

SENATE FILE **163**

BY COMMITTEE ON NATURAL
RESOURCES

Approved 2/1 (p. 245)

FILED FEB 1 1985

Passed Senate, Date 2-4-85 (p. 256)

Passed House, Date 2-7-85 (p. 246)

Vote: Ayes 45 Nays 5

Vote: Ayes 19 Nays 18

Approved MARCH 5, 1985 (p. 632)

House Amendment 3129

2-7-85 (p. 230)

35-9

A BILL FOR

1 An Act relating to the authority of the department of water,
2 air and waste management to regulate water use and em-
3 bodying a general plan of water allocation priorities for
4 this state.

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

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S-3129

HOUSE AMENDMENT TO
SENATE FILE 163

1 Amend Senate File 163 as passed by the Senate as
2 follows:

3 1. Page 3, by inserting after line 2 the
4 following: "455B.265 PERMITS FOR DIVERSION, STORAGE
5 AND WITHDRAWAL."

6 2. Page 4, line 16, by striking the figure "3"
7 and inserting the figure "4".

S-3129 Filed & Adopted
February 7, 1985 (p. 330)

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SF 163

1 Section 1. Section 455B.261, subsection 8, Code 1985, is
2 amended to read as follows:

3 8. "Nonregulated use" means ~~the use of water for ordinary~~
4 ~~household purposes, use of water for poultry, livestock, and~~
5 ~~domestic animals, any beneficial use of surface flow from~~
6 ~~rivers bordering this state, any existing beneficial uses of~~
7 ~~water within the territorial boundaries of municipal~~
8 ~~corporations on May 16, 1957, and any other beneficial use of~~
9 water by any person of less than twenty-five thousand gallons
10 per day. However, ~~industrial users of water, having their own~~
11 ~~water supply, within the territorial boundaries of municipal~~
12 ~~corporations, shall be regulated when their water use exceeds~~
13 ~~three percent more than the highest per-day beneficial use~~
14 ~~prior to May 16, 1957.~~

15 Sec. 2. Section 455B.262, subsections 2 and 3, Code 1985,
16 are amended to read as follows:

17 2. The general welfare of the people of the state requires
18 that the water resources of the state be put to beneficial use
19 ~~to the fullest extent possible, and~~ which includes ensuring
20 that the waste or unreasonable use, or unreasonable methods of
21 use of water be prevented, and that the conservation and
22 protection of water resources be encouraged required with the
23 view to their reasonable and beneficial use in the interest of
24 the people, and that the public and private funds for the
25 promotion and expansion of the beneficial use of water
26 resources be invested to the end that the best interests and
27 welfare of the people are served.

28 3. Water occurring in a basin or watercourse, or other
29 ~~natural~~ body of water of the state, is public water and public
30 wealth of the people of the state and subject to use in
31 accordance with this chapter, and the control and development
32 and use of water for all beneficial purposes is vested in the
33 state, which shall take measures to ~~encourage full utilization~~
34 ensure the conservation and protection of the water resources
35 of the state. These measures shall include the protection of

1 specific surface and groundwater sources as necessary to
2 ensure long-term availability in terms of quantity and quality
3 to preserve the public health and welfare.

4 Sec. 3. Section 455B.263, subsection 1, Code 1985, is
5 amended by striking the subsection and inserting in lieu
6 thereof the following:

7 1. The commission shall deliver to the general assembly by
8 January 15, 1987, a plan embodying a general groundwater
9 protection strategy for this state which considers the effects
10 of potential sources of groundwater contaminations on
11 groundwater quality. The plan shall evaluate the ability of
12 existing laws and programs to protect groundwater quality and
13 recommend any necessary additional or alternative laws and
14 programs. The department shall develop the plan with the
15 assistance of and in consultation with representatives of
16 agriculture, industry, and public and other interests. The
17 commission shall report to the general assembly on the status
18 and implementation of the plan on a biennial basis. This
19 section does not preclude the implementation of existing or
20 new laws or programs which may protect groundwater quality.

21 Sec. 4. Section 455B.264, subsection 2, Code 1985, is
22 amended to read as follows:

23 2. Upon application by any person for permission to
24 divert, pump, or otherwise take waters from any watercourse,
25 underground basin or watercourse, drainage ditch, or settling
26 basin within this state for any purpose other than a
27 nonregulated use, the executive director shall investigate the
28 effect of the use upon the natural flow of the watercourse,
29 the effect of the use upon the owners of any land which might
30 be affected by the use, the effect of the use upon prior users
31 of the water source and contracts made under section 455B.263
32 and whether the use is consistent with the plan-of-water
33 allocation-priorities-for-this-state principles and policies
34 of beneficial use.

35 Sec. 5. Section 455B.265, Code 1985, is amended by

1 striking the section and inserting in lieu thereof the
2 following:

3 1. In its consideration of applications for permits, the
4 department shall give priority in processing to persons in the
5 order that the applications are received, except where the
6 application of this processing priority system prevents the
7 prompt approval of routine applications or where the public
8 health, safety or welfare will be threatened by delay. If the
9 department determines after investigation that the diversion,
10 storage or withdrawal is consistent with the principles and
11 policies of beneficial use and ensuring conservation, the
12 department shall grant a permit. Regardless of the request in
13 the application, the executive director or the commission on
14 appeal may determine the duration and frequency of withdrawal
15 and the quantity of water to be diverted, stored or withdrawn
16 pursuant to the permit. Each permit granted after July 1,
17 1986, shall include conditions requiring routine conservation
18 practices, and requiring implementation of emergency conser-
19 vation measures after notification by the department.

20 2. If an application is received by July 1, 1986, the
21 department shall grant a permit for the continuation of a
22 beneficial use of water that was a nonregulated use prior to
23 July 1, 1985, and now requires a permit pursuant to section
24 455B.268. However, the permit is subject to conditions
25 requiring routine and emergency conservation measures and to
26 modification or cancellation under section 455B.271.
27 Applications received after July 1, 1986 for those uses shall
28 be determined pursuant to subsection 1.

29 3. Permits shall be granted for a period of ten years;
30 however, permits for withdrawal of water may be granted for
31 less than ten years if geological data on the capacity of the
32 aquifer and the rate of its recharge are indeterminate, and
33 permits for the storage of water may be granted for the life
34 of the structure unless revoked by the commission. A permit
35 granted shall remain as an appurtenance of the land described

1 in the permit through the date specified in the permit and any
2 extension of the permit or until an earlier date when the
3 permit or its extension is canceled under section 455B.271.
4 Upon application for a permit prior to the termination date
5 specified in the permit, a permit may be renewed by the
6 department for a period of ten years.

7 Sec. 6. Section 455B.266, Code 1985, is amended by strik-
8 ing the section and inserting in lieu thereof the following:

9 455B.266 PRIORITY ALLOCATION.

10 1. After any event described in paragraphs "a" through "d"
11 of this subsection has occurred, the department shall
12 investigate and, if appropriate, may implement the priority
13 allocation plan provided in subsection 2. The department
14 shall require existing permittees to implement appropriate
15 emergency conservation measures. The pertinent public notice
16 and hearing requirements of subsection 3 of this section and
17 sections 455B.271 and 455B.278 shall apply to the
18 implementation of the plan.

19 a. Receipt of a petition by twenty-five affected persons
20 or a governmental subdivision requesting that the priority
21 allocation plan be implemented due to a substantial local
22 water shortage.

23 b. Receipt of information from a state or federal natural
24 resource, research or climatological agency indicating that a
25 drought of local or state magnitude is imminent.

26 c. Issuance by the governor of a proclamation of a
27 disaster emergency due to a drought or other event affecting
28 water resources of the state.

29 d. Determination by the department in conjunction with the
30 office of disaster services of a local crisis which affects
31 availability of water.

32 2. Notwithstanding a person's possession of a permit or
33 the person's use of water being a nonregulated use, the
34 department may suspend or restrict usage of water by category
35 of use on a local or statewide basis in the following order:

- 1 a. Water conveyed across state boundaries.
- 2 b. Uses of water primarily for recreational or aesthetic
- 3 purposes.
- 4 c. Uses of water for the irrigation of hay, corn,
- 5 soybeans, oats, grain sorghum or wheat.
- 6 d. Uses of water for the irrigation of crops other than
- 7 hay, corn, soybeans, oats, grain sorghum or wheat.
- 8 e. Uses of water for manufacturing or other industrial
- 9 processes.
- 10 f. Uses of water for generation of electrical power for
- 11 public consumption.
- 12 g. Uses of water for livestock production.
- 13 h. Uses of water for human consumption and sanitation
- 14 supplied by rural water districts, municipal water systems, or
- 15 other public water supplies as defined in section 455B.171.
- 16 i. Uses of water for human consumption and sanitation sup-
- 17 plied by a private water supply as defined in section
- 18 455B.171.
- 19 3. Unless the governor has issued a proclamation described
- 20 in subsection 1, paragraph "c", the department shall not
- 21 impose a suspension of water use or a further restriction,
- 22 other than conservation, on the uses of water provided in
- 23 subsection 2, paragraphs "g" through "i" or on users of water
- 24 pursuant to a contract with the state as provided in section
- 25 455B.263, subsections 5 and 6.
- 26 4. Suspension or restrictions of water usage applicable to
- 27 otherwise nonregulated water users shall be by emergency order
- 28 of the executive director which the department shall cause to
- 29 be published in local newspapers of general circulation and
- 30 broadcast by local media. The emergency order shall state an
- 31 effective date of the suspension or restriction and shall be
- 32 immediately effective on such date unless stayed, modified or
- 33 vacated at a hearing before the commission or by a court.
- 34 Sec. 7. Section 455B.267, Code 1985, is amended by adding
- 35 the following new subsection:

1 NEW SUBSECTION. 4. A permit to divert, store or withdraw
2 water shall not be issued or continued if it will unreasonably
3 impair the long-term availability of water from a surface or
4 groundwater source in terms of quantity or quality, or
5 otherwise adversely affect the public health or welfare.

6 Sec. 8. Section 455B.268, subsection 1, Code 1985, is
7 amended to read as follows:

8 1. A permit shall be required for the following:

9 a. ~~A municipal corporation or a person supplying a~~
10 ~~municipal corporation which increases its water use in excess~~
11 ~~of one hundred thousand gallons or three percent, whichever is~~
12 ~~the greater, per day more than its highest per day beneficial~~
13 ~~use prior to May 16, 1957. The corporation or person shall~~
14 ~~make reasonable provision for the storage of water at times~~
15 ~~when the daily use of the water by the corporation or person~~
16 ~~is less than the amount specified in this subsection.~~

17 b. a. Except for a nonregulated use, a person using in
18 excess of twenty-five thousand gallons of water per day,
19 diverted, stored, or withdrawn diverting, storing or
20 withdrawing water from any surface or groundwater source of
21 supply except a municipal water system or any other source
22 specifically exempted under this part.

23 c. b. A person who diverts water or any material from the
24 surface directly into an underground watercourse or basin.

25 d. ~~Industrial users of water having their own water supply~~
26 ~~within the territorial boundaries of municipal corporations~~
27 ~~when the water use exceeds three percent more than the highest~~
28 ~~per day beneficial use prior to May 16, 1957.~~

29 Sec. 9. Section 455B.271, subsection 2, paragraph d, Code
30 1985, is amended to read as follows:

31 d. The department finds that modification or cancellation
32 is necessary to protect the public health or safety, to
33 protect the public interests in lands or waters, to require
34 conservation measures or to prevent substantial injury to
35 persons or property in any manner. Before the modification or

1 cancellation is effective, the department shall give at least
2 thirty days' written notice mailed to the permittee at the
3 permittee's last known address, stating the grounds of the
4 proposed modification or cancellation and giving the permittee
5 an opportunity to be heard on the proposal.

6 Sec. 10. Section 455B.271, subsection 3, Code 1985, is
7 amended to read as follows:

8 3. By written emergency order to the permittee, the
9 department may suspend or restrict operations under a permit
10 if the executive director finds it necessary in an emergency
11 to protect the public health, to protect the public interest
12 in waters against imminent danger of substantial injury in any
13 manner or to an extent not expressly authorized by the permit,
14 to implement the priority allocation system of section
15 455B.266, or to protect persons or property against imminent
16 danger. The department may require the permittee to take
17 measures necessary to prevent or remedy the injury,--but an
18 order shall not be in effect for more than thirty days from
19 the date of issue without giving the permittee at least ten
20 days' written notice of the order and an opportunity to be
21 heard on the order. The emergency order shall state the
22 effective date of the suspension or restriction and shall be
23 immediately effective on that date unless stayed, modified or
24 vacated at a hearing before the commission or by a court.

25 Sec. 11. NEW SECTION. 455B.281 COMPENSATION FOR WELL
26 INTERFERENCE.

27 If an investigation by the department, using information
28 provided by the applicant or permittee and the complainant,
29 discloses that a proposed or existing permitted use or
30 combination of such uses is causing or will cause the delivery
31 system to fail in a well which supplies water for a
32 nonregulated use, the department may condition issuance or
33 continuation of a permit upon payment by the permittee of
34 compensation for all or a portion of the cost of a replacement
35 water supply system or remedial measures necessitated by the

1 interference. However, such condition may be imposed only
2 after the parties demonstrate to the department that a good
3 faith effort to negotiate a mutually agreeable compensation
4 has been made and has failed.

5 Determination of the amount of compensation for the well
6 interference shall be made a part of the determination of the
7 department in accordance with section 455B.265 or 455B.271.
8 The department may require the submission of itemized
9 estimates of the cost of remedial repairs or a replacement
10 water supply system. In determining appropriate compensation,
11 the department shall consider the age and condition of the
12 affected well or pumping system and its reasonableness as a
13 method of obtaining groundwater in light of the history of
14 development of groundwater in the surrounding area. When
15 compensation is required for all or part of the cost of
16 construction of a replacement water supply system or
17 reconstruction of an affected well, the construction or
18 reconstruction must comply with applicable well construction
19 standards. A permittee is not required to pay compensation
20 before having an opportunity to do test pumping authorized by
21 the department and supervised by the department or designee.

22 The determination of the department shall be subject to ad-
23 ministrative and judicial review and shall be the exclusive
24 remedy for such interference.

25 EXPLANATION

26 This bill implements the recommendation of the state water
27 plan, developed pursuant to section 455B.263, subsection 1.
28 Section 1 of the bill strikes certain exemptions from the
29 class of nonregulated water users and simplifies the
30 definition of "nonregulated use". Section 2 embodies the
31 concepts of requiring conservation and protecting water
32 sources for public health and welfare. Section 3 calls for
33 the preparation of a general plan embodying a groundwater
34 protection strategy. Section 4 emphasizes the consideration
35 of prior use, contracts, and beneficial use in day-to-day

S.F. 163 H.F. _____

1 permit issuance. Section 5 draws together the department's
2 procedures and criteria for permit issuance, with additional
3 provisions requiring conditions for conservation in permits
4 and requiring issuance of permits to previously "grand-
5 fathered" or exempted facilities upon timely application.
6 Section 6 is the priority allocation system for water shortage
7 situations. Section 7 embodies the "protected source" concept
8 in the water plan. Section 8 reflects the elimination of cer-
9 tain "grandfathered" or exempted uses from the permit
10 requirement. Sections 9 and 10 add provisions for
11 implementing conservation measures and the priority allocation
12 system as to existing permit holders. Section 11 authorizes
13 an administrative mechanism for awarding compensation to
14 nonregulated well users for interference by regulated
15 activities.

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PAGE TWO, FEBRUARY 6, 1985

HOUSE CLIP SHEET

SENATE FILE 163

H-3041

- 1 Amend Senate File 163 as passed by the Senate as
- 2 follows:
- 3 1. Page 3, by inserting after line 2 the
- 4 following: "455B.265 PERMITS FOR DIVERSION, STORAGE
- 5 AND WITHDRAWAL."
- 6 2. Page 4, line 16, by striking the figure "3"
- 7 and inserting the figure "4".

H-3041 FILED FEBRUARY 5, 1985

BY COMMITTEE ON
NATURAL RESOURCES

Adopted 2/7/85 (p. 263)

SENATE FILE 163

H-3046

- 1 Amend Senate File 163 as passed by the Senate as
- 2 follows:
- 3 1. Page 5, line 33, by inserting after the word
- 4 "court." the following: "This section does not impair
- 5 the vested right of any person."

H-3046 FILED FEBRUARY 6, 1985

BY HARBOR of Mills

Withdrawn 2/7 (p. 265)

SENATE FILE 163

H-3045

- 1 Amend Senate File 163 as passed by the Senate as
- 2 follows:
- 3 1. By striking page 7, line 25 through page 8,
- 4 line 24.

H-3045 FILED FEBRUARY 6, 1985

BY HARBOR of Mills

W/D 2/7 (265)

SENATE FILE 163

H-3047

- 1 Amend Senate File 163 as passed by the Senate as
- 2 follows:
- 3 1. Page 8, by striking lines 19 through 21 and
- 4 inserting the following: "standards."

H-3047 FILED FEBRUARY 6, 1985

BY HARBOR of Mills

W/D 2/7 (265)

SENATE FILE 163

AN ACT

RELATING TO THE AUTHORITY OF THE DEPARTMENT OF WATER, AIR AND
WASTE MANAGEMENT TO REGULATE WATER USE AND EMBODYING A GEN-
ERAL PLAN OF WATER ALLOCATION PRIORITIES FOR THIS STATE.

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

Section 1. Section 455B.261, subsection 8, Code 1985, is
amended to read as follows:

8. "Nonregulated use" means ~~the use of water for ordinary household purposes; use of water for poultry, livestock, and domestic animals; any beneficial use of surface flow from rivers bordering this state; any existing beneficial uses of water within the territorial boundaries of municipal corporations on May 16, 1957; and any other beneficial use of water by any person of less than twenty-five thousand gallons per day. However, industrial users of water, having their own water supply, within the territorial boundaries of municipal corporations, shall be regulated when their water use exceeds three percent more than the highest per-day beneficial use prior to May 16, 1957.~~

Sec. 2. Section 455B.262, subsections 2 and 3, Code 1985, are amended to read as follows:

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use ~~to the fullest extent possible, and which includes ensuring~~ that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be encouraged required with the

view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other ~~natural~~ body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ~~encourage full utilization~~ ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

Sec. 3. Section 455B.263, subsection 1, Code 1985, is amended by striking the subsection and inserting in lieu thereof the following:

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

Sec. 4. Section 455B.264, subsection 2, Code 1985, is amended to read as follows:

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the executive director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.261 and whether the use is consistent with the plan of water-allocation priorities-for-this-state principles and policies of beneficial use.

Sec. 5. Section 455B.265, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

455B.265 PERMITS FOR DIVERSION, STORAGE AND WITHDRAWAL.

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. Regardless of the request in the application, the executive director or the commission on appeal may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1986, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the commission. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

Sec. 6. Section 455B.266, Code 1985, is amended by striking the section and inserting in lieu thereof the following:

455B.266 PRIORITY ALLOCATION.

1. After any event described in paragraphs "a" through "d" of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the office of disaster services of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph "c", the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs "g" through "i" or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the executive director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

Sec. 7. Section 455B.267, Code 1985, is amended by adding the following new subsection:

NEW SUBSECTION. 4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

Sec. 8. Section 455B.268, subsection 1, Code 1985, is amended to read as follows:

1. A permit shall be required for the following:

~~at--A-municipal-corporation-or-a-person-supplying-a-municipal-corporation-which-increases-its-water-use-in-excess-of-one-hundred-thousand-gallons-or-three-percent, whichever is the greater, per day more than its highest per day beneficial use prior to May 16, 1957--The corporation or person shall make reasonable provision for the storage of water at times when the daily use of the water by the corporation or person is less than the amount specified in this subsection:~~

or a. Except for a nonregulated use, a person using in excess of twenty five thousand gallons of water per day, diverted, stored, or withdrawn diverting, storing or withdrawing water from any surface or groundwater source of supply except a municipal water system or any other source specifically exempted under this part.

or b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.

d. --Industrial users of water having their own water supply within the territorial boundaries of municipal corporations when the water use exceeds three percent more than the highest per day beneficial use prior to May 167-1957.

Sec. 9. Section 455B.271, subsection 2, paragraph d, Code 1985, is amended to read as follows:

d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.

Sec. 10. Section 455B.271, subsection 3, Code 1985, is amended to read as follows:

3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the executive director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent

danger. The department may require the permittee to take measures necessary to prevent or remedy the injury. Such an order shall not be in effect for more than thirty days from the date of issue without giving the permittee at least ten days' written notice of the order and an opportunity to be heard on the order. The emergency order shall state the effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the commission or by a court.

Sec. 11. NEW SECTION. 455B.281. COMPENSATION FOR WELL INTERFERENCE.

If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good faith effort to negotiate a mutually agreeable compensation has been made and has failed.

Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is

required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.

The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 163, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved March 5, 1985

TERRY E. BRANSTAD
Governor

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