

MAR 19 2001  
ENVIRONMENTAL PROTECTION

HOUSE FILE 651  
BY JOCHUM

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to environmental high-impact areas and the use of  
2 community impact statements in the permitting process for  
3 facilities handling toxic pollutants.

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

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HF 651

1 Section 1. NEW SECTION. 455L.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Community" means one or more cities, a county, or a  
5 combination of one or more cities and a county.

6 2. "Department" means the department of natural resources  
7 created under section 455A.2.

8 3. "Facility" means land and structures, other  
9 appurtenances, and improvements on the land which require a  
10 permit pursuant to chapter 455B.

11 Sec. 2. NEW SECTION. 455L.2 IDENTIFICATION OF  
12 ENVIRONMENTAL HIGH-IMPACT AREAS.

13 1. a. By July 1, 2002, the department shall assess the  
14 degree of risk to human health posed by releases of toxic  
15 substances in each county.

16 b. For each county, the department shall calculate and  
17 compile the total weight of toxic pollutants released into the  
18 ambient environment, broken down by releases into the air,  
19 water, and land and by each toxic pollutant.

20 c. In compiling the data required in paragraph "b", the  
21 department shall disregard toxic pollutants which are in a  
22 contained, controlled environment such as barrels, factories,  
23 warehouses, or lined landfills.

24 d. The department shall publish for public comment by  
25 December 1, 2002, the methods to be used to calculate the  
26 total weight of toxic chemicals released in each county.

27 e. The department shall publish for public comment, not  
28 later than December 1, 2002, the methods to be used to assess  
29 the degree of risk posed by releases of toxic chemicals, as  
30 required under this subsection, as well as the basis for the  
31 threshold level of substantial risk determined by the  
32 department pursuant to subsection 3.

33 2. The department shall publish a list of all counties  
34 that are below the threshold level of substantial risk, ranked  
35 by the assessed degree of risk. The department shall revise

1 and republish this list every two years using the most recent  
2 data available.

3 3. a. By July 1, 2003, and every two years thereafter,  
4 the department shall designate any county as an environmental  
5 high-impact area if the degree of risk to human health posed  
6 by releases of toxic pollutants in that county meets a  
7 threshold level of substantial risk established by the  
8 department.

9 b. To ensure that facilities with the highest potential  
10 for releases of toxic pollutants are operating in compliance  
11 with all applicable state environmental health and safety laws  
12 and applicable permits, the department shall conduct  
13 inspections of any facility that handles toxic pollutants in  
14 an environmental high-impact area.

15 4. a. By July 1, 2003, the department of public health  
16 shall publish a report on each environmental high-impact area  
17 that provides all of the following information:

18 (1) Documents incidents of cancer, birth deformities,  
19 infant mortality rates, and respiratory diseases.

20 (2) Compares the incidence of adverse health impacts under  
21 subparagraph (1) in environmental high-impact areas with state  
22 and demographic averages.

23 (3) Assesses the health risks posed by releases of toxic  
24 chemicals by individual chemical and by cumulative releases.

25 (4) Determines, in consultation with the department of  
26 natural resources, the levels to which releases of toxic  
27 pollutants, individually and cumulatively, must be reduced so  
28 that a county no longer is designated as an environmental  
29 high-impact area.

30 (5) Determines, in consultation with the department of  
31 natural resources, the impact of releases not regulated by law  
32 and releases in violation of current law.

33 b. If the report required under this subsection identifies  
34 significant adverse health impacts from exposure to toxic  
35 pollutants as defined by the department of natural resources,

1 a review board consisting of citizen representatives of any  
2 affected community, industry representatives, legislators, and  
3 the governor shall propose solutions to remedy and prevent  
4 such impacts.

5 Sec. 3. NEW SECTION. 455L.3 ASSISTANCE TO COMMUNITY-  
6 BASED HEALTH CARE PROVIDERS.

7 The department shall provide grants to community-based  
8 health facilities in environmental high-impact areas to enable  
9 a community-based health facility to establish special  
10 programs to monitor and respond to adverse health impacts  
11 experienced by the residents of the community.

12 Sec. 4. NEW SECTION. 455L.4 PUBLIC HEARINGS.

13 1. The department shall hold public hearings to  
14 investigate issues concerning possible inequities and  
15 discrimination in state enforcement of environmental laws.  
16 The department shall establish a citizen advisory committee to  
17 ensure direct citizen participation in the hearings.  
18 Immediately following the completion of the public hearing  
19 process, the department shall file a report with the general  
20 assembly which summarizes the hearings, evaluates any concerns  
21 voiced by the citizens, and recommends remedies for any  
22 existing inequities or discrimination in enforcement.

23 2. Additional public hearings may be held if the  
24 department determines that the need is shown. The department  
25 shall make this determination based upon a review of a citizen  
26 petition. The department shall file a report with the general  
27 assembly, as described in subsection 1, whenever an additional  
28 public hearing process occurs.

29 Sec. 5. NEW SECTION. 455L.5 COMMUNITY IMPACT STATEMENTS.

30 1. The department shall require the preparation of a  
31 community impact statement as part of the permitting process  
32 for any new facility that handles toxic pollutants and for any  
33 expansion of an existing facility.

34 2. Each community impact statement shall be made available  
35 for public review, following its release to the elected

1 officials of the applicable community.

2 3. The department shall do all of the following:

3 a. Give significant weight to the community impact  
4 statement when making any final decision regarding the  
5 issuance of a permit.

6 b. Deny a permit application, if the community impact  
7 statement identifies any current violations of other permits  
8 held by the applicant.

9 c. Hold a public hearing at which members of the general  
10 public of the community where the proposed facility would be  
11 located or where the expansion would take place can provide  
12 public comments on the community impact statement and other  
13 issues relating to the permitting of the facility in their  
14 community. The community impact statement and comments made  
15 at the public hearing shall be part of the record on which the  
16 permitting decision by the department is based.

17 4. An independent contractor shall prepare the community  
18 impact statement. The independent contractor shall possess  
19 certain qualifications as defined by the department. The  
20 independent contractor shall be selected by the community's  
21 chief elected official following consultation with community  
22 members and the permit applicant.

23 5. There shall be a fee for each permit application for  
24 which a community impact statement is required.

25 6. A community impact statement shall identify and  
26 describe each of the following:

27 a. The types of chemical releases expected from the  
28 facility.

29 b. The projected effects of the facility on the health,  
30 environment, and economy of the community where the site would  
31 be located.

32 c. The options or alternatives for mitigating any negative  
33 impacts on the health, environment, and economy of the  
34 affected community.

35 d. The demographic characteristics of the community where

1 the facility would be located.

2 e. The presence in the affected community of any other  
3 existing toxic chemical facilities and hazardous waste sites.

4 f. The applicant's record of compliance with state and  
5 federal environmental laws, including the record of compliance  
6 of any firm affiliated with the applicant.

7 7. A community impact statement shall be completed by the  
8 independent contractor within three months from the date on  
9 which the application is filed. Upon completion of a  
10 community impact statement, the statement shall be submitted  
11 to the department.

12 8. a. When a community impact statement identifies a  
13 likely significant adverse pollution effect on the local  
14 economy and employment level of the community where the  
15 facility will be located, the state shall take actions to  
16 mitigate the effects. The state may attempt to mitigate these  
17 effects by supporting community programs relating to  
18 employment and economic development, including all of the  
19 following:

- 20 (1) Job training and placement programs.  
21 (2) Community development corporations.  
22 (3) Microloan programs for local businesses.  
23 (4) Day care centers for low-income working parents.  
24 (5) Adult educational programs.

25 b. The department, in consultation with appropriate state  
26 agencies, shall specify which adverse impacts are to be  
27 considered significant under this subsection.

28 Sec. 6. NEW SECTION. 455L.6 LOAN PROGRAM.

29 1. The state shall establish in the state treasury a  
30 community-based environmental cleanup, health testing, and  
31 health remediation fund under the control of the department.  
32 The fund shall consist of any moneys appropriated by the  
33 general assembly and any other moneys available to and  
34 obtained or accepted by the department for placement in the  
35 fund. Payments of interest, repayments of moneys loaned, and

1 recaptures of loans shall be deposited in the fund. Moneys in  
2 the fund are not subject to section 8.33. Notwithstanding  
3 section 12C.7, interest or earnings on moneys in the fund  
4 shall be credited to the fund.

5 2. The fund shall be used for loans to provide resources  
6 for community-based environmental cleanup, health testing, and  
7 health remediation. To receive moneys from the fund,  
8 applicants must submit a detailed proposal outlining how the  
9 moneys will be used and how the cleanup, testing, or  
10 remediation will be achieved. Loans may be forgiven upon  
11 satisfactory completion of the proposed cleanup, testing, or  
12 remediation.

13 Sec. 7. NEW SECTION. 455L.7 GENERAL PROHIBITION.

14 1. A facility that handles toxic pollutants within twelve  
15 miles of any existing permitted facility shall not receive a  
16 permit from the department.

17 2. The prohibition in subsection 1 may be waived if, based  
18 on public comment from the community where the facility would  
19 be located, the applicable local government entity does either  
20 of the following:

21 a. Determines that significant local environment needs  
22 require the new facility.

23 b. Decides to accept the siting of the new facility in  
24 exchange for incentives offered to the community by the  
25 operators of the facility. Such incentives may include, but  
26 are not limited to, any of the following:

27 (1) Increased employment.

28 (2) Direct payments to the local government.

29 (3) Contributions by the facility to the community  
30 infrastructure.

31 (4) Compensation to individual landowners for any assessed  
32 decrease in property values.

33 (5) Subsidization of community services.

34 3. Public comment shall be obtained through public  
35 hearings and any other appropriate mechanism.

1     Sec. 8. NEW SECTION. 455L.8 MORATORIUM IN ENVIRONMENTAL  
2 HIGH-IMPACT AREAS.

3     1. If a county is designated an environmental high-impact  
4 area, there shall be a moratorium in that county on the siting  
5 or permitting of any new facility or an expansion of an  
6 existing facility that handles toxic pollutants. A new  
7 facility or an expansion may be sited or permitted in the  
8 county during the moratorium only if either of the following  
9 occurs:

10    a. The appropriate local government determines that there  
11 is a significant environmental need for the new facility or  
12 expansion.

13    b. The facility demonstrates that it will minimize any  
14 releases that threaten public health and maintain a  
15 comprehensive pollution prevention program.

16    2. The moratorium shall continue in effect until the  
17 department determines that the county is no longer an  
18 environmental high-impact area. The determination shall be  
19 based on a reassessment of the degree of risk to human health  
20 posed by releases of toxic pollutants in each county.

21     Sec. 9. NEW SECTION. 455L.9 GRANTS FOR IMPACT STUDIES OF  
22 EXISTING FACILITIES.

23    1. The department shall establish a grant program for the  
24 purposes of awarding community impact study grants.

25    2. The grants shall enable a person, citizen group, or  
26 local governmental entity to obtain an independent study of  
27 the impact of facilities in the area that handle toxic  
28 pollutants which were sited prior to the requirement of  
29 community impact statements. The study shall detail the  
30 effects on the local economy, the environment, and public  
31 health.

32    3. To receive a grant, an applicant must present evidence  
33 that the community experiences significant levels of at least  
34 one of the following:

35    a. Economic depression.



1 b. Environmental hazards.

2 c. Public health problems.

3 4. The impact studies may be used for any of the following  
4 purposes:

5 a. To facilitate the filing of citizen petitions for a  
6 public hearing.

7 b. To request an investigation by the department of the  
8 need for remedial action.

9 c. To qualify for state assistance for community programs  
10 relating to employment and economic development.

11 Sec. 10. NEW SECTION. 455L.10 SPECIAL INSURANCE.

12 The department shall create a program to assist communities  
13 and individuals in purchasing special insurance policies to  
14 cover the risk of a future decrease in property values  
15 attributable to the siting or operation of a facility.

16 Sec. 11. NEW SECTION. 455L.11 COMPLIANCE AGREEMENTS.

17 The state shall enable communities to enter into compliance  
18 agreements with an operator of any new facility that handles  
19 toxic pollutants. If a local governmental entity decides to  
20 offer incentives to an operator of a facility to locate a  
21 facility in the community in exchange for promises of economic  
22 development and increased employment, the local governmental  
23 entity may institute a compliance agreement. The compliance  
24 agreement shall ensure that if a facility does not satisfy its  
25 promises, the local governmental entity shall get a portion of  
26 its incentives reimbursed.

27 Sec. 12. NEW SECTION. 455L.12 SPECIAL COMMUNITY  
28 PROGRAMS.

29 The department shall establish all of the following for  
30 communities located in environmental high-impact areas:

31 1. A program enabling communities to hire independent  
32 experts to conduct both on-site and off-site monitoring of  
33 local facilities to ensure that the facilities are complying  
34 with permit requirements and state and federal laws.

35 2. Community environmental resource centers located within

1 existing community service facilities and institutions,  
2 staffed by an environmental expert, that shall do all of the  
3 following:

4 a. Provide environmental awareness training to the general  
5 public.

6 b. Provide education to the general public regarding state  
7 and federal right-to-know laws.

8 c. Inform the general public regarding the opportunities  
9 to participate and affect governmental decisions relating to  
10 the environment.

11 d. Serve as a clearinghouse for environmental information.

12 3. A program which facilitates contact between the general  
13 public of an affected community and environmental groups,  
14 health experts, and legal advisors serving on a volunteer  
15 basis to promote environmental justice.

16 Sec. 13. NEW SECTION. 455L.13 RULES.

17 The department shall adopt rules pursuant to chapter 17A to  
18 administer this chapter.

19 EXPLANATION

20 This bill creates new Code chapter 455L which relates to  
21 environmental high-impact areas and the use of community  
22 impact statements in the permitting process for facilities  
23 handling toxic pollutants.

24 The bill provides a process for identifying environmental  
25 high-impact areas. The bill provides that the department of  
26 natural resources shall assess the degree of risk to human  
27 health posed by releases of toxic substances in each county.  
28 The bill provides that the department shall designate any  
29 county as an environmental high-impact area if the degree of  
30 risk to human health posed by releases of toxic pollutants in  
31 that county meets a threshold level of substantial risk  
32 established by the department. The bill requires the  
33 department to inspect any facility that handles toxic  
34 pollutants in an environmental high-impact area. The bill  
35 allows for public participation in the identification process.

1 The bill requires the department of public health to  
2 publish a report on each environmental high-impact area that  
3 documents incidents of cancer, birth deformities, infant  
4 mortality rates, and respiratory diseases; compares the  
5 incidence of adverse health impacts in environmental high-  
6 impact areas with state and demographic averages; assesses the  
7 health risks posed by releases of toxic chemicals by  
8 individual chemical and by cumulative releases; determines, in  
9 consultation with the department of natural resources, the  
10 levels to which releases of toxic pollutants, individually and  
11 cumulatively, must be reduced so that a county shall no longer  
12 be designated as an environmental high-impact area; and  
13 determines, in consultation with the department of natural  
14 resources, the impact of releases not regulated by law and  
15 releases in violation of current law.

16 The bill provides that the department of natural resources  
17 shall provide grants to community-based health facilities in  
18 environmental high-impact areas to enable a community-based  
19 health facility to establish special programs to monitor and  
20 respond to adverse health impacts experienced by the residents  
21 of the community.

22 The bill provides for a public hearing process to  
23 investigate issues concerning possible inequities and  
24 discrimination in state enforcement of environmental laws.  
25 The bill provides that the department of natural resources  
26 shall establish a citizen advisory committee to ensure direct  
27 citizen participation in the hearings. The bill provides that  
28 immediately following the completion of the public hearing  
29 process, the department shall file a report with the general  
30 assembly which summarizes the hearings, evaluates any concerns  
31 voiced by the citizens, and recommends remedies for any  
32 existing inequities or discrimination in enforcement.

33 The bill provides that the department of natural resources  
34 shall require the preparation of a community impact statement  
35 as part of the permitting process for any new facility that

1 handles toxic pollutants and for any expansion of an existing  
2 facility. The bill provides that the department shall give  
3 significant weight to the community impact statement when  
4 making any final decision regarding the issuance of a permit;  
5 deny a permit application, if the community impact statement  
6 identifies any current violations of other permits held by the  
7 applicant; and hold a public hearing where members of the  
8 general public of the community where the proposed facility  
9 would be located or where the expansion would take place can  
10 provide public comments on the community impact statement and  
11 other issues relating to the permitting of the facility in  
12 their community.

13 The bill provides that an independent contractor shall  
14 prepare the community impact statement. The bill provides  
15 that the independent contractor shall be selected by the  
16 community's chief elected official following consultation with  
17 community members and the permit applicant. The bill provides  
18 that there shall be a fee for each permit application for  
19 which a community impact statement is required.

20 The bill provides that a community impact statement shall  
21 identify and describe the types of chemical releases expected  
22 from the facility; the projected effects of the facility on  
23 the health, environment, and economy of the community where  
24 the site would be located; the options or alternatives for  
25 mitigating any negative impacts on the health, environment,  
26 and economy of the affected community; the demographic  
27 characteristics of the community where the facility would be  
28 located; the presence in the affected community of any other  
29 existing toxic chemical facilities and hazardous waste sites;  
30 and the applicant's record of compliance with state and  
31 federal environmental laws, including the record of compliance  
32 of any firm affiliated with the applicant.

33 The bill provides that when a community impact statement  
34 identifies a likely significant adverse pollution effect on  
35 the local economy and employment level of the community where

1 the facility will be located, the state shall take action to  
2 mitigate the effects. The bill provides that a community  
3 impact statement shall be completed by the independent  
4 contractor within three months from the date on which the  
5 application is filed.

6 The bill provides that the state shall establish a loan  
7 program and loan fund. The bill provides that the loans shall  
8 be used to provide resources for community-based environmental  
9 cleanup, health testing, and health remediation. The bill  
10 provides that applicants must submit a detailed proposal  
11 outlining how the moneys will be used and how the cleanup,  
12 testing, or remediation will be achieved.

13 The bill provides that a facility that handles toxic  
14 pollutants within 12 miles of any existing permitted facility  
15 shall not receive a permit from the department. The bill  
16 provides for a waiver of the prohibition if, based on public  
17 comment from the community where the facility would be  
18 located, the applicable local government entity determines  
19 that significant local environment needs require the new  
20 facility or decides to accept the siting of the new facility  
21 in exchange for incentives offered to the community by the  
22 operators of the facility.

23 The bill provides that if a county is designated as an  
24 environmental high-impact area, there shall be a moratorium in  
25 that county on the siting or permitting of any new facility or  
26 an expansion of an existing facility that handles toxic  
27 pollutants. The bill provides that a new facility or an  
28 expansion may be sited or permitted in the county during the  
29 moratorium only if the appropriate local government determines  
30 that there is a significant environmental need for the new  
31 facility or expansion, or the facility demonstrates that it  
32 will minimize any releases that threaten public health and  
33 maintain a comprehensive pollution prevention program. The  
34 bill provides that the moratorium shall continue in effect  
35 until the department determines that the county is no longer

1 designated an environmental high-impact area.

2 The bill provides that the department shall establish a  
3 grant program for the purposes of awarding community impact  
4 study grants. The bill provides that the grants shall enable  
5 a person, citizen group, or local governmental entity to  
6 obtain an independent study of the impact of existing  
7 facilities that handle toxic pollutants in the area which were  
8 sited prior to the requirement of community impact statements.  
9 The bill provides that the study shall detail the effects on  
10 the local economy, the environment, and public health.

11 The bill provides that the department shall create a  
12 program to assist communities and individuals in purchasing  
13 special insurance policies to cover the risk of a future  
14 decrease in property values attributable to the siting or  
15 operation of a facility.

16 The bill provides that the state shall enable communities  
17 to enter into compliance agreements with an operator of any  
18 new facility that handles toxic pollutants. The bill provides  
19 that the compliance agreement shall ensure that if a facility  
20 does not satisfy its promises relating to economic development  
21 and increased employment, the local governmental entity shall  
22 get a portion of its incentives reimbursed.

23 The bill provides that the department shall establish a  
24 program enabling communities to hire independent experts to  
25 conduct both on-site and off-site monitoring of local  
26 facilities to ensure that the facilities are complying with  
27 permit requirements and state and federal laws; community  
28 environmental resource centers located within existing  
29 community service facilities and institutions, staffed by an  
30 environmental expert; and a program which facilitates contact  
31 between the general public of an affected community and  
32 environmental groups, health experts, and legal advisors  
33 serving on a volunteer basis to promote environmental justice.

34 The bill provides the department with rulemaking authority  
35 to administer new Code chapter 455L.