

FEB 14 1990

WAYS & MEANS CALENDAR

HOUSE FILE 2407
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2155)

Passed House, Date 3/21/90 (p. 1290) Passed Senate, Date 4/4/90 (p. 1536)
Vote: Ayes 69 Nays 30 Vote: Ayes 46 Nays 1
Approved April 26, 1990

A BILL FOR

1 An Act relating to the designation, inventory, and protection of
2 wetlands, providing a civil penalty for violations, and
3 providing a property tax exemption for wetlands.

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

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HF 2407

S.F. _____

H.F. _____

2407

1 Section 1. Section 108.1, Code 1989, is amended by adding
2 the following new subsection:

53 43 NEW SUBSECTION. 4. "Protected wetlands" means two or more
4 acres of wetlands, marshes, or sloughs defined pursuant to
5 rule of the department. "Protected wetlands" includes type 3,
6 type 4, and type 5 wetlands as described in Circular 39,
7 Wetlands of the United States, 1971 Edition, published by the
8 United States department of the interior. However, a
9 protected wetland does not include land where an agricultural
10 drainage well has been plugged causing a temporary wetland.

11 Sec. 2. NEW SECTION. 108.12 INVENTORY OF PROTECTED
12 WETLANDS.

13 The department shall inventory the wetlands and marshes of
14 each county and make a preliminary designation as to which
15 constitute protected wetlands. The department shall consult
16 with the county conservation board in making the preliminary
17 designations. Upon completion of the inventory with
18 preliminary designations, the department shall use an existing
19 map or prepare a map and a list of the marshes and wetlands
20 which are designated as protected wetlands in each county.
21 The department shall file at least one copy of the list and
22 map with the county conservation board and the county
23 recorder. The department shall notify the landowners affected
24 by the preliminary wetlands designation by certified mail.
25 The notice shall state that any person may challenge the
26 designation of the protected wetlands or may request the
27 designation of additional marshes or wetlands as protected
28 wetlands, by filing a petition for a hearing with the director
29 within sixty days following the date of notice. The petition
30 shall state specifically the reasons for disputing the
31 preliminary designations of the department. The hearing shall
32 be held in the county within sixty days following the
33 expiration of the sixty-day period for filing petitions.
34 Within sixty days following the completion of the hearing, the
35 director shall issue an order designating the protected

1 wetlands in the county. The order shall be considered a final
2 decision of the department in a contested case for the
3 purposes of judicial review pursuant to chapter 17A.

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4 Sec. 3. NEW SECTION. 108.13 PROTECTION OF WETLANDS.

5 1. A person shall not drain a protected wetland without
6 first obtaining a permit from the department.

7 2. The department shall not issue a permit to drain a
8 protected wetland except under one of the following
9 conditions:

10 a. The protected wetland is replaced by the applicant with
11 a wetland of equal or greater value as determined by the
12 department.

13 b. The protected wetland does not meet the criteria for
14 continued designation as a protected wetland.

15 3. This section does not prevent a landowner from
16 utilizing the bed of a protected wetland for pasture or
17 cropland during a period of drought if there is no
18 construction of dikes, ditches, tile lines, or buildings and
19 the agricultural use does not result in drainage.

20 Sec. 4. NEW SECTION. 108.14 CIVIL PENALTY.

21 A person who violates the permit requirement of section
22 108.13 is subject to a civil penalty of not more than five
23 thousand dollars for each day that the violation continues. A
24 civil penalty assessed under this section shall not apply
25 until the fourth day after a violator is given written
26 notification of the violation.

27 Sec. 5. Section 427.1, subsection 36, unnumbered
28 paragraphs 1 and 2, Code Supplement 1989, are amended to read
29 as follows:

30 ~~Wetlands,--recreational~~ Recreational lakes, forest covers,
31 rivers and streams, river and stream banks, and open prairies
32 as designated by the board of supervisors of the county in
33 which located. The board of supervisors shall annually
34 designate the real property, not to exceed in the aggregate
35 for the fiscal year beginning July 1, 1983 the greater of one

1 percent of the acres assessed as agricultural land or three
2 thousand acres in each county, for which this exemption shall
3 apply. For subsequent fiscal years, the limitation on the
4 maximum acreage of real property that may be granted
5 exemptions shall be the limitation for the previous fiscal
6 year, unless the amount of acreage granted exemptions for the
7 previous fiscal year equaled the limitation for that year,
8 then the limitation for the subsequent fiscal year is the
9 limitation for the previous fiscal year plus an increase, not
10 to exceed three hundred acres, of ten percent of that
11 limitation. The procedures of this subsection shall be
12 followed for each assessment year to procure an exemption for
13 the fiscal year beginning in the assessment year. The
14 exemption shall be only for the fiscal year for which it is
15 granted, ~~except that an exemption granted for wetlands shall~~
16 ~~be for three fiscal years.~~ A parcel of property may be
17 granted subsequent exemptions. The exemption shall only be
18 granted for parcels of property of two acres or more.

19 Application for this exemption shall be filed with the
20 commissioners of the soil and water conservation district in
21 which the property is located, or if not located in a
22 district, to the board of supervisors, not later than April 15
23 of the assessment year, on forms provided by the department of
24 revenue and finance. ~~However, in the case of an exemption~~
25 ~~granted for wetlands an application does not have to be filed~~
26 ~~for the second and third years of the three-year exemption~~
27 ~~period.~~ The application shall describe and locate the
28 property to be exempted and have attached to it an aerial
29 photo of that property on which is outlined the boundaries of
30 the property to be exempted. In the case of an open prairie
31 which is or includes a gully area susceptible to severe
32 erosion, an approved erosion control plan must accompany the
33 application. Upon receipt of the application, the
34 commissioners or the board of supervisors, if the property is
35 not located in a soil and water conservation district, shall

1 certify whether the property is eligible to receive the
2 exemption. The commissioners or board shall not withhold
3 certification of the eligibility of property because of the
4 existence upon the property of an abandoned building or
5 structure which is not used for economic gain. If the
6 commissioners certify that the property is eligible, the
7 application shall be forwarded to the board of supervisors by
8 May 1 of that assessment year with the certification of the
9 eligible acreage. An application must be accompanied by an
10 affidavit signed by the applicant that if an exemption is
11 granted, the property will not be used for economic gain
12 during the assessment year in which the exemption is granted.

13 Sec. 6. Section 427.1, subsection 36, unnumbered paragraph
14 5, Code Supplement 1989, is amended to read as follows:

15 The board of supervisors does not have to grant tax
16 exemptions under this subsection, grant tax exemptions in the
17 aggregate of the maximum acreage which may be granted
18 exemptions, or grant a tax exemption for the total acreage for
19 which the applicant requested the exemption. Only real
20 property in parcels of two acres or more which is wetlands,
21 recreational lakes, forest cover, river and stream, river and
22 stream banks, or open prairie and which is utilized for the
23 purposes of providing soil erosion control or wildlife habitat
24 or both, and which is subject to property tax for the fiscal
25 year for which the tax exemption is requested, is eligible for
26 the exemption under this subsection. However, in addition to
27 the above, in order for a gully area which is susceptible to
28 severe erosion to be eligible, there must be an erosion
29 control plan for it approved by the commissioners of the soil
30 and water conservation district in which it is located or the
31 state soil conservation committee if not located in a
32 district. In the case of an exemption for river and stream or
33 river and stream banks, the exemption shall not be granted
34 unless there is included in the exemption land located at
35 least thirty-three feet from the ordinary high water mark of

1 the river and stream or river and stream banks. Property
2 shall not be denied an exemption because of the existence upon
3 the property of an abandoned building or structure which is
4 not used for economic gain. If the real property is located
5 within a city, the approval of the governing body must be
6 obtained before the real property is eligible for an
7 exemption. For purposes of this subsection:

8 Sec. 7. Section 427.1, subsection 36, paragraph a, Code
9 Supplement 1989, is amended by striking the paragraph.

10 Sec. 8. Section 427.1, subsection 37, Code Supplement
11 1989, is amended to read as follows:

537412 37. NATIVE PRAIRIE AND WETLAND. Land designated as native
13 prairie ~~by-a-county-conservation-board~~ or wetland by the
14 department of natural resources ~~in-an-area-not-served-by-a~~
15 ~~county-conservation-board~~. Application for the exemption
16 shall be made on forms provided by the department of revenue
17 and finance. The application forms shall be filed with the
18 assessing authority not later than the first of February of
19 the year for which the exemption is requested. The
20 application must be accompanied by an affidavit signed by the
21 applicant that if the exemption is granted, the property will
22 not be used for economic gain during the assessment year in
23 which the exemption is granted. If the property is used for
24 economic gain during the assessment year in which the
25 exemption is granted, the property shall lose its tax
26 exemption and shall be taxed at the rate levied by the county
27 for the fiscal year beginning in that assessment year. The
28 first annual application shall be accompanied by a certificate
29 from ~~the-county-conservation-board-serving-the-area-in-which~~
30 ~~the-property-is-located-or-if-none-exists,~~ the department of
31 natural resources stating that the land is native prairie or
32 wetland. The ~~county-conservation-board-or-the~~ department of
33 natural resources shall issue the a certificate for the native
34 prairie exemption if the board or department finds that the
35 land has never been cultivated, is unimproved, is primarily a

1 mixture of warm season grasses interspersed with flowering
2 plants, and meets the other criteria established by the
3 natural resource commission for native prairie. The
4 department of natural resources shall issue a certificate for
5 the wetland exemption if the department finds the land is a
6 protected wetland, as defined under section 108.1, or if the
7 wetland was previously drained and cropped but has been
8 restored under a nonpermanent restoration agreement with the
9 department or other county, state, or federal agency or
10 private conservation group. A taxpayer may seek judicial
11 review of a decision of ~~a board or~~ the department according to
12 chapter 17A. The natural resource commission shall adopt
13 rules to implement this subsection.

14 EXPLANATION

15 This bill provides a property tax exemption for wetlands
16 which are certified by the department of natural resources.
17 Current law provides for a property tax exemption for wetlands
18 greater than 2 acres subject to the discretion of the county
19 board of supervisors with a maximum cumulative acreage in each
20 county of 3,000 acres or 1 percent of the acres assessed as
21 agricultural land, whichever is greater.

22 The bill also directs the department of natural resources
23 to inventory the wetlands and marshes of each county and give
24 a preliminary designation to those wetlands and marshes which
25 constitute protected wetlands. When the preliminary inventory
26 is complete, notice of the list of protected wetlands and a
27 map shall be published in an official newspaper in the county.
28 An interested person may file a petition protesting the
29 designation of a particular wetland or requesting another
30 wetland to be included. Procedures for a hearing and appeal
31 are provided.

32 The bill provides that a protected wetland shall not be
33 drained without a permit from the department of natural re-
34 sources. The department shall not issue a permit to drain
35 unless the wetland to be drained is replaced by one of equal

1 or greater value or unless the wetland in question does not
2 meet the criteria for continued designation as a protected
3 wetland.

4 A civil penalty of not more than \$5,000 per day may be
5 assessed for failure to obtain a permit to drain a protected
6 wetland. The civil penalty applies from the fourth day after
7 written notice of the violation.

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**HOUSE FILE 2407
FISCAL NOTE**

A fiscal note for **House File 2407** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2407 directs the Department of Natural Resources to inventory the wetlands and marshes of each county and give a preliminary designation to those wetlands and marshes that constitute protected wetlands. The bill also provides that a protected wetland shall not be drained without a permit, provides a civil penalty for non-compliance, and provides for the removal of protected wetlands from the property tax roles.

Assumptions:

1. There are a maximum of 10,000 wetland acres privately owned in Iowa.
2. The average wetland acre pays \$0.90 per acre in consolidated property tax.

Fiscal Effect:

The Department of Natural Resources estimates that \$58,000 per year, for two years, would be needed for two FTE positions, support, and indirect cost. After the inventory is completed, the provisions of this bill would be incorporated within the workload of the present staff.

Property tax exemptions on the entire 10,000 acres would result in a property tax loss to local governments of approximately \$9,000 per year.

Sources:

Department of Natural Resources
Department of Revenue and Finance
Dickinson County Assessor

(LSB 7229hz.2, JWR)

FILED FEBRUARY 19, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2407

H-5249

1 Amend House File 2407 as follows:

2 1. Page 2, by inserting after line 3 the
3 following:

4 "The owner of protected wetlands may request the
5 department to purchase the protected wetlands. Upon
6 receipt of the request for purchase, the department
7 shall purchase the protected wetlands at its fair
8 market value. The department shall not be required to
9 purchase the protected wetlands unless the request for
10 purchase is filed with the director within sixty days
11 of the issuance of the order of the director
12 designating the area as protected wetlands or in the
13 case where judicial review has been sought and the
14 decision of the director was upheld, within sixty days
15 of the final decision of the courts."

By SCHNEKLOTH of Scott

H-5249 FILED FEBRUARY 20, 1990

Adopted 3/21 (p. 1289)

HOUSE FILE 2407

H-5374

1 Amend House File 2407 as follows:

2 1. Page 1, line 2, by striking the word
3 "subsection:" and inserting the following:
4 "subsections:".

5 2. Page 1, by striking lines 3 through 5 and
6 inserting the following:

7 "NEW SUBSECTION. 4. "Wetlands" means an area in a
8 natural condition that is mostly under water or
9 waterlogged during the spring growing season and is
10 characterized by vegetation of hydric soils.

11 NEW SUBSECTION. 5. "Protected wetlands" means
12 type 3, "

13 3. Page 2, line 23, by striking the word
14 "thousand" and inserting the following: "hundred".

15 4. Page 5, by striking lines 13 through 15 and
16 inserting the following: "prairie by-a-county
17 ~~conservation-board-or-by-the-department-of-natural~~
18 ~~resources-in-an-area-not-served-by-a-county~~
19 ~~conservation-board~~ or type 3, 4, 5, 6, and 7 wetlands
20 only as defined in Circular 39, Wetlands of the United
21 States, 1971 Edition, published by the United States
22 department of interior. Application for the
23 exemption".

By OSTERBERG of Linn

H-5374 FILED FEBRUARY 27, 1990

Adopted as amended by 5790 3/21 (p. 1290)

HOUSE FILE 2407

H-5739

1 Amend House File 2407 as follows:

2 1. Page 1, by striking line 28 and inserting the
3 following: "wetlands, by doing one of the following:

4 1. Filing a petition for a hearing with the
5 director".

6 2. Page 1, by striking line 34 and inserting the
7 following:

8 "2. Filing a request for mediation with the farm
9 mediation service as provided in section 654A.16
10 within sixty days following the date of the notice.
11 The department shall participate in mediation as
12 provided in section 654A.16.

13 Within sixty days following the completion of the
14 hearing, or the issuance of a mediation release in
15 which both parties agree to the designation or no
16 agreement is reached, the".

17 3. Page 6, by inserting after line 13 the fol-
18 lowing:

19 "Sec. ____ . NEW SECTION. 654A.16 WETLAND
20 DESIGNATION.

21 The farm mediation service shall provide for
22 mediation between the department of natural resources
23 and a landowner affected by the preliminary wetland
24 designation provided in section 108.12. The
25 department shall cease actions relating to
26 inventorying or designating affected land until a
27 mediation release is issued by the farm mediation
28 service. The mediation process shall be conducted
29 according to rules adopted by the attorney general
30 after consultation with the farm mediation service.
31 The rules shall to the extent practical be based on
32 mediation provided under this chapter for borrowers
33 and lenders.

34 Sec. ____ . Section 654A.16 is repealed effective
35 upon the repeal of sections 654A.1 through 654A.14."

36 4. By renumbering as necessary.

By DE GROOT of Lyon
OSTERBERG of Linn

H-5739 FILED MARCH 16, 1990

Adopted 3/21 (p. 1287)

HOUSE FILE 2407

H-5789

1 Amend House File 2407 as follows:

2 1. Page 1, line 10, by inserting after the word
3 "wetland" the following: "or land within a drainage
4 district".

5 2. Page 3, by striking lines 21 and 22 and
6 inserting the following: "which the property is
7 located, ~~or-if-not-located-in-a-district,-to-the-board~~
8 ~~of-supervisors,~~ not later than April 15".

9 3. Page 3, by striking lines 34 and 35 and
10 inserting the following: "commissioners ~~or-the-board~~
11 ~~of-supervisors,-if-the-property-is-not-located-in-a~~
12 ~~soil-and-water-conservation-district,~~ shall".

13 4. Page 4, line 2, by striking the words "or
14 board" and inserting the following: "or-board".

15 5. Page 4, by striking lines 30 through 32 and
16 inserting the following: "and water conservation
17 district in which it is located ~~or-the-state-soil~~
18 ~~conservation-committee-if-not-located-in-a-district.~~
19 In the case of an exemption for river and stream or".

By OSTERBERG of Linn
HIBBARD of Madison

H-5789 FILED MARCH 21, 1990
ADOPTED (y 1288)

HOUSE FILE 2407

H-5790

1 Amend the amendment H-5374, to House File 2407,
2 as follows:

3 1. Page 1, line 7, by inserting after the word
4 "area" the following: "of two or more acres".

By OSTERBERG of Linn

H-5790 FILED MARCH 21, 1990
ADOPTED (y 1290)

HOUSE FILE 2407

H-5793

1 Amend amendment H-5789, to House File 2407,
2 as follows:

3 1. Page 1, line 3, by inserting after the word
4 "drainage" the words "or levee".

By SPEAR of Lee

H-5793 FILED MARCH 21, 1990
LOST (y 1288)

Jan. Ways Means Amend per 5706 v Do Pass 3/27 (p 1345)
Ag 3/28 Amend per 5830 v Do Pass 4/2.

HOUSE FILE 2407
BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 2155)

(As Amended and Passed by the House March 21, 1990)

Re^{p. 115}Passed House, Date 4/5/90 (p. 2066) Passed Senate, Date 4/4/90 (p. 1530)
Vote: Ayes 72 Nays 22 Vote: Ayes 46 Nays 1
Approved April 26, 1990

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2 the following new subsections:

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4 more acres in a natural condition that is mostly under water
5 or waterlogged during the spring growing season and is
6 characterized by vegetation of hydric soils.

7 NEW SUBSECTION. 5. "Protected wetlands" means type 3,
8 type 4, and type 5 wetlands as described in Circular 39,
9 Wetlands of the United States, 1971 Edition, published by the
10 United States department of the interior. However, a
11 protected wetland does not include land where an agricultural
12 drainage well has been plugged causing a temporary wetland or
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17 each county and make a preliminary designation as to which
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20 designations. Upon completion of the inventory with
21 preliminary designations, the department shall use an existing
22 map or prepare a map and a list of the marshes and wetlands
23 which are designated as protected wetlands in each county.
24 The department shall file at least one copy of the list and
25 map with the county conservation board and the county
26 recorder. The department shall notify the landowners affected
27 by the preliminary wetlands designation by certified mail.
28 The notice shall state that any person may challenge the
29 designation of the protected wetlands or may request the
30 designation of additional marshes or wetlands as protected
31 wetlands, by doing one of the following:

32 1. Filing a petition for a hearing with the director
33 within sixty days following the date of notice. The petition
34 shall state specifically the reasons for disputing the
35 preliminary designations of the department. The hearing shall

1 be held in the county within sixty days following the
2 expiration of the sixty-day period for filing petitions.

3 2. Filing a request for mediation with the farm mediation
4 service as provided in section 654A.16 within sixty days
5 following the date of the notice. The department shall
6 participate in mediation as provided in section 654A.16.

7 Within sixty days following the completion of the hearing,
8 or the issuance of a mediation release in which both parties
9 agree to the designation or no agreement is reached, the
10 director shall issue an order designating the protected
11 wetlands in the county. The order shall be considered a final
12 decision of the department in a contested case for the
13 purposes of judicial review pursuant to chapter 17A.

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16 first obtaining a permit from the department.

17 2. The department shall not issue a permit to drain a
18 protected wetland except under one of the following
19 conditions:

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21 a wetland of equal or greater value as determined by the
22 department.

23 b. The protected wetland does not meet the criteria for
24 continued designation as a protected wetland.

25 3. This section does not prevent a landowner from
26 utilizing the bed of a protected wetland for pasture or
27 cropland during a period of drought if there is no
28 construction of dikes, ditches, tile lines, or buildings and
29 the agricultural use does not result in drainage.

30 Sec. 4. NEW SECTION. 108.14 CIVIL PENALTY.

31 A person who violates the permit requirement of section
32 108.13 is subject to a civil penalty of not more than five
33 hundred dollars for each day that the violation continues. A
34 civil penalty assessed under this section shall not apply
35 until the fourth day after a violator is given written

1 notification of the violation.

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3 paragraphs 1 and 2, Code Supplement 1989, are amended to read
4 as follows:

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9 designate the real property, not to exceed in the aggregate
10 for the fiscal year beginning July 1, 1983 the greater of one
11 percent of the acres assessed as agricultural land or three
12 thousand acres in each county, for which this exemption shall
13 apply. For subsequent fiscal years, the limitation on the
14 maximum acreage of real property that may be granted
15 exemptions shall be the limitation for the previous fiscal
16 year, unless the amount of acreage granted exemptions for the
17 previous fiscal year equaled the limitation for that year,
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19 limitation for the previous fiscal year plus an increase, not
20 to exceed three hundred acres, of ten percent of that
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25 ~~granted~~granted~~for wetlands shall~~
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28 granted for parcels of property of two acres or more.

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30 commissioners of the soil and water conservation district in
31 which the property is located, or if not located in a
32 district, to the board of supervisors, not later than April 15
33 of the assessment year, on forms provided by the department of
34 revenue and finance. ~~However~~in the case of an exemption
35 ~~granted for wetlands an application does not have to be filed~~

1 ~~for the second and third years of the three-year exemption~~
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4 photo of that property on which is outlined the boundaries of
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9 commissioners or the board of supervisors, if the property is
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11 certify whether the property is eligible to receive the
12 exemption. The commissioners or board shall not withhold
13 certification of the eligibility of property because of the
14 existence upon the property of an abandoned building or
15 structure which is not used for economic gain. If the
16 commissioners certify that the property is eligible, the
17 application shall be forwarded to the board of supervisors by
18 May 1 of that assessment year with the certification of the
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30 property in parcels of two acres or more which is wetlands,
31 recreational lakes, forest cover, river and stream, river and
32 stream banks, or open prairie and which is utilized for the
33 purposes of providing soil erosion control or wildlife habitat
34 or both, and which is subject to property tax for the fiscal
35 year for which the tax exemption is requested, is eligible for

1 the exemption under this subsection. However, in addition to
2 the above, in order for a gully area which is susceptible to
3 severe erosion to be eligible, there must be an erosion
4 control plan for it approved by the commissioners of the soil
5 and water conservation district in which it is located ~~or the~~
6 ~~state soil conservation committee if not located in a~~
7 ~~district.~~ In the case of an exemption for river and stream or
8 river and stream banks, the exemption shall not be granted
9 unless there is included in the exemption land located at
10 least thirty-three feet from the ordinary high water mark of
11 the river and stream or river and stream banks. Property
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25 ~~conservation board or type 3, 4, 5, 6, and 7 wetlands only as~~
26 ~~defined in Circular 39, Wetlands of the United States, 1971~~
27 ~~Edition, published by the United States department of~~
28 ~~interior.~~ Application for the exemption shall be made on
29 forms provided by the department of revenue and finance. The
30 application forms shall be filed with the assessing authority
31 not later than the first of February of the year for which the
32 exemption is requested. The application must be accompanied
33 by an affidavit signed by the applicant that if the exemption
34 is granted, the property will not be used for economic gain
35 during the assessment year in which the exemption is granted.

1 If the property is used for economic gain during the
2 assessment year in which the exemption is granted, the
3 property shall lose its tax exemption and shall be taxed at
4 the rate levied by the county for the fiscal year beginning in
5 that assessment year. The first annual application shall be
6 accompanied by a certificate from ~~the county conservation~~
7 ~~board serving the area in which the property is located or if~~
8 ~~none exists~~, the department of natural resources stating that
9 the land is native prairie or wetland. The county
10 ~~conservation board or the~~ department of natural resources
11 shall issue the a certificate for the native prairie exemption
12 if the board or department finds that the land has never been
13 cultivated, is unimproved, is primarily a mixture of warm
14 season grasses interspersed with flowering plants, and meets
15 the other criteria established by the natural resource
16 commission for native prairie. The department of natural
17 resources shall issue a certificate for the wetland exemption
18 if the department finds the land is a protected wetland, as
19 defined under section 108.1, or if the wetland was previously
20 drained and cropped but has been restored under a nonpermanent
21 restoration agreement with the department or other county,
22 state, or federal agency or private conservation group. A
23 taxpayer may seek judicial review of a decision of ~~a board or~~
24 the department according to chapter 17A. The natural resource
25 commission shall adopt rules to implement this subsection.

26 Sec. 9. NEW SECTION. 654A.16 WETLAND DESIGNATION.
27 The farm mediation service shall provide for mediation
28 between the department of natural resources and a landowner
29 affected by the preliminary wetland designation provided in
30 section 108.12. The department shall cease actions relating
31 to inventorying or designating affected land until a mediation
32 release is issued by the farm mediation service. The
33 mediation process shall be conducted according to rules
34 adopted by the attorney general after consultation with the
35 farm mediation service. The rules shall to the extent

1 practical be based on mediation provided under this chapter
2 for borrowers and lenders.

3 Sec. 10. Section 654A.16 is repealed effective upon the
4 repeal of sections 654A.1 through 654A.14.

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HOUSE FILE 2407

S-5841

1 Amend House File 2407, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 7, by inserting after line 2 the
4 following:

5 "Sec. ____ . Section 654B.8, subsection 4, as
6 enacted in 1990 Iowa Acts, House File 2404, section
7 22, is amended to read as follows:

8 4. If the parties waive mediation, or if a
9 mediation agreement is not reached, the parties may
10 sign a statement prepared by the mediator that
11 mediation was waived or that the parties did not reach
12 an agreement. If any party does not sign the
13 statement, the mediator shall sign the statement. The
14 statement constitutes a mediation release. ~~Unless the~~
15 ~~farm-resident-waives-mediation,-the-department-shall~~
16 ~~not-receive-a-mediation-release-until-the-party-has~~
17 ~~participated-in-at-least-one-mediation-meeting."~~

18 2. Title page, line 2, by inserting after the
19 word "wetlands," the following: "providing for
20 mediation,".

By JIM RIORDAN

S-5841 FILED APRIL 2, 1990

(Accepted 4/4/90 p. 1536)

HOUSE FILE 2407

S-5861

1 Amend the amendment, S-5830, to House File 2407, as
2 amended, passed, and reprinted by the House, as follows:

3 1. Page 1, line 14, by inserting after the word
4 "to" the following: "fifty percent of".

By MIKE CONNOLLY

S-5861 FILED APRIL 3, 1990

(w/RS 4/4/90 p. 1536)

HOUSE FILE 2407

S-5884

1 Amend the amendment, S-5830, to House File 2407, as
2 amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 1, line 29, by inserting after the word
5 "wetland." the following: "The reimbursement shall be
6 as provided in section 111E.4.".

By MIKE CONNOLLY

S-5884 FILED APRIL 4, 1990

LOST *(p. 1536)*

HOUSE FILE 2407

S-5830

1 Amend House File 2407, as amended, passed, and
2 reprinted by the House, as follows:

3 1. Page 5, by striking lines 23 through 28 and
4 inserting the following: "prairie by-a-county
5 conservation-board-or-by-the-department-of-natural
6 resources-in-an-area-not-served-by-a-county
7 conservation-board or land designated as a protected
8 wetland by the department of natural resources
9 pursuant to section 108.12. Application for the
10 exemption shall be made on".

11 2. Page 5, line 29, by inserting after the word
12 "finance." the following: "Land designated as a
13 protected wetland shall be assessed at a value equal
14 to the average value of the land where the wetland is
15 located and which is owned by the person granted the
16 exemption."

17 3. Page 6, line 9, by inserting before the word
18 "wetland" the following: "protected".

19 4. Page 6, by inserting after line 25 the
20 following:

21 "The assessing authority each year may submit to
22 the department a claim for reimbursement of tax
23 revenue lost from the exemption. Upon receipt of the
24 claim, the department shall reimburse the assessing
25 authority an amount equal to the lost tax revenue
26 based on the value of the protected wetland as
27 assessed by the authority, unless the department
28 reimburses the authority based upon a departmental
29 assessment of the protected wetland. The authority
30 may contest the department's assessment as provided in
31 chapter 17A. The department is not required to honor
32 a claim submitted more than sixty days after the
33 authority has assessed land where the protected
34 wetland is located and which is owned by the person
35 granted the exemption."

By COMMITTEE ON AGRICULTURE,
BERL E. PRIEBE, Chair

S-5830 FILED APRIL 2, 1990

(Adopted 4/4 p. 1536)

HOUSE FILE 2407

S-5706

1 Amend House File 2407, as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 1, line 13, by inserting after the word
4 "district" the following: "or levee district".

By COMMITTEE ON WAYS AND MEANS
WILLIAM W. DIELEMAN, Chairperson

S-5706 FILED MARCH 27, 1990

(Adopted 4/4 (p. 1536)

HOUSE FILE 2407
FISCAL NOTE

REQ. BY SENATOR CONNOLLY

A fiscal note for Amendment S-5830 to House File 2407 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Amendment S-5830 to House File 2407 assesses property designated as protected wetlands at a level equal to the surrounding land owned by the landowner who owns the protected wetland. The Department of Natural Resources (DNR) is directed to pay the assessing authority for the lost tax revenue, based on the equal-value assessed rate. This amendment would require the DNR to make property tax payments for all lands designated as protected wetlands at a rate equal to the surrounding non-wetland property.

Assumptions:

1. There are 3,000 protected wetlands in the state which fall under the definitions in Section 108.12, Code of Iowa (created in this Bill).
2. The average property tax paid on land surrounding these protected wetlands is \$8.75 per acre per year.
3. The average property tax presently paid on wetlands is \$0.50 per acre per year.

Fiscal Effect:

The DNR would have to pay local entities a total of \$26,000 per year in property taxes on 3,000 protected wetland acres. Without a General Fund appropriation, the payments would have to come from the Department's appropriations, or another funding source could be specified.

The average-value assessment would produce an additional \$24,500 in property tax revenue for local entities.

Sources:

Department of Natural Resources' Iowa Wetlands Protection Plan
1987 Census of Agriculture

(LSB 7229hz.3, JWR)

FILED APRIL 3, 1990

BY DENNIS PROUTY, FISCAL DIRECTOR

H-6115

1 Amend House File 2407, as amended, passed and
2 reprinted by the House, as follows:

3 1. Page 1, line 13, by inserting after the word
4 "district" the following: "or levee district".

5 2. Page 5, by striking lines 23 through 28 and
6 inserting the following: "prairie by-a-county
7 conservation-board-or-by-the-department-of-natural
8 resources-in-an-area-not-served-by-a-county
9 conservation-board or land designated as a protected
10 wetland by the department of natural resources
11 pursuant to section 108.12. Application for the
12 exemption shall be made on".

13 3. Page 5, line 29, by inserting after the word
14 "finance." the following: "Land designated as a
15 protected wetland shall be assessed at a value equal
16 to the average value of the land where the wetland is
17 located and which is owned by the person granted the
18 exemption."

19 4. Page 6, line 9, by inserting before the word
20 "wetland" the following: "protected".

21 5. Page 6, by inserting after line 25 the
22 following:

23 "The assessing authority each year may submit to
24 the department a claim for reimbursement of tax
25 revenue lost from the exemption. Upon receipt of the
26 claim, the department shall reimburse the assessing
27 authority an amount equal to the lost tax revenue
28 based on the value of the protected wetland as
29 assessed by the authority, unless the department
30 reimburses the authority based upon a departmental
31 assessment of the protected wetland. The authority
32 may contest the department's assessment as provided in
33 chapter 17A. The department is not required to honor
34 a claim submitted more than sixty days after the
35 authority has assessed land where the protected
36 wetland is located and which is owned by the person
37 granted the exemption."

38 6. Page 7, by inserting after line 2 the
39 following:

40 "Sec. ____ . Section 654B.8, subsection 4, as
41 enacted in 1990 Iowa Acts, House File 2404, section
42 22, is amended to read as follows:

43 4. If the parties waive mediation, or if a
44 mediation agreement is not reached, the parties may
45 sign a statement prepared by the mediator that
46 mediation was waived or that the parties did not reach
47 an agreement. If any party does not sign the
48 statement, the mediator shall sign the statement. The
49 statement constitutes a mediation release. ~~Unless the~~
50 ~~farm-resident-waives-mediation, the department shall~~

-1-

Page 2

1 ~~not-receive-a-mediation-release-until-the-party-has~~
2 ~~participated-in-at-least-one-mediation-meeting."~~

3 7. Title page, line 2, by inserting after the
4 word "wetlands," the following: "providing for
5 mediation,".

6 8. By renumbering, relettering, or redesignating
7 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6115 FILED APRIL 4, 1990

House concurred 4/5 (p. 2067)

HOUSE FILE 2407

AN ACT

RELATING TO THE DESIGNATION, INVENTORY, AND PROTECTION OF WETLANDS, PROVIDING FOR MEDIATION, PROVIDING A CIVIL PENALTY FOR VIOLATIONS, AND PROVIDING A PROPERTY TAX EXEMPTION FOR WETLANDS.

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

Section 1. Section 108.1, Code 1989, is amended by adding the following new subsections:

NEW SUBSECTION. 4. "Wetlands" means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

NEW SUBSECTION. 5. "Protected wetlands" means type 3, type 4, and type 5 wetlands as described in Circular 39, Wetlands of the United States, 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

Sec. 2. NEW SECTION. 108.12 INVENTORY OF PROTECTED WETLANDS.

The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county

recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

1. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

2. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

Sec. 3. NEW SECTION. 108.13 PROTECTION OF WETLANDS.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.

2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:

a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.

b. The protected wetland does not meet the criteria for continued designation as a protected wetland.

3. This section does not prevent a landowner from utilizing the bed of a protected wetland for pasture or cropland during a period of drought if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

Sec. 4. NEW SECTION. 108.14 CIVIL PENALTY.

A person who violates the permit requirement of section 108.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

Sec. 5. Section 427.1, subsection 36, unnumbered paragraphs 1 and 2, Code Supplement 1989, are amended to read as follows:

~~Wetlands; recreational~~ Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983 the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is

~~granted; except that an exemption granted for wetlands shall be for three fiscal years.~~ A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, ~~or if not located in a district, to the board of supervisors,~~ not later than April 15 of the assessment year, on forms provided by the department of revenue and finance. ~~However, in the case of an exemption granted for wetlands an application does not have to be filed for the second and third years of the three-year exemption period.~~ The application shall describe and locate the property to be exempted and have attached to it an aerial photo of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application. Upon receipt of the application, the ~~commissioners or the board of supervisors, if the property is not located in a soil and water conservation district,~~ shall certify whether the property is eligible to receive the exemption. The ~~commissioners or board~~ shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the ~~commissioners~~ certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

Sec. 6. Section 427.1, subsection 36, unnumbered paragraph 5, Code Supplement 1989, is amended to read as follows:

The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is wetlands, recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located ~~or the state soil conservation committee if not located in a~~ district. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

Sec. 7. Section 427.1, subsection 36, paragraph a, Code Supplement 1989, is amended by striking the paragraph.

Sec. 8. Section 427.1, subsection 37, Code Supplement 1989, is amended to read as follows:

37. NATIVE PRAIRIE AND WETLAND. Land designated as native prairie ~~by a county conservation board or by the department of natural resources in an area not served by a county~~

conservation board or land designated as a protected wetland by the department of natural resources pursuant to section 108.12. Application for the exemption shall be made on forms provided by the department of revenue and finance. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate ~~from the county conservation board serving the area in which the property is located or if none exists,~~ the department of natural resources stating that the land is native prairie or protected wetland. The ~~county conservation board or the~~ department of natural resources shall issue the a certificate for the native prairie exemption if the board or department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 108.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or

federal agency or private conservation group. A taxpayer may seek judicial review of a decision of a board or the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

Sec. 9. **NEW SECTION. 654A.16 WETLAND DESIGNATION.**

The farm mediation service shall provide for mediation between the department of natural resources and a landowner affected by the preliminary wetland designation provided in section 108.12. The department shall cease actions relating to inventorying or designating affected land until a mediation release is issued by the farm mediation service. The mediation process shall be conducted according to rules adopted by the attorney general after consultation with the farm mediation service. The rules shall to the extent practical be based on mediation provided under this chapter for borrowers and lenders.

Sec. 10. Section 654B.8, subsection 4, as enacted in 1990 Iowa Acts, House File 2404, section 22, is amended to read as follows:

4. If the parties waive mediation, or if a mediation agreement is not reached, the parties may sign a statement prepared by the mediator that mediation was waived or that the

parties did not reach an agreement. If any party does not sign the statement, the mediator shall sign the statement. The statement constitutes a mediation release. ~~Unless the farm resident waives mediation, the department shall not receive a mediation release until the party has participated in at least one mediation meeting.~~

Sec. 11. Section 654A.16 is repealed effective upon the repeal of sections 654A.1 through 654A.14.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2407, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved  1990

TERRY E. BRANSTAD
Governor