

MAR 19 1973

HOUSE FILE 405

Place On Calendar
for Natl. Resources 6/21, Pass 4/22

BY COMMITTEE ON NATURAL RESOURCES

Passed House, Date 4-6-73 (790) Passed Senate, Date 6-23-73 (2045)

Vote: Ayes 63 Nays 26 Vote: Ayes 48 Nays 1

Approved 7-12-73

Motion to reconsider filed 4-6, prevailed 6-19 (2074)

Passed House 6-17-73 (2083)

80-8
Rec'd per Senate amendment
6-23-73 81-7

A BILL FOR

1 An Act relating to the authority of the department of
2 environmental quality to enter public or private prop-
3 erty for the purpose of conducting investigations.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

1 Section 1. Section four hundred fifty-five B point three
2 (455B.3), Code 1973, is amended by adding the following new
3 subsection:

4 NEW SUBSECTION. Conduct investigations of complaints
5 received directly or referred by any of the commissions created
6 in section four hundred fifty-five B point four (455B.4) of
7 the Code or such other investigations deemed necessary. While
8 conducting an investigation, the executive director may enter
9 at any reasonable time in and upon any private or public
10 property, except private dwellings, to investigate any actual
11 or possible violation of the provisions of this chapter or
12 the rules or standards adopted under this chapter.

13 a. If the executive director is denied admittance to
14 property subject to inspection under this chapter, he may
15 apply to the district court of the county in which the prop-
16 erty is located for issuance of a search warrant. In the
17 application, the executive director shall state that he be-
18 lieves that a search of the property designated in the ap-
19 plication is necessary for the proper administration and en-
20 forcement of the provisions of this chapter or the rules or
21 standards adopted under this chapter. If the court is sat-
22 isfied that a search warrant is justified he shall grant the
23 application and issue the warrant.

24 b. If the executive director establishes, under oath,
25 probable cause that a violation of the provisions of this
26 chapter or the rules or standards adopted under this chapter
27 has occurred, and that the evidence required to prove such
28 violation is of a nature that it may be easily or quickly
29 dissipated, camouflaged, or disposed of, he may apply for
30 and the court may issue a search warrant without evidence
31 that admission to the property was denied and prior to any
32 attempt by the executive director to gain admittance.

33 Sec. 2. Section four hundred fifty-five B point thirteen
34 (455B.13), subsection three (3), section four hundred fifty-
35 five B point thirty-six (455B.36), and section four hundred

1 fifty-five B point eighty-nine (455B.89), subsection four
2 (4), Code 1973, are repealed.

3 EXPLANATION

4 This bill provides uniform procedures for the executive
5 director of the department of environmental preservation or
6 his designee to enter public or private property to conduct
7 investigations of alleged violations of Chapter 455B or orders
8 issued under Chapter 455B. Some of the procedures for con-
9 ducting such investigations under present law may be uncon-
10 stitutional and, therefore, are repealed in favor of the uni-
11 form procedures provided in this bill.

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

CORRECTED AMENDMENT

HOUSE FILE 405

H—835

1 Amend House File 405 as follows:

2 1. By striking lines 13 through 32 inclusive,
3 and inserting in lieu thereof the following:

4 a. If the owner or occupant of any property
5 refuses admittance thereto, or if prior to such refusal
6 the executive director demonstrates the necessity
7 for a warrant, the executive director may make applica-
8 tion under oath or affirmation to the district court
9 of the county in which the property is located for
10 the issuance of a search warrant.

11 b. In the application the executive director
12 shall state that an inspection of the premises is
13 mandated by the laws of this state or that a search
14 of certain premises, areas, or things designated in
15 the application may result in evidence tending to
16 reveal the existence of violations of public health,
17 safety, or welfare requirements imposed by statutes,
18 rules or ordinances established by the state or a
19 political subdivision thereof. The application shall
20 describe the area, premises, or thing to be searched
21 give the date of the last inspection if known, give
22 the date and time of the proposed inspection, declare
23 the need for such inspection, recite that notice of
24 desire to make an inspection has been given to affected
25 persons and that admission was refused if that be the
26 fact, and state that the inspection has no purpose
27 other than to carry out the purpose of the statute,
28 ordinance, or regulation pursuant to which inspection
29 is to be made. If an item of property is sought by the
30 executive director it shall be identified in the
31 application.

32 c. If the court is satisfied from the examination
33 of the applicant, and of other witnesses, if any, and
34 of the allegations of the application of the existence
35 of the grounds of the application, or that there is
36 probable cause to believe their existence, he may
37 issue such search warrant.

38 d. In making inspection and searches pursuant
39 to the authority of this division, the executive
40 director must execute the warrant:

41 1. Within ten days after its date.

42 2. In a reasonable manner, and any property
43 seized shall be treated in accordance with the pro-
44 visions of chapter seven hundred fifty one (751) of
45 the Code.

46 3. Subject to any restrictions imposed by the
47 statute, ordinance or regulation pursuant to which
48 inspection is made.

H—835 Filed and adopted
June 19, 1973

By JESSE of Polk

HOUSE FILE 405

H-829

1 Amend House File 405 as follows:

2 1. Page 2, by inserting after line 32 the follow-
3 ing:

4 "Sec. _____. Section four hundred fifty-five B point
5 thirty-two (455B.32), subsection three (3), Code 1973,
6 is amended to read as follows:

7 3. Establish, modify, or repeal rules specifying
8 the conditions under which the executive director shall
9 issue, revoke, modify, or deny permits for the installa-
10 tion or operation of disposal systems, or for the dis-
11 charge of sewage, industrial waste or other wastes, or
12 for the disposal of water wastes resulting from poultry
13 and livestock operations. ~~Persons engaged in livestock
14 and poultry operations or persons intending to initiate
15 such operations shall register with the department and
16 provide information relating to their operations or
17 intended operations as the executive director may
18 reasonably require. -- Except as otherwise provided in
19 section 455B.45, no such registrant shall be required
20 to make application and obtain a permit for disposal
21 of waste water unless the department determines that
22 the livestock and poultry operations of such registrant
23 are polluting or may pollute the water of the state.~~

24 Sec. _____. Section four hundred fifty-five B point
25 thirty-two (455B.32), Code 1973, is amended by adding
26 the following new subsection:

27 NEW SUBSECTION. Adopt by rule a fee schedule for
28 applications for permits required under part one (1) of
29 this division. The fee schedule shall be based on the
30 reasonable cost of reviewing, issuing and enforcing
31 such permits. The fee schedule may be amended period-
32 ically by rule of the commission.

33 Sec. _____. Section four hundred fifty-five B point
34 forty-five (455B.45), Code 1973, is amended to read as
35 follows:

36 455B.45 WRITTEN PERMITS REQUIRED. It shall be un-
37 lawful to carry on any of the following activities
38 without first securing a written permit from the
39 department executive director as required by the com-
40 mission: ~~for the disposal of all sewage, industrial
41 waste, or other wastes which are or may be discharged
42 into the water of the state.~~

43 1. The construction, installation or modification
44 of any disposal system or part thereof or any extension
45 or addition thereto.

46 2. The construction or use of any new outlet for
47 the discharge of any sewage or wastes directly into the
48 water of the state. However, no permit shall be required
49 for any new disposal system or extension or addition to
50 any existing disposal system that receives only domestic

51 or sanitary sewage from a building, housing or occupied
52 by fifteen persons or less.

53 3. The operation of any waste disposal system or
54 any part of or extension or addition to such system.
55 This provision shall not apply to any pretreatment
56 system the effluent of which is to be discharged directly
57 to another waste disposal system for final treatment
58 and disposal.

59 Plans and specifications for any waste disposal
60 system covered by this section shall be submitted to
61 the department before a written permit may be issued and
62 the construction of any such waste disposal system shall
63 be in accordance with plans and specifications approved
64 by the department. If it is necessary or desirable to
65 make material changes in such plans or specifications,
66 revised plans or specifications together with reasons
67 for the proposed changes must be submitted to the de-
68 partment for a supplemental written permit.

69 ~~Any person convicted of violating this section shall~~
70 ~~be fined in a sum not to exceed one thousand dollars.~~

71 Sec. _____. Section four hundred fifty-five B point
72 forty-nine (455B.49), Code 1973, is amended by striking
73 the section and inserting in lieu thereof the following:

74 455B.49 PENALTIES--BURDEN OF PROOF.

75 1. Any person who violates any provision of part
76 one (1) of division three (III) of this chapter or any
77 permit, rule, standard, or order issued under part one
78 (1) of division three (III) of this chapter shall be
79 subject to a civil penalty not to exceed five thousand
80 dollars for each day of such violation. The civil
81 penalty shall be an alternative to any criminal penalty
82 provided under part one (1) of division three (III) of
83 this chapter.

84 2. Any person who willfully or negligently discharges
85 any pollutants in violation of section four hundred
86 fifty-five B point forty-five (455B.45) of the Code or
87 in violation of any condition or limitation included in
88 any permit issued under section four hundred fifty-five
89 B point forty-five (455B.45) of the Code or, with respect
90 to the introduction of pollutants into publicly-owned
91 treatment works, violates a pretreatment standard or
92 toxic effluent standard, shall be punished by a fine
93 not to exceed ten thousand dollars for each day of
94 violation. If the conviction is for a violation committed
95 by a person after his first conviction under this
96 section, the punishment shall be a fine not to exceed
97 twenty thousand dollars for each day of violation.

98 3. Any person who knowingly makes any false statement,
99 representation, or certification in any application,
100 record, report, plan or other document filed or required
101 to be maintained under part one (1) of division three
102 (III) of this chapter, or who falsifies, tampers with
103 or knowingly renders inaccurate any monitoring device
104 or method required to be maintained under part one (1)
105 of division three (III) of this chapter or by any per-

106 mit, rule, regulation, or order issued under part one
107 (1) of division three (III) of this chapter, shall upon
108 conviction be punished by a fine of not more than ten
109 thousand dollars or by imprisonment in the county jail
110 for not more than six months or by both such fine and
111 imprisonment.

112 4. It is unlawful for any person to willfully or
113 negligently place or cause to be placed any liquid,
114 solid or gaseous material in a place where it causes
115 or will cause pollution of the water of the state unless
116 such action is specifically authorized by a valid permit
117 issued by the executive director. Any person convicted
118 of violating this section shall be punished by a fine
119 not to exceed ten thousand dollars.

120 5. The attorney general shall, at the request of
121 the commission or the executive director, institute
122 any legal proceedings necessary to enforce the penalty
123 provisions of part one (1) of division three (III) of
124 this chapter or to obtain compliance with the provisions
125 of part one (1) of division three (III) of this chapter
126 or any rules promulgated or any provisions of any permit
127 issued under part one (1) of division three (III) of
128 this chapter.

129 6. In all proceedings with respect to any alleged
130 violation of the provisions of this part one (1) of
131 division three (III) or any rule established by the
132 commission or the department, the burden of proof shall
133 be upon the commission or the department except in an
134 action for contempt as provided in section four hundred
135 fifty-five B point forty-four (455B.44) of the Code."

136 2. By renumbering sections to conform to this
137 amendment.

H-829 Filed and adopted
June 19, 1973

By BUTLER of Pottawattamie
FREEMAN of Buena Vista
COCHRAN of Webster

CORRECTED EXPLANATION

This bill provides uniform procedures for the executive director of the department of environmental preservation or his designee to enter public or private property to conduct investigations of alleged violations of Chapter 455B or orders issued under Chapter 455B. Some of the procedures for conducting such investigations under present law may be unconstitutional and, therefore, are repealed in favor of the uniform procedures provided in this bill.

This bill also provides amendments to division III of chapter 455B of the Code relating to water quality to conform to the requirements of the Federal Water Pollution Control Act amendments of 1972. This bill requires that any person operating a water waste system must obtain a permit upon payment of a fee determined by the water quality commission.

The bill provides both civil and criminal penalties for violating the permit program required by the National Pollutant Discharge Elimination System. The bill also provides a separate penalty for the one-time polluter who is not adequately covered under the injunction provisions of present Iowa law.

HOUSE FILE 405

H—835

1 Amend House File 405 as follows:

2 1. By striking lines 13 through 32 inclusive,
3 and inserting in lieu thereof the following:

4 a. If the owner or occupant of any property
5 refuses admittance thereto, or if prior to such refusal
6 the executive director demonstrates the necessity
7 for a warrant, the executive director may make applica-
8 tion under oath or affirmation, to the district court
9 of the county in which the property is located for
10 the issuance of a search warrant.

11 b. In the application the executive director
12 shall state that an inspection of the premises is
13 mandated by the laws of this state or that a search
14 of certain premises, areas, or things designated in
15 the application may obtain evidence tending to
16 reveal the existence of violations of public health,
17 safety, or welfare requirements imposed by statutes,
18 rules or ordinances established by the state or a
19 political subdivision thereof. The application shall
20 describe the area, premises, or thing to be searched,
21 give the date of the last inspection if known, give
22 the date and time of the proposed inspection, declare
23 the need for such inspection, recite that notice of
24 desire to make an inspection has been given to affected
25 persons and that admission was refused if that be the
26 fact, and state that the inspection has no purpose
27 other than to carry out the purpose of the statute,
28 ordinance, or regulation pursuant to which inspection
29 is made. If an item of property is sought by the
30 executive director it shall be identified in the
31 application.

32 c. In making inspections and searches pursuant
33 to the authority of this division, the executive
34 director must execute the warrant:

35 1. Within ten days after its date.

36 2. In a reasonable manner, and any property
37 seized shall be treated in accordance with the pro-
38 visions of chapter seven hundred fifty one (751) of
39 the Code.

40 3. Subject to any restrictions imposed by the
41 statute, ordinance or regulation pursuant to which
42 inspection is made.

43 d. If the court is satisfied from the examination
44 of the applicant, and of other witnesses, if any, and
45 of the allegations of the application of the existence
46 of the grounds of the application, or that there is
47 probable cause to believe their existence, he may
48 issue such search warrant.

H—835 Filed and adopted
June 19, 1973

By JESSE of Polk

H—839

1 Amend the title to House File 405, line 3, by
2 inserting after the word "investigations" the
3 following: "relating to the powers and duties
4 of the water quality commission, and providing
5 penalties".

H—839 Filed and adopted
June 19, 1973

By HILL of Polk

SENATE AMENDMENT TO HOUSE FILE 405

1 Amend House File 405, as amended, passed and reprinted by
2 the House, page 2E, by striking lines 166 through 173,
3 inclusive, and renumbering the remaining subsections.

Received from the Senate and Adopted
June 23, 1973

S—1006

1 Amend House File 405 as amended, passed and reprinted by
2 the House, page 2E, by striking lines 166 through 173,
3 inclusive, and renumbering the remaining subsections.

S—1006 Filed and adopted
June 23, 1973

By SCHABEN
