

FEB 19 2002
ENVIRONMENTAL PROTECTION

HOUSE FILE **2413**
BY MASCHER

(COMPANION TO LSB 5674SS
BY BOLKCOM)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating a wetlands program and providing penalties.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2413

1 Section 1. NEW SECTION. 456B.21 SHORT TITLE.

2 This subchapter shall be known and may be cited as the
3 "Iowa Wetlands Act".

4 Sec. 2. NEW SECTION. 456B.22 DEFINITIONS.

5 As used in this subchapter, unless the context otherwise
6 requires:

7 1. "Program" means the wetland program created pursuant to
8 section 456B.23.

9 2. "Regulated activity" means any activity conducted
10 within a wetland or a regulated buffer area which may decrease
11 wetland functions, including discharge of fill material,
12 bulkheading, mining, excavating, draining, and dredging.

13 3. "Wetland" means an area that is inundated or saturated
14 by surface or groundwater at a frequency and duration
15 sufficient to support, and that under normal circumstances do
16 support, a prevalence of vegetation typically adapted to live
17 in saturated soil conditions. "Wetland" may include a swamp,
18 marsh, bog, or similar area.

19 Sec. 3. NEW SECTION. 456B.23 WETLAND PROGRAM.

20 1. The department shall create and administer a wetland
21 program for the protection and restoration of wetlands in the
22 state. The program shall be carried out in cooperation with
23 other state agencies, federal agencies, local governments,
24 land trusts, private and public landowners, and other
25 interested organizations.

26 2. In carrying out the program, the department shall do
27 all of the following:

28 a. Adopt wetland maps as provided in section 456B.24.

29 b. Provide technical assistance and training to assist
30 local governments in developing wetland protection and
31 restoration programs and to assist local governments in
32 integrating wetland protection and restoration into
33 comprehensive land planning and management efforts, including
34 floodplain and stormwater management, pollution control,
35 source water planning, greenway, open space, and other

1 efforts.

2 c. Adopt procedures and criteria for approval of local
3 government wetland regulatory programs in lieu of direct state
4 permitting as provided in section 456B.29.

5 d. Encourage and provide guidance with regard to the
6 restoration of wetlands as provided in section 456B.30.

7 e. Adopt joint permit processing procedures with other
8 federal and state agencies and local governments with
9 jurisdiction over wetlands and take other measures to improve
10 coordination and reduce duplication between the department and
11 other federal and state agencies and local governments.

12 Sec. 4. NEW SECTION. 456B.24 MAPPING AND DELINEATION.

13 1. The department shall adopt wetland maps for the state.
14 In this effort, the department may utilize on an interim or
15 longer term basis national wetland inventory maps for all or a
16 portion of the state. The department may also use maps
17 prepared by other groups or organizations or undertake
18 independent mapping with federal or state agencies, local
19 governments, or other groups or organizations. The department
20 may separately adopt wetland maps for various regions of the
21 state.

22 2. The department shall adopt guidance documents for the
23 delineation of wetlands. The department may adopt the 1987
24 manual for the delineation of jurisdictional wetlands by the
25 corps of engineers or prepare another guidance document.

26 3. The department shall, upon the written request of a
27 landowner whose land may be included in a regulated wetland,
28 delineate more precisely the wetland boundary line on the land
29 applying delineation criteria. The department may request
30 information from the landowner or other agencies or
31 organizations to assist such a delineation effort.

32 Sec. 5. NEW SECTION. 456B.25 PERMIT APPLICATION --
33 PROCESS -- REVOCATION.

34 1. A person shall not conduct or cause a regulated
35 activity within a wetland without a permit issued by the

1 department. A person proposing to conduct or cause such an
2 activity to be conducted shall file an application with the
3 department for a permit and shall, at the same time, submit a
4 copy of the application to the city or county in which the
5 wetland is located. Within ten days of filing the permit
6 application with the department, the applicant shall provide
7 written notice of the permit application to the owners of
8 property adjacent to the wetland and shall cause a notice of
9 the permit application to be published in a newspaper of
10 general circulation in the county or city where the wetland is
11 located.

12 2. A permit application shall include, but not be limited
13 to, all of the following information:

14 a. A map of the area which will be affected by the
15 activity, including wetland and water boundaries for areas
16 affected and existing uses and structures.

17 b. A description of the proposed activity, including its
18 purpose, the location and dimensions of any structures,
19 grading or fills, drainage, roads, sewer and water supply,
20 parking lots, stormwater facilities, discharge of pollutants,
21 and onsite waste disposal.

22 c. A description of any public benefit to be derived from
23 the proposed project.

24 d. A description with a sketch map of the entire parcel
25 owned by the applicant and the location of the wetland on the
26 parcel.

27 e. A description of any natural hazards at the site,
28 including flood, erosion, and soil-bearing capacity hazards,
29 and how the applicant will avoid increasing hazards on
30 adjacent lands or avoid hazard losses associated with the
31 proposed activity.

32 f. An explanation of why the proposed activity cannot be
33 located at other sites and why other alternatives cannot be
34 used to fulfill the desired purpose of the proposed activity.

35 g. The names and addresses of adjacent landowners as

1 determined by the current tax assessment roles and a
2 description of adjacent uses and their distance from the
3 proposed activity.

4 h. The proposed measures to reduce the impact of the
5 proposed activity on wetland functions and values and to
6 compensate for impacts.

7 3. The department may require additional permit
8 application information when such information is needed to
9 determine the compliance of the proposed activity with
10 criteria for issuance of a permit provided in section 456B.26.

11 4. Upon receipt of a permit application, the department
12 shall notify, within ten days, other federal and state
13 agencies and local governments which may have jurisdiction
14 over the proposed activity. These entities shall have thirty
15 days to provide comments to the department regarding the
16 permit application.

17 5. The department shall hold a public hearing relating to
18 the permit application if the proposed activity may have a
19 significant impact upon wetland resources or the department
20 believes that a public hearing is otherwise necessary.

21 6. The department shall issue, conditionally issue, or
22 deny a permit application within ninety days of the receipt of
23 an application unless the permit applicant has failed to
24 supply needed information or additional information gathering
25 is needed to determine the compliance of the permit with
26 regulatory criteria.

27 7. In issuing a permit, the department may impose
28 conditions or limitations required to carry out the permit
29 criteria. The department may require a bond in an amount and
30 with surety and conditions sufficient to secure compliance
31 with the conditions and limitations provided in the permit.

32 8. The department may suspend or revoke a permit if the
33 department finds that the applicant has not complied with the
34 conditions or limitations set forth in the permit. The
35 department may revoke a permit for obtaining a permit by

1 misrepresentation or failing to disclose relevant facts.

2 Sec. 6. NEW SECTION. 456B.26 CRITERIA FOR PERMITS.

3 1. The department shall issue a proposed permit if the
4 department finds that the permit is in the public interest.
5 In determining whether a proposed activity is in the public
6 interest, the department shall consider the goals of this
7 subchapter and any more specific criteria for the permit
8 issuance adopted by the department. The department shall
9 consider the need for the proposed activity and the impact on
10 the landowner of permit denial. In order to issue a permit,
11 the department must make an affirmative finding regarding all
12 of the following:

13 a. There will be no net loss of wetland function or
14 acreage.

15 b. There are no practical alternatives to the proposed
16 activity.

17 c. The proposed activity will not be subject to flooding,
18 erosion, soil limitations, on-site waste disposal, or other
19 hazards that will threaten adjacent landowners or the public.

20 d. The proposed activity will not violate pollution
21 control standards, or violate other federal, state, or local
22 laws and regulations.

23 e. The proposed activity will not otherwise threaten
24 health and safety, result in fraud, cause nuisances, impair
25 public rights to the enjoyment and use of public waters, or
26 threaten a rare or endangered plant, animal, or ecosystem.

27 2. In evaluating the impact of the proposed permit, the
28 department shall consider the cumulative effects of existing
29 and reasonably anticipated future uses similar to the use
30 proposed in the permit application upon wetland resources.
31 The department shall consider any irreversible and
32 irretrievable commitment of resources that will result from
33 the proposed activity, and the relationship between short-term
34 uses of the environment and the maintenance and enhancement of
35 long-term productivity. The department shall consider any

1 proposed impact reduction and compensation measures after
2 determining that there are no practical alternatives to the
3 proposed activity.

4 3. If a permit applicant proposes wetland restoration,
5 creation, or enhancement to compensate for damage to a
6 wetland, the department shall consider the risk of failure of
7 any such impact reduction or compensation measures and may
8 require, if such risks are great, that the permit applicant
9 implement compensation measures prior to undertaking the
10 proposed activity. In deciding whether the compensation ratio
11 proposed by the permit applicant is sufficient to provide no
12 net loss of wetland functions or acreage, the department shall
13 consider all of the following:

14 a. The sensitivity of the wetland type.

15 b. The success of other efforts to restore this wetland
16 type.

17 c. The length of time it will take before a compensation
18 wetland will become fully functioning.

19 d. The degree of difficulty which will be encountered in
20 creating or restoring wetland hydrology in this setting.

21 e. The adequacy of the overall project design.

22 f. The threats, if any, posed to the compensation wetland
23 by pollution or other activities.

24 g. The adequacy of proposed protection and management
25 measures for the proposed compensation wetland.

26 h. The extent to which monitoring and mid-course
27 correction capabilities are proposed.

28 i. The extent to which bonds or other assurances are
29 provided to ensure long-term success.

30 j. Any other factors the department believes to be
31 relevant.

32 Sec. 7. NEW SECTION. 456B.27 APPEALS.

33 An action of the department relating to the issuance of a
34 permit under this part may be appealed to the commission by
35 the applicant if the appeal is taken within thirty days of the

1 action being appealed. The appeal shall be conducted as a
2 contested case pursuant to chapter 17A. A final action or
3 order of the commission is subject to judicial review pursuant
4 to chapter 17A.

5 Sec. 8. NEW SECTION. 456B.28 ENFORCEMENT -- PENALTIES.

6 1. A person who violates any provision of this subchapter
7 shall be subject to a civil penalty not to exceed five
8 thousand dollars for each day of the violation.

9 2. In the event of a violation, the department may order
10 restoration of the wetland area and seek a court injunction to
11 compel compliance. If a violator does not restore a wetland
12 within a reasonable time of an order to do so, the department
13 may restore the wetland to its condition prior to the
14 violation and the violator shall be liable to the department
15 for the cost of restoration.

16 3. A monetary penalty assessed pursuant to this section,
17 including costs of wetland restoration, shall be recorded with
18 the clerk of the district court as a lien against the land and
19 shall not be removed until the penalty is paid in full. A
20 lien under this section is not effective unless the department
21 files a notice of lien with the clerk of the district court in
22 the county where the wetland is located.

23 4. All costs, fees, and expenses in connection with an
24 enforcement or restoration action shall be assessed as damages
25 against the violator.

26 Sec. 9. NEW SECTION. 456B.29 LOCAL REGULATION OF
27 WETLANDS -- STATE AND LOCAL ROLES.

28 1. A city or county may adopt zoning, subdivision control,
29 and other wetland protection regulations to achieve the
30 objectives provided in this subchapter. In adopting and
31 administering such regulations, a city or county is encouraged
32 to utilize the wetland definition provided in this subchapter
33 and wetland delineation criteria developed by the department
34 pursuant to section 456B.24.

35 2. A city or county with wetland regulations which are as

1 restrictive or more restrictive than those of the state may
2 apply to the department for permission to issue all or a
3 portion of the wetland permits within the city's or county's
4 jurisdiction in lieu of the permitting procedure provided in
5 this subchapter. The department may authorize a local
6 government to issue all or a portion of the wetland permits
7 within the city's or county's jurisdiction in lieu of the
8 permitting procedure if the department finds that the local
9 government has wetland regulations which are as restrictive or
10 more restrictive than those of the state and the local
11 government has adequate administration and enforcement
12 mechanisms. The department shall continue to review permit
13 applications for activities which may affect wetlands of more
14 than one city or county. The department may withdraw approval
15 for local issuance of wetland permits if the department finds
16 the local government has failed to administer or enforce
17 regulations as restrictive or more restrictive than those of
18 the state.

19 Sec. 10. NEW SECTION. 456B.30 RESTORATION AND CREATION
20 -- USE OF MITIGATION BANKS.

21 1. The department shall encourage private landowners,
22 local governments, other state agencies, land trusts, and any
23 other persons to restore wetlands in order to achieve the
24 long-term goal of net gain in wetland resources. The
25 department shall provide technical assistance to a private
26 landowner, local government, other state agency, land trust,
27 or other person planning and carrying out a restoration
28 project. The department shall identify possible restoration
29 sites in cooperation with other entities. The department
30 shall adopt guidelines and educational materials for
31 restoration projects and may carry out restoration research
32 and demonstration projects.

33 2. The department may authorize, in appropriate
34 circumstances, applicants for permits under this subchapter to
35 utilize wetland mitigation banks to compensate for loss of

1 wetland functions where there is not a practical onsite
2 alternative and use of a wetland mitigation bank will provide
3 a net benefit in wetland functions or acreage. However,
4 permit applicants shall not be permitted to use a wetland
5 mitigation bank if such use will result in increased water
6 pollution, flooding, increased erosion, or other nuisances or
7 hazards at the permit application site. A permit applicant
8 shall not use a wetland mitigation bank if a landowner or the
9 ecosystem near the permit application site will suffer
10 significant losses in wetland function. The department may
11 permit some combination of onsite impact reduction and
12 compensation measures and the use of an offsite mitigation
13 bank to avoid losses or problems.

14 Sec. 11. NEW SECTION. 456B.31 RULES.

15 The commission shall adopt rules pursuant to chapter 17A
16 necessary to implement this subchapter.

17 Sec. 12. Section 427.1, subsection 23, unnumbered
18 paragraph 1, Code Supplement 2001, is amended to read as
19 follows:

20 Land designated as native prairie or land designated as a
21 protected wetland by the department of natural resources
22 pursuant to ~~section-456B-12~~ chapter 456B, subchapter 2.
23 Application for the exemption shall be made on forms provided
24 by the department of revenue and finance. Land designated as
25 a protected wetland shall be assessed at a value equal to the
26 average value of the land where the wetland is located and
27 which is owned by the person granted the exemption. The
28 application forms shall be filed with the assessing authority
29 not later than the first of February of the year for which the
30 exemption is requested. The application must be accompanied
31 by an affidavit signed by the applicant that if the exemption
32 is granted, the property will not be used for economic gain
33 during the assessment year in which the exemption is granted.
34 If the property is used for economic gain during the
35 assessment year in which the exemption is granted, the

1 property shall lose its tax exemption and shall be taxed at
2 the rate levied by the county for the fiscal year beginning in
3 that assessment year. The first annual application shall be
4 accompanied by a certificate from the department of natural
5 resources stating that the land is native prairie or protected
6 wetland. The department of natural resources shall issue a
7 certificate for the native prairie exemption if the department
8 finds that the land has never been cultivated, is unimproved,
9 is primarily a mixture of warm season grasses interspersed
10 with flowering plants, and meets the other criteria
11 established by the natural resource commission for native
12 prairie. The department of natural resources shall issue a
13 certificate for the wetland exemption if the department finds
14 the land is a protected wetland, as defined under section
15 456B.1, or if the wetland was previously drained and cropped
16 but has been restored under a nonpermanent restoration
17 agreement with the department or other county, state, or
18 federal agency or private conservation group. A taxpayer may
19 seek judicial review of a decision of the department according
20 to chapter 17A. The natural resource commission shall adopt
21 rules to implement this subsection.

22 Sec. 13. Section 654A.16, Code 2001, is amended to read as
23 follows:

24 654A.16 WETLAND DESIGNATION.

25 The farm mediation service shall provide for mediation
26 between the department of natural resources and a landowner
27 affected by the preliminary wetland designation provided in
28 ~~section-456B.12~~ chapter 456B, subchapter 2. The department
29 shall cease actions relating to inventorying or designating
30 affected land until a mediation release is issued by the farm
31 mediation service. The mediation process shall be conducted
32 according to rules adopted by the attorney general after
33 consultation with the farm mediation service. The rules shall
34 to the extent practical be based on mediation provided under
35 this chapter for borrowers and lenders.

1 Sec. 14. Sections 456B.12, 456B.13, and 456B.14, Code
2 2001, are repealed.

3 EXPLANATION

4 This bill repeals current statutes relating to the
5 inventory and protection of wetlands, makes conforming
6 amendments, and replaces them with a more comprehensive
7 wetland program.

8 The bill requires the department of natural resources to
9 create and administer a wetland program. The bill provides
10 that, in carrying out the program, the department shall adopt
11 wetland maps; provide technical assistance and training to
12 assist local governments in developing wetland protection and
13 restoration programs and to assist local governments in
14 integrating wetland protection and restoration into
15 comprehensive land planning and management efforts including
16 floodplain and stormwater management, pollution control,
17 source water planning, greenway, open space, and other
18 efforts; adopt procedures and criteria for approval of local
19 government wetland regulatory programs in lieu of direct state
20 permitting; encourage and provide guidance with regard to the
21 restoration of wetlands; and adopt joint permit processing
22 procedures with other federal and state agencies and local
23 governments with jurisdiction over wetlands and take other
24 measures to improve coordination and reduce duplication
25 between the department and other federal and state agencies
26 and local governments.

27 The bill provides that the department shall adopt wetland
28 maps for the state. The bill provides that the department
29 shall adopt guidance documents for delineation of wetlands and
30 that the department may adopt the 1987 manual for the
31 delineation of jurisdictional wetlands by the corps of
32 engineers or prepare another guidance document. The bill
33 provides that the department shall, upon the written request
34 of a landowner whose land may be included in a regulated
35 wetland, delineate more precisely the wetland boundary line on

1 the land applying delineation criteria.

2 The bill provides that a person shall not conduct or cause
3 a regulated activity to be conducted within a wetland without
4 a permit issued by the department. The bill provides for
5 procedures that must be followed during the permit application
6 process, including providing public notice, notification of
7 federal, state, and local governmental entities, and holding a
8 public hearing. The bill provides that the department shall
9 issue, conditionally issue, or deny a permit application
10 within 90 days of the receipt of an application unless the
11 permit application has failed to supply needed information or
12 additional information gathering is needed to determine the
13 compliance of the permit with regulatory criteria. The bill
14 provides that, in issuing a permit, the department may impose
15 conditions or limitations required to carry out the permit
16 criteria. The bill provides that the department may require a
17 bond in an amount and with surety and conditions sufficient to
18 secure compliance with the conditions and limitations provided
19 in the permit. The bill provides that the department may
20 suspend or revoke a permit if the department finds that the
21 applicant has not complied with the conditions or limitations
22 set forth in the permit. The department may also revoke a
23 permit for obtaining a permit by misrepresentation or failing
24 to disclose relevant facts.

25 The bill provides that the department shall issue a
26 proposed permit if the department finds that the permit is in
27 the public interest. The bill provides that, in order to
28 issue a permit, the department must make an affirmative
29 finding that there will be no net loss of wetland function and
30 acreage; there are no practical alternatives to the proposed
31 activity; the proposed activity will not be subject to hazards
32 that will threaten adjacent landowners or the public; the
33 proposed activity will not violate pollution control standards
34 or other laws and regulations; and the proposed activity will
35 not otherwise threaten health and safety, result in fraud,

1 cause nuisances, impair public rights to the enjoyment and use
2 of public waters, or threaten a rare or endangered plant,
3 animal, or ecosystem. The bill provides that if a permit
4 applicant proposes wetland restoration, creation, or
5 enhancement to compensate for damage to a wetland, the
6 department shall consider the risk of failure of any such
7 impact reduction or compensation measures and may require, if
8 such risks are great, that the permit applicant implement
9 compensation measures prior to undertaking the proposed
10 activity.

11 The bill provides that an action of the department relating
12 to the issuance of a permit under the bill may be appealed to
13 the natural resource commission by the applicant if the appeal
14 is taken within 30 days of the action being appealed. The
15 bill provides that an appeal shall be conducted as a contested
16 case pursuant to Code chapter 17A and that a final action or
17 order of the commission is subject to judicial review pursuant
18 to Code chapter 17A.

19 The bill provides that a person who violates any provision
20 of the bill shall be subject to a civil penalty not to exceed
21 \$5,000 for each day of the violation. The bill provides that,
22 in the event of a violation, the department may order
23 restoration of the wetland area and seek a court injunction to
24 compel compliance. The bill provides that any monetary
25 penalty assessed, including costs of wetland restoration,
26 shall be recorded with the clerk of the district court as a
27 lien against the land and shall not be removed until the
28 penalty is paid in full. The bill provides that all costs,
29 fees, and expenses in connection with an enforcement or
30 restoration action shall be assessed as damages against the
31 violator.

32 The bill provides that a city or county may adopt zoning,
33 subdivision control, and other wetland protection regulations
34 to achieve the objectives of the bill. The bill provides that
35 a city or county with wetland regulations which are as

1 restrictive or more restrictive than those of the state may
2 apply to the department for permission to issue all or a
3 portion of the wetland permits within the city's or county's
4 jurisdiction in lieu of the permitting procedure of the
5 department. The bill provides that the department may
6 withdraw approval for local issuance of wetland permits if the
7 department finds the local government has failed to administer
8 or enforce regulations as restrictive or more restrictive than
9 those of the state.

10 The bill provides that the department shall encourage
11 private landowners, local governments, other state agencies,
12 land trusts, and any other persons to restore wetlands in
13 order to achieve the long-term goal of net gain in wetland
14 resources. The bill provides that the department shall
15 provide technical assistance to a private landowner, local
16 government, other state agency, land trust, or other person
17 planning and carrying out a restoration project. The bill
18 provides that the department shall identify possible
19 restoration sites in cooperation with other entities. The
20 bill provides that the department shall adopt guidelines and
21 educational materials for restoration projects and may carry
22 out restoration research and demonstration projects. The bill
23 provides that the department may authorize, in appropriate
24 circumstances, permit applicants to utilize wetland mitigation
25 banks to compensate for loss of wetland functions where there
26 is not a practical onsite alternative and use of a wetland
27 mitigation bank will provide a net benefit in wetland
28 functions and acreage.

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