

Senate File 1312
Welden, Chairman
Avenson
Dunlap
Freeman
Middleswart
Strothman
Wyckoff

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Resources

SENATE FILE 1312

By COMMITTEE ON NATURAL RESOURCES

FILED MA

*Appropriations 3/25, Pass 4/22
see " 4/25*

Passed Senate, Date 4-24-74 (1557)

Passed House, Date 5-3-74 (2452)

Vote: Ayes 42 Nays 0

Vote: Ayes 80 Nays 2

Approved 5-27-74

*Passed Senate per House amendment 5
5-4-74 (2047)
41-0*

A BILL FOR

1 An Act relating to the department of environmental quality
2 and its authority regarding public water supplies, making
3 an appropriation, and providing penalties for violations.

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

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1 Section 1. Chapter four hundred fifty-five B (455B), Code
2 1973, is amended by adding sections two (2) through nineteen
3 (19) of this Act.

4 Sec. 2. NEW SECTION. DEFINITIONS. When used in this
5 Act:

6 1. "Public water supply" means any water supply system
7 including the source, water treatment plant, transmission
8 mains, distribution system and storage facilities intended
9 for use or used by the public for drinking water and culinary
10 purposes. This term shall include any water supply serving
11 or intended to serve ten or more dwelling units or twenty-
12 five or more people or any parks, memorials, highway rest
13 areas, and institutions owned or operated by a public agency
14 of the state including any political subdivision of this state
15 or any agency of state government.

16 2. "Source" means any ground water aquifer, surface water
17 body or watercourse from which water is taken by any means
18 either periodically or continuously.

19 3. "Water treatment plant" means any plant or equipment
20 which through the addition of chemicals or the application
21 of a chemical or physical process or processes, changes the
22 physical, chemical, radiological, biological or bacterio-
23 logical quality of the water.

24 4. "Transmission main" means the system of pipes which
25 conveys water from a source to a water treatment plant or
26 distribution system or from a water treatment plant to a
27 distribution system.

28 5. "Distribution system" means the system of pipes which
29 conveys water from a source, water treatment plant or trans-
30 mission main to the consumer's service connecting pipe.

31 6. "Storage facility" means any tank or other container
32 used or intended to be used for the containment of a reserve
33 supply of water.

34 7. "Dwelling unit" means one or more rooms with provi-
35 sions for living, sanitary, and sleeping facilities for the

1 use of one family.

2 8. "Commission" means the water quality commission of
3 the department.

4 Sec. 3. NEW SECTION. ADMINISTRATIVE AGENCY. The de-
5 partment shall be the agency of the state to conduct the
6 public water supply program as defined in this Act.

7 Sec. 4. NEW SECTION. POWERS AND DUTIES OF COMMISSION.

8 The commission shall:

9 1. Establish, modify or repeal rules relating to the con-
10 struction, operation, and maintenance of public water supplies
11 and specifying the conditions under which the executive di-
12 rector shall issue, revoke, modify or deny permits for the
13 operation, installation, construction or modification of or
14 addition to a public water supply.

15 2. Recognize existing approval notices for the contin-
16 uance of every public water supply operating under legal
17 authority. The commission may direct the executive director
18 to modify or revoke such approval notices.

19 3. Establish, modify or repeal rules relating to drink-
20 ing water standards.

21 4. Conduct public hearings for the discharge of its du-
22 ties. The commission may authorize the executive director
23 to conduct such hearings.

24 5. Establish by rule a fee schedule for applications for
25 permits issued under this Act based upon the actual or es-
26 timated cost of review and issuance of such permits.

27 Sec. 5. NEW SECTION. POWERS AND DUTIES OF EXECUTIVE
28 DIRECTOR. The executive director shall:

29 1. Conduct periodic surveys of all public water supplies
30 and appraise the construction, operation, maintenance and
31 water quality of such water supplies.

32 2. Conduct investigations of alleged violations of the
33 provisions of this Act or of the rules, permits or drinking
34 water standards promulgated under this Act upon the written
35 request of any state agency, political subdivision, local

1 board of health, or twenty-five residents of the state, or
2 as directed by the commission. If a violation is found to
3 exist, the executive director shall notify the alleged of-
4 fender in writing and attempt to informally resolve the prob-
5 lem within a reasonable period of time, except where there
6 is an imminent threat to the public health.

7 3. Approve or disapprove of plans and specifications for
8 public water supplies or any part thereof.

9 4. Issue any order necessary to secure compliance with
10 or prevent a violation of the provisions of this Act or the
11 rules promulgated under this Act. Orders issued pursuant
12 to this section shall be served in the manner required for
13 the service of notice of the commencement of an ordinary ac-
14 tion in a court of record. Any such order entered by the
15 executive director shall be effective immediately and bind-
16 ing until such order is reviewed by the commission on appeal.

17 Any person aggrieved by an order of the executive director
18 under this section may appeal the same by filing a written
19 notice of appeal with the executive director within thirty
20 days of the issuance of the order. The executive director
21 shall schedule a hearing for the purpose of hearing the argu-
22 ments of the aggrieved person within thirty days of the fil-
23 ing of the notice of appeal. The hearing may be held before
24 the commission or its designee. A complete record shall be
25 made of the proceedings. The executive director shall issue
26 the findings in writing to the aggrieved person within thirty
27 days of the conclusion of such hearings. If such person is
28 not satisfied with the findings of the commission, he may
29 appeal such findings to the district court of the county where
30 the acts in issue occurred. Such appeal shall be made within
31 thirty days of the issuance of the findings of the commission
32 and a copy of the same shall be filed with the commission.
33 The court upon the filing of such appeal shall hear the ap-
34 peal in equity.

35 Sec. 6. NEW SECTION. PERMIT REQUIRED. It shall be un-

1 lawful to construct or operate any public water supply or
2 part of a public water supply without first securing a writ-
3 ten permit from the executive director as required by the
4 commission.

5 Plans and specifications for any public water supply shall
6 be submitted to the department before a written permit may
7 be issued and the construction of any such water supply shall
8 be in accordance with plans and specifications approved by
9 the department. If it is necessary or desirable to make ma-
10 terial changes in such plans or specifications, revised plans
11 or specifications together with reasons for the proposed
12 changes must be submitted to the department for a supple-
13 mental written permit.

14 Sec. 7. NEW SECTION. PLANS REQUIRED. The executive
15 director may require the owner of a public water supply to
16 file complete plans of the whole or any part of such sys-
17 tem and any other information and records concerning the
18 installation and operation of such system.

19 Sec. 8. NEW SECTION. HEARING PROCEDURES. When the com-
20 mission or the executive director conducts any hearing or
21 investigation, any member of the commission or any employee
22 or agent authorized in writing by the commission or the ex-
23 ecutive director may administer oaths and examine witnesses.
24 The commission may issue subpoenas requiring the attendance
25 and testimony of witnesses, and the production of evidence
26 relevant to any matter involved in such hearing or
27 investigation. Witnesses shall receive the same fees and
28 mileage as in civil actions.

29 1. Notice of the time and place of hearing shall be served
30 upon each alleged offender at least ten days before the hear-
31 ing. Such notice shall be in the manner required for the
32 service of notice of the commencement of an ordinary action
33 in a court of record.

34 2. After such hearing the commission or the executive
35 director may, if the alleged offender is found guilty of the

1 charges, enter an order directing such person to desist in
2 the practice found to be the cause of such violation or the
3 commission or the executive director may order a change in
4 the construction, operation, maintenance, reporting or samp-
5 ling and analysis so that the method shall be in compliance
6 with the permit requirements and drinking water standards
7 adopted by the commission.

8 3. If any such change is ordered, unless the practice
9 causing the violation is rendering the water supply in ques-
10 tion dangerous to the public health, a reasonable time shall
11 be granted to the offender in which to put in use the method
12 ordered.

13 4. The executive director shall keep a complete record
14 of such proceedings, including all the evidence taken, and
15 such record shall be open to public inspection. However,
16 it shall be unlawful for any person in connection with his
17 duties or employment by the department, to make public or
18 give any information relating to secret processes or method
19 of manufacture or production at any public hearing or other-
20 wise, and all such information shall be kept confidential.

21 Sec. 9. NEW SECTION. REFUSAL TO OBEY SUBPOENA. If any
22 person refuses to obey a subpoena issued under the provisions
23 of this Act, the district court of the county where the pro-
24 ceeding is pending shall have jurisdiction, upon application
25 of the commission or the executive director to issue to such
26 person an order requiring him to appear and testify or pro-
27 duce evidence and any failure to obey such order of the court
28 may be punished by the court as a contempt thereof.

29 Sec. 10. NEW SECTION. APPEAL TO DISTRICT COURT. An
30 appeal may be taken by an aggrieved party from any order en-
31 tered in such proceedings to the district court of the county
32 in which the alleged offense was committed or such final or-
33 der was entered. Such appeal shall be initiated by serving
34 a written notice on the executive director within thirty days
35 of the entry of such order. The hearing on appeal shall be

1 tried as a suit in equity and shall be de novo. The court
2 may receive additional testimony and may affirm, modify or
3 reverse the order of the commission or the executive director.
4 The setting aside of such order by the court shall not pre-
5 clude the commission or the executive director from again
6 instituting proceedings against the same person if the com-
7 mission or the executive director feels that the public health
8 is endangered.

9 Sec. 11. NEW SECTION. ADMINISTRATIVE RECORD TO CLERK
10 OF DISTRICT COURT. Within thirty days after an application
11 for an appeal is filed with the executive director, he shall
12 make, certify and file in the office of the clerk of the court
13 to which an appeal is taken a full and complete transcript
14 of all documents and papers relating to the case including
15 a copy of the order, rule or decision appealed from and a
16 copy of any findings of fact, rulings or conclusions of law
17 made by the department in the matter.

18 Sec. 12. NEW SECTION. EFFECT OF APPEAL. Action of the
19 department shall not be stayed by an appeal except by the
20 order of the court for good cause shown by the appellant.
21 The granting of a stay must be conditioned upon the furnish-
22 ing by the appellant of such reasonable security as the court
23 may direct. A stay may be vacated on application of the de-
24 partment or any other party after hearing by the court.

25 Sec. 13. NEW SECTION. VALIDITY OF ORDER, RULE, OR DE-
26 CISION. If no appeal is taken from an order, rule or other
27 decision of the department as provided in this Act, or if
28 the action of the department is affirmed on appeal, the ac-
29 tion of the department in the matter involved shall be deemed
30 conclusive and the validity and reasonableness thereof shall
31 not be raised in any other action or proceeding, but this
32 shall not preclude the department from modifying or rescind-
33 ing its action.

34 Sec. 14. NEW SECTION. INJUNCTION. Any person causing
35 a real or potential health hazard through possible contami-

1 nation of a public water supply or who is in violation of
2 any provision of this Act, or any rule or drinking water
3 standard adopted or any condition of any permit issued under
4 this Act may be enjoined from continuing such action.

5 The attorney general shall, upon the request of the de-
6 partment, bring an action for an injunction against any per-
7 son violating any provision of this part or any rule, stan-
8 dard or condition of any permit issued under this Act. In
9 any such action, any previous findings of the department af-
10 ter due notice and hearing shall be prima facie evidence of
11 the fact or facts found therein.

12 Sec. 15. NEW SECTION. CONTEMPT OF COURT. Failure to
13 obey any order issued by the commission or the executive
14 director with reference to matters pertaining to the con-
15 tamination of a public water supply or violation of any
16 provisions of this Act or any permit, rule or drinking wa-
17 ter standard adopted or issued under this Act shall consti-
18 tute prima facie evidence of contempt. In such event the
19 department may certify to the district court of the county
20 in which such alleged disobedience occurred the fact of such
21 failure. The district court after notice, as prescribed by
22 the court, to the parties in interest shall then proceed to
23 hear the matter and if the court finds that the order was
24 lawful and reasonable, the court shall order the party to
25 comply with the order. If the person fails to comply with
26 the court order, he shall be guilty of contempt and shall
27 be fined not to exceed five hundred dollars for each day that
28 he fails to comply with the court order. The penalties pro-
29 vided in this section shall be considered as additional to
30 any penalty which may be imposed under any other statute and
31 a conviction under this section shall not be a bar to prose-
32 cution under any other penal statute.

33 Sec. 16. NEW SECTION. CIVIL PENALTY. Any person who
34 violates any provision of this Act or any permit, rule, stan-
35 dard, or order issued under this Act shall be subject to a

1 civil penalty not to exceed five hundred dollars for each
2 day of such violation.

3 Sec. 17. NEW SECTION. CRIMINAL PENALTY. Any person who
4 knowingly makes any false statement, representation, or cer-
5 tification in any application, record, report, plan or other
6 document filed or required to be maintained under this Act,
7 or who falsifies, tampers with or knowingly renders inac-
8 curate any monitoring device or method required to be main-
9 tained under this Act or by any permit, rule, regulation,
10 or order issued under this Act, shall, upon conviction, be
11 punished by a fine of not more than one thousand dollars or
12 by imprisonment in the county jail for not more than six
13 months or by both such fine and imprisonment.

14 Sec. 18. NEW SECTION. DUTIES OF ATTORNEY GENERAL. The
15 attorney general shall at the request of the commission or
16 the executive director, institute any legal proceedings nec-
17 essary to enforce the penalty provisions of this Act or to
18 obtain compliance with the provisions of this Act or any rule
19 adopted, or the conditions of any permit or order issued under
20 this Act.

21 Sec. 19. NEW SECTION. BURDEN OF PROOF. In all proceed-
22 ings with respect to any alleged violation of the provisions
23 of this Act or any rule established by the commission or the
24 department, the burden of proof shall be upon the commission
25 or the department except in an action for contempt.

26 Sec. 20. There is appropriated from the general fund of
27 the state of Iowa to the department of environmental quality
28 for the fiscal year commencing July 1, 1974, and ending June
29 30, 1975, the amount of ninety-seven thousand (97,000) dol-
30 lars, or so much thereof as may be necessary, to be used for
31 the administration of the water supply program under this
32 Act.

33 Sec. 21. Sections four hundred fifty-five B point sixty-
34 five (455B.65) and four hundred fifty-five B point sixty-six
35 (455B.66), Code 1973, are repealed.

S-2850

- 1 Amend Senate File 1312 as follows:
2 1. Page 3, line 13 by inserting after the first word
3 "or" the word "major".
4 2. Page 4, line 1 by striking the word "state" and
5 inserting in lieu thereof the words "affected politi-
6 cal subdivision".
7 3. Page 4, line 4 by inserting after the word "wri-
8 ting" the words "within five days of the date a viola-
9 tion is found to exist".
10 4. Page 4, line 6 by inserting after the word "is"
11 the words "determined to be".
12 5. Page 4, line 6 by inserting after the word "health"
13 the words ", in which case the executive director shall
14 issue an order to secure compliance with the provisions
15 of this Act which shall be effective immediately and
16 binding until such order is reviewed by the commission
17 on appeal".
18 6. Page 4, line 14 by striking the words "Any such
19 order entered by the" and by striking all of lines 15
20 and 16.
21 7. Page 5, line 2 by striking the words "part of" and
22 inserting in lieu thereof the words "major modification
23 of or addition to".

S-2850 Filed - *Adopted 4/24*
April 23, 1974

By MILLIGAN

HOUSE AMENDMENT TO SENATE FILE 1312

- 1 Amend Senate File 1312, as amended and passed by
2 the Senate, as follows:
3 1. By striking everything after the enacting clause
4 and inserting in lieu thereof the following:
5 Section 1. There is appropriated from the general
6 fund of the state to the department of environmental
7 quality for the fiscal year commencing July 1, 1974,
8 and ending June 30, 1975, the sum of thirty-one thousand
9 (31,000) dollars, or so much thereof as may be necessary
10 to be used for the salaries, support, maintenance and
11 miscellaneous expenses of personnel for the water
12 supply program.
13 2. Amend the title on page 1 by striking everything
14 after the word "Act" and all of lines 2 and 3, and
15 inserting in lieu thereof the words "to make an
16 appropriation from the general fund of the state to
17 the department of environmental quality for the water
18 supply program."

Received from the House
May 3, 1974

Senate concurred 5/4

H-3154

1 Amend Senate File 1312, as amended and passed by
2 the Senate, as follows:
3 1. By striking everything after the enacting clause
4 and inserting in lieu thereof the following:
5 Section 1. There is appropriated from the general
6 fund of the state to the department of environmental
7 quality for the fiscal year commencing July 1, 1974,
8 and ending June 30, 1975, the sum of thirty-one thousand
9 (31,000) dollars, or so much thereof as may be necessary
10 to be used for the salaries, support, maintenance and
11 miscellaneous expenses of personnel for the water
12 supply program.
13 2. Amend the title on page 1 by striking everything
14 after the word "Act" and all of lines 2 and 3, and
15 inserting in lieu thereof the words "to make an
16 appropriation from the general fund of the state to
17 the department of environmental quality for the water
18 supply program."

H-3154 Filed and adopted
May 3, 1974

By FREEMAN of Buena Vista
WELDEN of Hardin