal Act
1 22 in a manner that the state deems most appropriate.

1 23 2. Historically, the state has been and continues to be a
1 24 responsible steward of the environment, including Iowa's water
1 25 quality.

1 26 3. The state has adopted water quality standards that are
1 27 protecting Iowa's water quality.

1 28 4. State law provides in section 455B.176 that the
1 29 environmental protection commission, when establishing,
1 30 modifying, or repealing water quality standards, must base its
1 31 decision upon data gathered from sources within the state.

1 32 5. State law provides in section 455B.176, subsection 11,
1 33 that the goal of any changes to water quality standards shall
1 34 be a reasonable balance between total costs to the people and
1 35 to the economy, and the resultant benefits to the people of
2 1 Iowa.

2 2 6. The state shall adopt water quality standards that,
2 3 where attainable, provide water quality for the protection and
2 4 propagation of fish, shellfish, and wildlife, and for
2 5 recreation in and on the water.

2 6 Sec. 3. NEW SECTION. 455B.176A WATER QUALITY STANDARDS.

2 7 1. For purposes of this section, unless the context
2 8 otherwise requires:

2 9 a. "Base flow conditions" means the flow of a stream
2 10 segment, as measured during the time period between July 1 and
2 11 September 30, that occurs during a period of time when the
2 12 watershed, in which the stream segment is located, receives no
2 13 twenty-four-hour rainfall in excess of one-quarter inch total
2 14 rainfall and not more than one-half inch total rainfall for
2 15 the watershed in the preceding two weeks.

2 16 b. "Credible data" means the same as defined in section
2 17 455B.171 and is subject to the same requirements as provided
2 18 in section 455B.193 and may include, but not rely solely on,
2 19 data that is older than five years and that is obtained
2 20 pursuant to the best professional judgment of a professional
2 21 designee or a state or federal agency.

2 22 c. "Ephemeral stream" means a stream that flows only in
2 23 response to precipitation and whose channel is primarily above
2 24 the water table.

2 25 d. "Professional designee" means the same as defined in
2 26 section 455B.193.

2 27 e. "Use attainability analysis" means a structured
2 28 scientific assessment that includes physical, chemical,
2 29 biological, and economic factors.

2 30 2. A water of the state shall be a designated stream
2 31 segment when any one of the following is met:

2 32 a. The most recent ten-year median flow is equal to or in
2 33 excess of one cubic foot per second based on data collected
2 34 and evaluated by the United States geological survey between
2 35 July 1 and September 30 of each year or in the absence of
3 1 stream segment flow data calculations of flow conducted by
3 2 extrapolation methods provided by the United States geological
3 3 survey or based upon a calculation method adopted by rule.

3 4 b. The water is a critical habitat of a threatened or
3 5 endangered aquatic specie as determined by the department or
3 6 the United States fish and wildlife service.

3 7 c. Credible data developed in accordance with section
3 8 455B.193 shows that water flows that are less than set out in
3 9 paragraph "a" provide a refuge for aquatic life that permits
3 10 biological recolonization of intermittently flowing segments.

3 11 3. All waters of the state not designated as a stream
3 12 segment shall be identified as a general stream segment and
3 13 shall be subject to narrative water quality standards.

3 14 4. a. The commission shall adopt rules to define
3 15 designated uses of stream segments in accordance with the
3 16 following categories:

3 17 (1) Agricultural water supply use.
3 18 (2) Aquatic life support.
3 19 (3) Domestic water supply.
3 20 (4) Food procurement use.
3 21 (5) Industrial water supply use.
3 22 (6) Recreational use, including primary, secondary, and
3 23 children's recreational use.
3 24 (7) Seasonal use. The department may allow for a seasonal
3 25 use designation for streams that would otherwise be
3 26 categorized under an aquatic or recreational designation if a
3 27 varying degree of protection would be sufficient to protect
3 28 the stream during a seasonal time period.

3 29 b. The commission shall include subcategories of
3 30 designated uses of the categories listed in paragraph "a", as
3 31 deemed appropriate by the commission.

3 32 c. When reviewing whether a designated use is attainable,
3 33 the department shall consider at a minimum the following:

3 34 (1) Whether the natural, ephemeral, intermittent, or low
3 35 flow conditions or water levels could inhibit recreational
4 1 activities.
4 2 (2) If opposite sides of a stream segment would have
4 3 different designated recreational uses due to differences in
4 4 public access, the designated use of the entire stream segment
4 5 may be the higher attainable use.
4 6 (3) The time period for determining primary contact
4 7 recreation shall be March 15 through November 15.
4 8 (4) The degree to which the public has access to the
4 9 stream segment.
4 10 (5) The minimum depth of the deepest pool.
4 11 (6) Stream segments shall be protected for all existing
4 12 uses as defined by the federal Water Pollution Control Act.

4 13 5. The commission shall adopt rules designating water
4 14 quality standards which shall be specific to each designated
4 15 use adopted pursuant to subsection 4. The standards shall
4 16 take into account the different characteristics of each
4 17 designated use and shall provide for only the appropriate
4 18 level of protection based upon that particular use. The
4 19 standards shall not be identical for each designated use
4 20 unless required for the appropriate level of protection. The
4 21 appropriate level of protection and standards shall be
4 22 determined on a scientific basis. In the development process
4 23 for the water quality standards, input shall be received from
4 24 a water quality standards advisory committee convened by the
4 25 department. The water quality standards advisory committee
4 26 shall be comprised of experts in the scientific fields
4 27 relating to water quality, such as environmental engineering,
4 28 aquatic toxicology, fisheries biology, and other life sciences
4 29 and experts in the development of the appropriate levels of
4 30 aquatic life protection and standards. The water quality
4 31 standards shall be reviewed and revised by the department as
4 32 new scientific data becomes available to support revision.

4 33 6. Prior to any changes in a national pollutant discharge
4 34 elimination system permit effluent limitation based upon a new
4 35 use designation, the department or a designee of the
5 1 department shall conduct a use attainability analysis. The
5 2 commission shall adopt rules that establish procedures and
5 3 criteria to be used in the development of a use attainability
5 4 analysis. The rules shall, at a minimum, provide all of the
5 5 following:

5 6 a. A designated use, which is not an existing use as
5 7 defined by the federal Water Pollution Control Act, may be
5 8 removed due to any of the following:

5 9 (1) Naturally occurring pollutant concentrations prevent
5 10 the attainment of the use.
5 11 (2) Natural, ephemeral, intermittent, or low flow
5 12 conditions or water levels prevent the attainment of the use,
5 13 unless these conditions may be compensated for by the
5 14 discharge of sufficient volume of effluent discharges without

5 15 violating state water conservation requirements to enable uses
5 16 to be met.

5 17 (3) Human caused conditions or sources of pollution
5 18 prevent the attainment of the use and cannot be remedied or
5 19 would cause more environmental damage to correct than to leave
5 20 in place.

5 21 (4) Dams, diversions, or other types of hydrologic
5 22 modifications preclude the attainment of the use, and it is
5 23 not feasible to restore the water body to its original
5 24 condition or to operate such modification in a way that would
5 25 result in the attainment of the use.

5 26 (5) Physical conditions related to the natural features of
5 27 the water body, such as the lack of a proper substrate, cover,
5 28 flow, depth, pools, riffles, and the like, unrelated to water
5 29 quality, preclude attainment of aquatic life protection uses.

5 30 (6) Controls more stringent than those required by
5 31 sections 1311(b) and 1316 of the federal Water Pollution
5 32 Control Act would result in substantial and widespread
5 33 economic and social impact.

5 34 b. A designated use shall not be removed if any of the
5 35 following occur:

6 1 (1) The designated use is an existing use, as defined by
6 2 the federal Water Pollution Control Act, unless a use
6 3 requiring more stringent criteria is added.

6 4 (2) Such uses will be attained by implementing effluent
6 5 limits required under sections 1311(b) and 1316 of the federal
6 6 Water Pollution Control Act and by implementing cost-effective
6 7 and reasonable best management practices for nonpoint source
6 8 control.

6 9 c. Where existing water quality standards specify
6 10 designated uses less than those which are presently being
6 11 attained, the commission shall revise its standards to reflect
6 12 the uses actually being attained.

6 13 7. The department shall consider the substantial and
6 14 widespread economic and social impact that may occur as a
6 15 result of a designation. To make this determination, the
6 16 department shall review circumstances that are unique to each
6 17 regulated entity to determine whether substantial and
6 18 widespread economic and social impact would occur. The
6 19 analysis shall demonstrate whether the regulated entity would
6 20 face substantial financial impacts due to the costs of
6 21 compliance and that the affected community would bear
6 22 significant adverse impacts. The department shall work with
6 23 the regulated entity to gather necessary information to make
6 24 this determination.

6 25 a. The commission shall adopt rules to determine when a
6 26 regulated entity and the affected community would suffer
6 27 substantial and widespread economic and social impact due to
6 28 the costs of complying with a water quality standard. To make
6 29 this determination, the department shall review the
6 30 circumstances that are unique to each regulated entity and the
6 31 affected community. The rules shall include but not be
6 32 limited to all of the following elements:

6 33 (1) A financial analysis of the discharger to determine if
6 34 the capital, operating, and maintenance costs of pollution
6 35 control will have a substantial impact.

7 1 (2) The financial impact on households resulting from
7 2 compliance.

7 3 (3) The ability of the person releasing a pollutant into a
7 4 water of the state to obtain pollution control financing and
7 5 the general economic health of that person.

7 6 (4) The change in socioeconomic conditions that would
7 7 occur as a result of compliance. Factors to consider should
7 8 include but not be limited to median household income,
7 9 unemployment, and overall net debt as a percent of full market
7 10 value of taxable property.

7 11 (5) The benefits of improved water quality, such as the
7 12 expansion of consumptive markets, enhanced recreational use,
7 13 and increased property values in the community.

7 14 b. The department may grant a regulated entity a variance
7 15 from meeting a water quality standard pursuant to section
7 16 455B.181 if it is determined that the regulated entity or the
7 17 affected community would suffer substantial and widespread
7 18 economic and social impact. The department shall ensure the
7 19 conditions of any discharge permit variance represent
7 20 reasonable progress toward complying with water quality
7 21 standards but do not result in substantial and widespread
7 22 economic and social impact.

7 23 8. A regulated entity may use an alternative technology
7 24 system to meet water quality standards for either technology=
7 25 based or water quality-based effluent limits. The department

7 26 shall convene a technical advisory committee to assist in the
7 27 development of rules to allow for the use of appropriate
7 28 alternative technologies that include but are not limited to
7 29 all of the following:

- 7 30 a. Performance-based standards for alternative technology
7 31 systems.
- 7 32 b. Effluent reuse standards.
- 7 33 c. Criteria for large subsurface, midsize treatment, and
7 34 small cluster wastewater systems.
- 7 35 d. Setback requirements appropriate to the alternative
8 1 treatment technology.
- 8 2 e. Monitoring requirements appropriate to the alternative
8 3 technology and size of the treatment system.
- 8 4 f. Sizing factors based on soil morphology.
- 8 5 g. Design standards for alternative technology system
8 6 types.
- 8 7 9. The commission shall adopt rules for a review and
8 8 approval process for standardized treatment systems, and
8 9 expedited technical reviews for projects that meet the design
8 10 standards adopted pursuant to subsection 8, paragraph "g",
8 11 including standardized review checklists for the systems.
- 8 12 10. a. The commission shall adopt rules pursuant to
8 13 chapter 17A to administer this section. All new or revised
8 14 stream segment use designations shall be adopted by rule. Any
8 15 rule that establishes, modifies, or repeals existing water
8 16 quality standards in this state shall be adopted in
8 17 conformance with this section.
- 8 18 b. (1) By December 31, 2006, the department shall publish
8 19 a list of all designated stream segments that receive a
8 20 permitted discharge for which a use attainability analysis for
8 21 recreational use and aquatic life has not been completed and a
8 22 list of all designated stream segments that receive a
8 23 permitted discharge for which a use attainability analysis for
8 24 recreational use and aquatic life has been completed and
8 25 whether a recreational or aquatic use has been determined to
8 26 be or not to be attainable. By December 31, 2007, a use
8 27 attainability analysis shall be completed for all newly
8 28 designated stream segments that receive a permitted discharge.
- 8 29 (2) A use attainability analysis for a designated stream
8 30 segment receiving a permitted discharge shall be conducted by
8 31 either the department or a professional designee.
- 8 32 (3) The department shall make public a written
8 33 determination of whether a new or revised use designation is
8 34 appropriate for the designated stream segment prior to
8 35 adoption by rule of the proposed changes.
- 9 1 c. The department shall complete, upon request, a use
9 2 attainability analysis for recreational and aquatic uses on
9 3 any designated stream segment not receiving a permitted
9 4 discharge or on any previously designated stream segment in
9 5 accordance with the following provisions:
 - 9 6 (1) The department shall make public a written
9 7 determination of whether a new or revised designated use is
9 8 appropriate for the designated stream segment within ninety
9 9 days of completion of the use attainability analysis prior to
9 10 adoption by rule of the proposed changes.
 - 9 11 (2) The department shall accept a use attainability
9 12 analysis submitted by someone other than a professional
9 13 designee.
 - 9 14 (a) Within thirty days after receipt of submission of a
9 15 use attainability analysis, the department shall review and
9 16 provide a written determination of whether the documentation
9 17 submitted is complete.
 - 9 18 (b) Within ninety days after receipt of submission of a
9 19 completed use attainability analysis, the department shall
9 20 review and make available to the public a written
9 21 determination of whether a new or revised use designation is
9 22 appropriate for the designated stream segment.
 - 9 23 d. Any regulated entity or property owner adjacent to the
9 24 accessed stream segment aggrieved by such a determination may
9 25 make a written request, within thirty days from the date the
9 26 written determination of the appropriate use designation is
9 27 made available to the public, for a meeting with the director
9 28 or the director's designee. A regulated entity or property
9 29 owner adjacent to the accessed stream segment shall be allowed
9 30 to provide evidence that the designation is not appropriate
9 31 under the criteria as established in this subsection.
 - 9 32 11. An operation permit issued pursuant to section
9 33 455B.173 that expires before a use attainability analysis is
9 34 performed shall remain in effect and the department shall not
9 35 renew the permit until a use attainability analysis is
10 1 completed. If a use attainability analysis demonstrates that

10 2 a change in the use designation is warranted, the permit shall
10 3 remain in effect and the department shall not renew the permit
10 4 until the stream use designation is changed. In order for an
10 5 expired permit to remain in effect, the permit holder must
10 6 meet the requirements for a permit renewal. This subsection
10 7 does not apply if the permit applicant and the department
10 8 agree that the performance of a use attainability analysis
10 9 presents no reasonable likelihood of resulting in a change to
10 10 the existing stream use designations.

10 11 Sec. 4. WATERSHED QUALITY PLANNING TASK FORCE.

10 12 1. A watershed quality planning task force is established
10 13 within the department of natural resources in cooperation with
10 14 the Iowa department of agriculture and land stewardship. By
10 15 June 30, 2008, the task force shall report to the general
10 16 assembly its recommendations for a voluntary statewide water
10 17 quality program which is designed to achieve all of the
10 18 following goals:

10 19 a. Improving water quality and optimizing the costs of
10 20 voluntarily achieving and maintaining water quality standards.

10 21 b. Creating economic incentives for voluntary nonpoint
10 22 source load reductions, point source discharge reductions
10 23 beyond those required by the federal Water Pollution Control
10 24 Act, implementation of pollution prevention programs, wetland
10 25 restoration and creation, and the development of emerging
10 26 pollution control technologies.

10 27 c. Facilitating the implementation of total maximum daily
10 28 loads, urban stormwater control programs, and nonpoint source
10 29 management practices required or authorized under the federal
10 30 Water Pollution Control Act. This paragraph shall not be
10 31 construed to obviate the requirement to develop a total
10 32 maximum daily load for waters that do not meet water quality
10 33 standards as required by section 303(d) of the federal Water
10 34 Pollution Control Act or to delay implementation of a total
10 35 maximum daily load that has been approved by the department
11 1 and the director.

11 2 d. Providing incentives for the development of new and
11 3 more accurate and reliable pollution control quantification
11 4 protocols and procedures.

11 5 e. Providing greater flexibility through community-based,
11 6 nonregulatory, and performance-driven watershed management
11 7 planning.

11 8 2. Membership on the task force shall consist of all of
11 9 the following:

11 10 a. Voting members of the task force shall include all of
11 11 the following:

11 12 (1) One member selected by the Iowa association of
11 13 municipal utilities.

11 14 (2) One member selected by the Iowa league of cities.

11 15 (3) One member selected by the Iowa association of
11 16 business and industry.

11 17 (4) One member selected by the Iowa water pollution
11 18 control association.

11 19 (5) One member selected by the Iowa rural water
11 20 association.

11 21 (6) One member selected by growing green communities.

11 22 (7) One member selected by the Iowa environmental council.

11 23 (8) One member selected by the Iowa farm bureau
11 24 federation.

11 25 (9) One member selected by the Iowa corn growers
11 26 association.

11 27 (10) One member selected by the Iowa soybean association.

11 28 (11) One member selected by the Iowa pork producers
11 29 council.

11 30 (12) One member selected by the soil and water
11 31 conservation districts of Iowa.

11 32 (13) One person representing the department of agriculture
11 33 and land stewardship selected by the secretary of agriculture.

11 34 (14) One person representing the department of natural
11 35 resources selected by the director.

12 1 (15) Two members selected by the Iowa conservation
12 2 alliance.

12 3 b. Nonvoting members of the task force shall include all
12 4 of the following:

12 5 (1) Two members of the senate. One senator shall be
12 6 appointed by the republican leader of the senate and one
12 7 senator shall be appointed by the democratic leader of the
12 8 senate.

12 9 (2) Two members of the house of representatives. One
12 10 member shall be appointed by the speaker of the house of
12 11 representatives and one member shall be appointed by the
12 12 minority leader of the house of representatives.

12 13 Sec. 5. WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM.
12 14 1. The Iowa department of economic development shall adopt
12 15 rules to establish and administer wastewater treatment
12 16 financial assistance program to provide grants to enhance
12 17 water quality.
12 18 2. Financial assistance under the program shall be used
12 19 for disadvantaged communities to install or upgrade wastewater
12 20 treatment facilities and systems, and for engineering or
12 21 technical assistance for facility planning and design.
12 22 Financial assistance may be used as part of a project funded
12 23 in whole or in part by financial assistance provided through
12 24 other state or federally funded programs.
12 25 3. The department shall issue grants quarterly.
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12 29 JEFFREY M. LAMBERTI
12 30 President of the Senate
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12 32 CHRISTOPHER C. RANTS
12 33 Speaker of the House
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13 2 I hereby certify that this bill originated in the Senate and
13 3 is known as Senate File 2363, Eighty-first General Assembly.
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13 7 MICHAEL E. MARSHALL
13 8 Secretary of the Senate

13 9 Approved _____, 2006
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13 12 THOMAS J. VILSACK
13 13 Governor
13 14