

MAR 4 2003  
NATURAL RESOURCES

HOUSE FILE 413  
BY MASCHER

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:

- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

HF 413

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 on-site 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. No net loss of wetland function or acreage will occur.

14 b. No practical alternatives to the proposed activity  
15 exist.

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

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

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

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

1 determining that no practical alternatives to the proposed  
2 activity exist.

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

- 13 a. The sensitivity of the wetland type.
- 14 b. The success of other efforts to restore the wetland  
15 type.
- 16 c. The length of time it will take before a compensation  
17 wetland will become fully functioning.
- 18 d. The degree of difficulty which will be encountered in  
19 creating or restoring wetland hydrology in this setting.
- 20 e. The adequacy of the overall project design.
- 21 f. The threats, if any, posed to the compensation wetland  
22 by pollution or other activities.
- 23 g. The adequacy of proposed protection and management  
24 measures for the proposed compensation wetland.
- 25 h. The extent to which monitoring and mid-course  
26 correction capabilities are proposed.
- 27 i. The extent to which bonds or other assurances are  
28 provided to ensure long-term success.
- 29 j. Any other factors the department believes to be  
30 relevant.

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

32 An action of the department relating to the issuance of a  
33 permit under this subchapter may be appealed to the commission  
34 by the applicant if the appeal is taken within thirty days of  
35 the action being appealed. The appeal shall be conducted as a

1 contested case pursuant to chapter 17A. A final action or  
2 order of the commission is subject to judicial review pursuant  
3 to chapter 17A.

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

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

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

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

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

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

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

17 Sec. 12. Section 427.1, subsection 23, unnumbered  
18 paragraph 1, Code 2003, is amended to read as follows:

19 Land designated as native prairie or land designated as a  
20 protected wetland by the department of natural resources  
21 pursuant to ~~section-456B-12~~ chapter 456B, subchapter 2.

22 Application for the exemption shall be made on forms provided  
23 by the department of revenue and finance. Land designated as  
24 a protected wetland shall be assessed at a value equal to the  
25 average value of the land where the wetland is located and  
26 which is owned by the person granted the exemption. The  
27 application forms shall be filed with the assessing authority  
28 not later than the first of February of the year for which the  
29 exemption is requested. The application must be accompanied  
30 by an affidavit signed by the applicant that if the exemption  
31 is granted, the property will not be used for economic gain  
32 during the assessment year in which the exemption is granted.  
33 If the property is used for economic gain during the  
34 assessment year in which the exemption is granted, the  
35 property shall lose its tax exemption and shall be taxed at

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

21 Sec. 13. Section 654A.16, Code 2003, is amended to read as  
22 follows:

23 654A.16 WETLAND DESIGNATION.

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

35 Sec. 14. Sections 456B.12, 456B.13, and 456B.14, Code

1 2003, are repealed.

2

EXPLANATION

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

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

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

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

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

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

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

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

30 The bill provides that a city or county may adopt zoning,  
31 subdivision control, and other wetland protection regulations  
32 to achieve the objectives of the bill. The bill provides that  
33 a city or county with wetland regulations which are as  
34 restrictive or more restrictive than those of the state may  
35 apply to the department for permission to issue all or a

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

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

27  
28  
29  
30  
31  
32  
33  
34  
35