

JAN 1 2 2005
ENVIRONMENTAL PROTECTION

HOUSE FILE 58
BY JOCHUM

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

A BILL FOR

1 An Act relating to the regulation of wetlands, mitigation of
2 adverse impacts to wetlands, providing penalties and fees, and
3 making an appropriation.

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

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HF 58

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

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

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

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

7 1. "Creation" means the establishment of a wetland where
8 one did not formerly exist and involves wetland construction
9 on nonhydric soils.

10 2. "Enhancement" means activities conducted in an existing
11 wetland to improve or repair its existing or natural wetland
12 functions and values.

13 3. "Fill material" means any material free of toxic
14 contaminants, other than trace amounts, used to fill an
15 aquatic area, replace an aquatic area with dry land, or change
16 the bottom elevation of a wetland for any purpose. "Fill
17 material" does not include any of the following:

18 a. Material resulting from normal farming, silviculture,
19 or ranching activities, such as plowing, cultivating, seeding,
20 or harvesting for the production of food, fiber, or forest
21 products.

22 b. Material used to maintain existing structures,
23 including emergency reconstruction of recently damaged parts
24 of serviceable structures such as dikes, dams, levees,
25 breakwaters, causeways, or bridge abutments or approaches, or
26 transportation structures.

27 4. "Filling" means adding fill material into a wetland for
28 the purpose of creating an upland, changing the bottom
29 elevation of the wetland, or creating impoundments of water.

30 5. "Function" means properties of wetlands that provide
31 ecological or economic benefits including but not limited to
32 flood flow alteration, groundwater recharge, groundwater
33 discharge, sediment and toxicant retention, nutrient removal
34 or transformation, wildlife and aquatic diversity and
35 abundance, uniqueness, and historical and recreational value.

1 These functions can be evaluated using the wetland evaluation
2 technique developed by the United States army corps of
3 engineers or a similar technique developed by the department.

4 6. "Isolated wetlands" means wetlands that meet all of the
5 following criteria:

6 a. The wetlands are inundated or saturated by surface or
7 groundwater at a frequency and duration sufficient to support,
8 and that under normal circumstances do support, a prevalence
9 of vegetation typically adapted for life in saturated soil
10 conditions and possess hydrophytic vegetation, hydric soils,
11 and wetland hydrology.

12 b. The wetlands do not have a surface water connection to
13 United States navigable waterways or as otherwise defined by
14 the United States army corps of engineers.

15 c. The wetlands are delineated in accordance with current
16 delineation specifications of the United States army corps of
17 engineers.

18 d. The wetlands include, but are not limited to, marshes,
19 bogs, fens, and isolated ponds.

20 7. "Isolated wetland permit" means a permit obtained from
21 the department to engage in a regulated activity in an
22 isolated wetland.

23 8. "Mitigation" means applying the following actions in
24 order of acceptability and preference to the department:

25 a. Avoiding an adverse impact.

26 b. Where adverse impacts cannot be avoided, minimizing an
27 adverse impact.

28 c. Where adverse impacts cannot be avoided or minimized,
29 rectifying an adverse impact by repairing, rehabilitating, or
30 restoring the affected environment.

31 d. Where adverse impacts cannot be avoided, minimized, or
32 rectified, compensating for the adverse impact by replacing or
33 providing substitute resources or environments of equal or
34 greater quality and functions.

35 9. "Mitigation bank service area" means the designated

1 area where a mitigation bank provides appropriate compensation
2 for impacts to wetlands and other aquatic resources and that
3 is designated as such in accordance with the process
4 established in the federal guidance for the establishment,
5 use, and operation of mitigation banks.

6 10. "Off-site mitigation" means wetland restoration,
7 creation, enhancement, or preservation occurring farther than
8 one mile from a project boundary, but within the same
9 watershed.

10 11. "On-site mitigation" means wetland restoration,
11 creation, enhancement, or preservation occurring within and
12 not more than one mile from the project boundary, and within
13 the same watershed.

14 12. "Practicable" means available and capable of being
15 executed with existing technology and without significant
16 adverse effect on the economic feasibility of the project in
17 light of the overall project purposes and in consideration of
18 the relative environmental benefit. The department shall have
19 the final determination as to what measures are practicable.

20 13. "Preservation" means the protection of ecologically
21 important wetlands in perpetuity through the implementation of
22 appropriate legal mechanisms to prevent harm to the wetlands.
23 "Preservation" may include protection of adjacent upland areas
24 as necessary to ensure protection of a wetland.

25 14. "Restoration" means the reestablishment of a
26 previously existing wetland at a site where the wetland has
27 ceased to exist.

28 15. "Watershed" means a common surface drainage area.
29 "Watershed" is limited to those parts of the cataloging units
30 that geographically lie within the borders of this state.

31 16. "Wetlands" means those areas that are inundated or
32 saturated by surface or groundwater at a frequency and
33 duration that are sufficient to support, and that under normal
34 circumstances do support, a prevalence of vegetation typically
35 adapted for life in saturated soil conditions. "Wetlands"

1 includes swamps, marshes, bogs, and similar areas that are
2 delineated in accordance with the United States army corps of
3 engineers.

4 17. "Wetland mitigation bank" means a site where wetlands
5 have been restored, created, enhanced, or, in exceptional
6 circumstances, preserved expressly for the purpose of
7 providing mitigation for impacts to wetlands and that has been
8 approved in accordance with the process established in the
9 federal guidelines for the establishment, use, and operation
10 of mitigation banks.

11 Sec. 3. NEW SECTION. 456B.23 PERMITTING GUIDELINES.

12 1. A proposed filling of an isolated wetland shall require
13 an isolated wetland permit and be subject to review
14 requirements established under this subchapter.

15 2. A review shall require the submission of a preactivity
16 notice that includes an application containing an acceptable
17 wetland delineation, a wetland categorization, a description
18 of the project, a description of the acreage of the isolated
19 wetland that will be subject to filling, site photographs, and
20 a mitigation proposal for the impact to the isolated wetland.

21 3. The applicant shall conduct mitigation for the proposed
22 filling of an isolated wetland that is subject to review.
23 With the approval of the director, the applicant shall conduct
24 either on-site mitigation, mitigation at a wetland mitigation
25 bank within the same United States army corps of engineers
26 district as the location of the proposed filling of the
27 isolated wetland, or off-site mitigation.

28 4. A person that has submitted a preactivity notice shall
29 complete the filling within two years after the end of the
30 thirty-day period following the receipt of the preactivity
31 notice by the department. If the filling is not completed
32 within that two-year period, the person shall submit a new
33 preactivity notice.

34 Sec. 4. NEW SECTION. 456B.24 PERMITS.

35 1. A review for an isolated wetland permit shall require

1 all of the following:

2 a. All of the information required to be submitted with a
3 preactivity notice.

4 b. A full antidegradation review.

5 c. The submission of information indicating whether high-
6 quality waters are to be avoided by the proposed filling of
7 the isolated wetland.

8 2. The department shall issue or deny an isolated wetland
9 permit not later than one hundred eighty days after the
10 receipt of an application for the permit. The department
11 shall not issue an isolated wetland permit unless the
12 applicant has demonstrated that the proposed filling will not
13 prevent or interfere with the attainment or maintenance of
14 applicable state water quality standards.

15 3. a. The department may deny an isolated wetland permit
16 if the department determines that the proposed filling of the
17 isolated wetland will result in an adverse short-term or long-
18 term impact on water quality in the state.

19 b. The department may impose any practicable terms and
20 conditions on an isolated wetland permit to ensure adequate
21 protection of water quality in the state.

22 c. Prior to the issuance of an isolated wetland permit, or
23 prior to, during, or after the filling of the isolated wetland
24 that is the subject of the permit, the department may require
25 the applicant to perform various environmental quality tests,
26 including, without limitation, chemical analyses of water, to
27 sediment, or fill material and bioassays, in order to ensure
28 adequate protection of water quality.

29 4. Mitigation for the proposed filling of an isolated
30 wetland that is subject to review shall occur in the following
31 order:

32 a. Practicable on-site mitigation.

33 b. Reasonably identifiable, available, and practicable
34 off-site mitigation within the same watershed.

35 c. If the proposed filling of the isolated wetland will

1 take place within a mitigation bank service area, within that
2 mitigation bank service area. If there is a significant
3 ecological reason that the mitigation location should not be
4 limited to the watershed in which the isolated wetland is
5 located and if the proposed mitigation will result in a
6 substantially greater ecological benefit, in a watershed that
7 is adjacent to the watershed in which the isolated wetland is
8 located.

9 Sec. 5. NEW SECTION. 456B.25 WETLAND MITIGATION BANKS.

10 1. The department shall establish a list of approved
11 wetland mitigation banks. In establishing the list, the
12 department shall give preference to wetland mitigation banks
13 that are comprised of areas involving the restoration of
14 previously existing wetlands. The list established under this
15 section shall not exclude state or local agencies from
16 developing wetland mitigation banks.

17 2. The department may establish and operate a wetland
18 mitigation bank for use by any individual or entity, including
19 any state agency or department, for mitigation purposes in
20 accordance with this subchapter.

21 3. By December 31 of each year, the director shall issue
22 an annual report to the general assembly on the total acreage
23 of isolated wetlands that were subject to filling during the
24 preceding year and the total acreage of isolated wetlands
25 restored, created, enhanced, or preserved through mitigation
26 that same year as a result of isolated wetland permits.

27 Sec. 6. NEW SECTION. 456B.26 PERMIT REVIEW.

28 1. The director shall do all of the following in relation
29 to isolated wetland permits:

30 a. Prescribe the form of the application for an isolated
31 wetland permit.

32 b. Provide an explanation to an isolated wetland permit
33 applicant for the proposed denial of the application.

34 c. Within fifteen business days after the receipt of an
35 application, the director shall notify the applicant if the

1 application is complete. If the application is not complete,
2 the director shall include in the notice an itemized list of
3 the information or materials that are necessary to complete
4 the application. Time periods specified in this subchapter
5 shall not apply until the application is determined by the
6 director to be complete. If the applicant fails to provide
7 information or materials that are necessary to complete the
8 application within sixty days after the receipt of the
9 application, the director may return the incomplete
10 application to the applicant and take no further action on the
11 application.

12 d. Except as provided in subsection 2, the director shall
13 publish notice of the receipt of a complete application in a
14 newspaper of general circulation in the county housing the
15 isolated wetland proposed to be filled. The director shall
16 accept comments concerning the application and requests for a
17 public hearing concerning the application for not more than
18 thirty days following the publication of notice.

19 2. If a public hearing is requested during the thirty-day
20 comment period and the director determines there is
21 significant public interest, the department shall conduct a
22 public hearing concerning the application. Notice of the
23 public hearing shall be published not later than thirty days
24 prior to the date of the hearing in a newspaper of general
25 circulation in the county in which the proposed filling of the
26 isolated wetland that is the subject of the application is to
27 take place. If a public hearing is requested concerning an
28 application, the department shall accept comments concerning
29 the application until fifteen business days after the public
30 hearing. A public hearing conducted under this section shall
31 take place not later than ninety days after the director
32 notifies the applicant that the application is complete.

33 Sec. 7. NEW SECTION. 456B.27 MITIGATION.

34 1. The department may require mitigation for impacts to
35 isolated wetlands to replace or compensate for the long-term

1 and short-term economic, environmental, and natural resource
2 benefits that would be lost by the proposed regulated
3 activity.

4 2. Mitigation for impacts to isolated wetlands shall be
5 conducted in accordance with the following ratios:

6 a. For isolated wetlands, other than forested isolated
7 wetlands, mitigation located at an approved wetland mitigation
8 bank shall be conducted at a rate of two times the size of the
9 isolated wetland area being impacted.

10 b. For forested isolated wetlands, mitigation located at
11 an approved wetland mitigation bank shall be conducted at a
12 rate of two and one-half times the size of the isolated
13 wetland area being impacted.

14 3. Mitigation that involves the enhancement or
15 preservation of existing isolated wetlands shall be calculated
16 and performed in accordance with existing state and federal
17 laws and regulations for wetlands.

18 4. An applicant shall demonstrate that the mitigation site
19 will be protected in perpetuity and that appropriate
20 practicable management measures are, or will be, in place to
21 restrict harmful activities that jeopardize the mitigation.

22 Sec. 8. NEW SECTION. 456B.28 EXEMPTIONS.

23 1. The requirement for an isolated wetlands permit does
24 not apply to a discharge that is the result of any of the
25 following activities:

26 a. Normal farming, silviculture, or ranching activities.

27 b. Maintenance, emergency repair, or reconstruction of
28 damaged parts of structures that are in use in the waters of
29 the state.

30 c. Construction or maintenance of farm ponds, stock ponds,
31 or irrigation ditches.

32 d. Maintenance of drainage ditches.

33 e. Construction or maintenance of farm roads, forest
34 roads, or temporary mining roads that is performed in
35 accordance with best management practices, as determined by

1 the department, to ensure all of the following:

2 (1) That the flow and circulation patterns and chemical
3 and biological characteristics of the affected wetland are not
4 impaired.

5 (2) That the reach of the affected wetland is not reduced.

6 (3) That any adverse effect on the aquatic environment of
7 the affected wetland is minimized to the degree required by
8 the department.

9 2. A discharge that would be exempt under subsection 1 is
10 subject to the permit requirement if the discharge is
11 incidental to any of the following activities:

12 a. An activity that has as its purpose bringing a wetland,
13 or part of a wetland, into a use for which it was not
14 previously subject.

15 b. An activity that may impair the flow or circulation of
16 any waters of the state.

17 c. An activity that may reduce the reach of any waters of
18 the state.

19 Sec. 9. NEW SECTION. 456B.29 FEES.

20 1. The department is authorized to adopt and enforce a fee
21 schedule for purposes of this subchapter. The amount of fees
22 collected annually must not exceed the cost of administering
23 the provisions of this subchapter. The fees collected
24 pursuant to this subchapter are appropriated to the department
25 for purposes of administering this subchapter.

26 2. If a person conducts any activities for which an
27 isolated wetland permit is required under this subchapter
28 without first obtaining such a permit, in addition to
29 penalties outlined in section 456B.31, the person shall pay
30 twice the amount of the application and review fees that the
31 person otherwise would have been required to pay under this
32 subchapter.

33 Sec. 10. NEW SECTION. 456B.30 INSPECTION AUTHORITY.

34 For purposes of enforcing this subchapter, any employee or
35 other representative of the department, upon presenting the

1 employee's or representative's credentials, may do any of the
2 following:

3 1. Enter and inspect any property on which is located a
4 wetland, or part of a wetland, that is subject to a permit
5 issued under this subchapter.

6 2. Enter and inspect any property to investigate a
7 discharge of dredged or fill material.

8 3. Gain access to and inspect any records that the
9 department requires the holder of the isolated wetland permit
10 to keep.

11 Sec. 11. NEW SECTION. 456B.31 JURISDICTION AND
12 PENALTIES.

13 1. A person shall not conduct a regulated activity within
14 an isolated wetland unless an isolated wetlands permit has
15 been issued to the person.

16 2. The district court of the county in which the affected
17 isolated wetlands area or any part thereof lies shall have
18 jurisdiction to restrain a violation of this subchapter upon
19 petition of the department, the attorney general, or any
20 person adversely affected. In the event the affected isolated
21 wetlands area lies in more than one county, jurisdiction shall
22 be in the district court of any county in which any part of
23 the area lies. In the same action the district court having
24 jurisdiction over the affected area may require such area to
25 be restored to its original condition. In the alternative,
26 the department may complete the restoration at the expense of
27 the person altering the area in which case an action for
28 recovery of the amount expended may be brought in any court
29 having jurisdiction to restrain a violation. A bond shall not
30 be required as a condition of the granting of a temporary
31 restraining order under this section, except that the court
32 may in its discretion require that a reasonable bond be posted
33 by any person requesting the court to restrain a violation of
34 this subchapter.

35 3. A person violating any provision of this subchapter

1 involving more than five square yards of isolated wetlands is
2 guilty of a serious misdemeanor.

3 4. A person violating any provision of this subchapter
4 involving five square yards or less of isolated wetlands is
5 guilty of a simple misdemeanor.

6 5. A person who is determined to be in violation of any
7 provision of this subchapter by the department shall be liable
8 for, and may be assessed by the department for, a civil
9 penalty of not less than one hundred dollars nor more than one
10 thousand dollars per day of violation. Whenever the
11 department determines that any person is in violation of any
12 permit, regulation, standard, or requirement under this
13 subchapter, the department may issue an order requiring such
14 person to comply with such permit, regulation, standard, or
15 requirement, including an order requiring restoration when
16 deemed environmentally appropriate by the department. In
17 addition, the department may bring a civil enforcement action
18 under this section as well as seeking appropriate injunctive
19 relief.

20 Sec. 12. NEW SECTION. 456B.32 RULES.

21 The department shall adopt rules pursuant to chapter 17A
22 necessary to implement this subchapter.

23 Sec. 13. Section 427.1, subsection 23, Code 2005, is
24 amended to read as follows:

25 23. NATIVE PRAIRIE AND-WETLAND. Land designated as native
26 prairie ~~or-land-designated-as-a-protected-wetland~~ by the
27 department of natural resources ~~pursuant-to-section-456B-12.~~
28 Application for the exemption shall be made on forms provided
29 by the department of revenue. ~~Land-designated-as-a-protected~~
30 ~~wetland-shall-be-assessed-at-a-value-equal-to-the-average~~
31 ~~value-of-the-land-where-the-wetland-is-located-and-which-is~~
32 ~~owned-by-the-person-granted-the-exemption.~~ The application
33 forms shall be filed with the assessing authority not later
34 than the first of February of the year for which the exemption
35 is requested. The application must be accompanied by an

1 affidavit signed by the applicant that if the exemption is
 2 granted, the property will not be used for economic gain
 3 during the assessment year in which the exemption is granted.
 4 If the property is used for economic gain during the
 5 assessment year in which the exemption is granted, the
 6 property shall lose its tax exemption and shall be taxed at
 7 the rate levied by the county for the fiscal year beginning in
 8 that assessment year. The first annual application shall be
 9 accompanied by a certificate from the department of natural
 10 resources stating that the land is native prairie ~~or-protected~~
 11 ~~wetland~~. The department of natural resources shall issue a
 12 certificate for the native prairie exemption if the department
 13 finds that the land has never been cultivated, is unimproved,
 14 is primarily a mixture of warm season grasses interspersed
 15 with flowering plants, and meets the other criteria
 16 established by the natural resource commission for native
 17 prairie. ~~The-department-of-natural-resources-shall-issue-a~~
 18 ~~certificate-for-the-wetland-exemption-if-the-department-finds~~
 19 ~~the-land-is-a-protected-wetland, as-defined-under-section~~
 20 ~~456B-1, or-if-the-wetland-was-previously-drained-and-cropped~~
 21 ~~but-has-been-restored-under-a-nonpermanent-restoration~~
 22 ~~agreement-with-the-department-or-other-county, state, or~~
 23 ~~federal-agency-or-private-conservation-group.~~ A taxpayer may
 24 seek judicial review of a decision of the department according
 25 to chapter 17A. The natural resource commission shall adopt
 26 rules to implement this subsection.

27 The assessing authority each year may submit to the
 28 department a claim for reimbursement of tax revenue lost from
 29 the exemption. ~~Upon-receipt-of-the-claim, the-department~~
 30 ~~shall-reimburse-the-assessing-authority-an-amount-equal-to-the~~
 31 ~~lost-tax-revenue-based-on-the-value-of-the-protected-wetland~~
 32 ~~as-assessed-by-the-authority, unless-the-department-reimburses~~
 33 ~~the-authority-based-upon-a-departmental-assessment-of-the~~
 34 ~~protected-wetland.~~ The authority may contest the department's
 35 assessment as provided in chapter 17A. ~~The-department-is-not~~

1 ~~required-to-honor-a-claim-submitted-more-than-sixty-days-after~~
2 ~~the-authority-has-assessed-land-where-the-protected-wetland-is~~
3 ~~located-and-which-is-owned-by-the-person-granted-the~~
4 ~~exemption.~~

5 Sec. 14. Section 456B.1, subsections 4 and 5, Code 2005,
6 are amended by striking the subsections.

7 Sec. 15. Section 459.102, subsection 21, Code 2005, is
8 amended to read as follows:

9 21. "Designated wetland" means land designated as a
10 protected wetland by the United States department of the
11 interior or the department of natural resources, ~~including-but~~
12 ~~not-limited-to-a-protected-wetland-as-defined-in-section~~
13 ~~456B.17-if-the-land-is-owned-and-managed-by-the-federal~~
14 ~~government-or-the-department-of-natural-resources.~~ However, a
15 designated wetland does not include land where an agricultural
16 drainage well has been plugged causing a temporary wetland or
17 land within a drainage district or levee district.

18 Sec. 16. Sections 456B.12, 456B.13, 456B.14, and 654A.16,
19 Code 2005, are repealed.

20 EXPLANATION

21 This bill repeals current statutes relating to the
22 inventory and protection of wetlands, makes conforming
23 amendments, and replaces them with a comprehensive wetland
24 program.

25 The bill requires that a proposed filling of an isolated
26 wetland requires an isolated wetland permit and subjects the
27 filling to a review by the department of natural resources.
28 The bill provides that a review shall require the submission
29 of a preactivity notice that includes an application. An
30 applicant shall conduct mitigation for the proposed filling of
31 an isolated wetland that is subject to departmental review.
32 The bill provides that a person that has submitted a
33 preactivity notice shall complete the filling within two
34 years.

35 The bill provides that the department shall issue or deny

1 an isolated wetland permit not later than 180 days after the
2 receipt of an application for the permit. The bill prohibits
3 the department from issuing an isolated wetland permit unless
4 the applicant has demonstrated that the proposed filling will
5 not prevent or interfere with the attainment or maintenance of
6 applicable state water quality standards. The bill provides
7 that the department may deny an isolated wetland permit if the
8 department determines that the proposed filling of the
9 isolated wetland will result in an adverse short-term or long-
10 term impact on water quality in the state. The bill allows
11 the department to impose any practicable terms and conditions
12 on an isolated wetland permit to ensure adequate protection of
13 water quality in the state. The department may require the
14 applicant perform various environmental quality tests in order
15 to ensure adequate protection of water quality. The bill
16 provides a priority order of locations where mitigation for
17 the proposed filling of an isolated wetland that is subject to
18 review shall occur.

19 The bill requires the department to establish a list of
20 approved wetland mitigation banks. Wetland mitigation bank
21 means a site where wetlands have been restored, created,
22 enhanced, or, in exceptional circumstances, preserved
23 expressly for the purpose of providing mitigation for impacts
24 to wetlands and that has been approved in accordance with the
25 process established in the federal guidelines for the
26 establishment, use, and operation of mitigation banks.

27 The bill requires the director to prescribe the form of the
28 application for an isolated wetland permit and provide an
29 explanation to an isolated wetland permit applicant for the
30 proposed denial of the application. The bill requires the
31 director, within 15 business days after the receipt of an
32 application, to notify the applicant if the application is
33 complete. The bill provides procedures for public hearings
34 regarding an isolated wetland permit.

35 The bill allows the department to require mitigation for

1 impacts to isolated wetlands to replace or compensate for the
2 long-term and short-term economic, environmental, and natural
3 resource benefits that would be lost by the proposed regulated
4 activity. The bill requires an applicant to demonstrate that
5 the mitigation site will be protected in perpetuity and that
6 appropriate practicable management measures are, or will be,
7 in place to restrict harmful activities that jeopardize the
8 mitigation.

9 The bill provides that the requirement for an isolated
10 wetlands permit does not apply to any discharge that is the
11 result of normal farming, silviculture, or ranching
12 activities; maintenance, emergency repair, or reconstruction
13 of damaged parts of structures that are in use in the waters
14 of the state; construction or maintenance of farm ponds, stock
15 ponds, or irrigation ditches; maintenance of drainage ditches;
16 or construction or maintenance of certain roads that is
17 performed in accordance with best management practices. The
18 bill provides that an exempt discharge is subject to the
19 permit requirement if the discharge is incidental to an
20 activity that has as its purpose bringing a wetland, or part
21 of a wetland, into a use for which it was not previously
22 subject, an activity that may impair the flow or circulation
23 of any waters of the state, or an activity that may reduce the
24 reach of any waters of the state.

25 The bill allows the department to adopt and enforce a fee
26 schedule. The bill provides that the amount of fees collected
27 annually must not exceed the cost of administering the
28 provisions of this bill and that the fees are appropriated for
29 purposes of administering the provisions. The bill provides
30 that if a person conducts any activities for which an isolated
31 wetland permit is required without first obtaining such a
32 permit, in addition to other penalties, the person shall pay
33 twice the amount of the application and review fees that the
34 person otherwise would have been required to pay.

35 The bill allows any employee or other representative of the

1 department, upon presenting the employee's or representative's
2 credentials, to enter and inspect any property on which is
3 located a wetland, or part of a wetland, that is subject to a
4 permit, enter and inspect any property to investigate a
5 discharge of dredged or fill material, and gain access to and
6 inspect any records that the department requires the holder of
7 the isolated wetland permit to keep.

8 The bill prohibits a person from conducting a regulated
9 activity within an isolated wetland unless an isolated
10 wetlands permit has been issued. The bill allows a district
11 court having jurisdiction over an affected area to require
12 such area to be restored to its original condition. In the
13 alternative, the bill allows the department to complete the
14 restoration at the expense of the person altering the area in
15 which case an action for recovery of the amount expended may
16 be brought in any court having jurisdiction to restrain a
17 violation.

18 The bill provides that a person violating any provision of
19 this bill involving more than five square yards of isolated
20 wetlands is guilty of a serious misdemeanor. The bill
21 provides that a person violating any provision of this bill
22 involving five square yards or less of isolated wetlands is
23 guilty of a simple misdemeanor. The bill provides that a
24 person who is determined to be in violation of any provision
25 of this bill shall be assessed a civil penalty of not less
26 than \$100 nor more than \$1,000 per day of violation. The bill
27 provides that whenever the department determines that any
28 person is in violation of any permit, regulation, standard, or
29 requirement under the bill, the department may issue an order
30 requiring such person to comply with such permit, regulation,
31 standard, or requirement, including an order requiring
32 restoration when deemed environmentally appropriate by the
33 department. The bill provides that, in addition, the
34 department may bring a civil enforcement action as well as
35 seeking an appropriate injunctive relief.