

SENATE FILE 2363
BY COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT

(SUCCESSOR TO SSB 3069)

Passed Senate, Date 3-16-06 Passed House, Date _____
Vote: Ayes 48 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to water quality standards.

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

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SF 2363

1 Section 1. Section 455B.173, subsection 2, unnumbered
2 paragraph 1, Code 2005, is amended to read as follows:

3 Establish, modify, or repeal water quality standards,
4 pretreatment standards and effluent standards, in accordance
5 with the provisions of this chapter. The effluent standards
6 may provide for maintaining the existing quality of the water
7 of the state that is a navigable water of the United States
8 under the federal Water Pollution Control Act where the
9 quality thereof exceeds the requirements of the water quality
10 standards.

11 Sec. 2. WATER QUALITY STANDARDS. The general assembly
12 makes the following findings:

13 1. The federal Water Pollution Control Act provides that
14 the state is responsible for implementation of the federal Act
15 in a manner that the state deems most appropriate.

16 2. Historically, the state has been and continues to be a
17 responsible steward of the environment, including Iowa's water
18 quality.

19 3. The state has adopted water quality standards that are
20 protecting Iowa's water quality.

21 4. State law provides in section 455B.176 that the
22 environmental protection commission, when establishing,
23 modifying, or repealing water quality standards, must base its
24 decision upon data gathered from sources within the state.

25 5. State law provides in section 455B.176, subsection 11,
26 that the goal of any changes to water quality standards shall
27 be a reasonable balance between total costs to the people and
28 to the economy, and the resultant benefits to the people of
29 Iowa.

30 6. The state shall adopt water quality standards that,
31 where attainable, provide water quality for the protection and
32 propagation of fish, shellfish, and wildlife, and for
33 recreation in and on the water.

34 Sec. 3. NEW SECTION. 455B.176A WATER QUALITY STANDARDS.

35 1. For purposes of this section, unless the context

1 otherwise requires:

2 a. "Base flow conditions" means the flow of a stream
3 segment, as measured during the time period between July 1 and
4 September 30, that occurs during a period of time when the
5 watershed, in which the stream segment is located, receives no
6 twenty-four-hour rainfall in excess of one-quarter inch total
7 rainfall and not more than one-half inch total rainfall for
8 the watershed in the preceding two weeks.

9 b. "Credible data" means the same as defined in section
10 455B.171 and is subject to the same requirements as provided
11 in section 455B.193 and may include, but not rely solely on,
12 data that is older than five years and that is obtained
13 pursuant to the best professional judgment of a professional
14 designee or a state or federal agency.

15 c. "Ephemeral stream" means a stream that flows only in
16 response to precipitation and whose channel is primarily above
17 the water table.

18 d. "Professional designee" means the same as defined in
19 section 455B.193.

20 e. "Use attainability analysis" means a structured
21 scientific assessment that includes physical, chemical,
22 biological, and economic factors.

23 2. A water of the state shall be a designated stream
24 segment when any one of the following is met:

25 a. The most recent ten-year median flow is equal to or in
26 excess of one cubic foot per second based on data collected
27 and evaluated by the United States geological survey between
28 July 1 and September 30 of each year or in the absence of
29 stream segment flow data calculations of flow conducted by
30 extrapolation methods provided by the United States geological
31 survey or based upon a calculation method adopted by rule.

32 b. The water is a critical habitat of a threatened or
33 endangered aquatic specie as determined by the department or
34 the United States fish and wildlife service.

35 c. Credible data developed in accordance with section

1 455B.193 shows that water flows that are less than set out in
2 paragraph "a" provide a refuge for aquatic life that permits
3 biological recolonization of intermittently flowing segments.

4 3. All waters of the state not designated as a stream
5 segment pursuant to subsection 2 shall be identified as a
6 general stream segment and shall be subject to narrative water
7 quality standards. The department shall apply rules in
8 existence on March 1, 2006, for water quality standards for
9 general stream segments.

10 4. a. The commission shall adopt rules to define
11 designated uses of stream segments in accordance with the
12 following categories:

13 (1) Agricultural water supply use.

14 (2) Aquatic life support.

15 (3) Domestic water supply.

16 (4) Food procurement use.

17 (5) Industrial water supply use.

18 (6) Recreational use, including primary, secondary, and
19 children's recreational use.

20 (7) Seasonal use. The department may allow for a seasonal
21 use designation for streams that would otherwise be
22 categorized under an aquatic or recreational designation if a
23 varying degree of protection would be sufficient to protect
24 the stream during a seasonal time period.

25 b. The commission shall include subcategories of
26 designated uses of the categories listed in paragraph "a", as
27 deemed appropriate by the commission.

28 c. When reviewing whether a designated use is attainable,
29 the department shall consider at a minimum the following:

30 (1) Whether the natural, ephemeral, intermittent, or low
31 flow conditions or water levels could inhibit recreational
32 activities.

33 (2) If opposite sides of a stream segment would have
34 different designated recreational uses due to differences in
35 public access, the designated use of the entire stream segment

1 may be the higher attainable use.

2 (3) The time period for determining primary contact
3 recreation shall be March 15 through November 15.

4 (4) The degree to which the public has access to the
5 stream segment.

6 (5) The minimum depth of the deepest pool.

7 (6) Stream segments shall be protected for all existing
8 uses as defined by the federal Water Pollution Control Act.

9 5. The commission shall adopt rules designating water
10 quality standards which shall be specific to each designated
11 use adopted pursuant to subsection 4. The standards shall
12 take into account the different characteristics of each
13 designated use and shall provide for only the appropriate
14 level of protection based upon that particular use. The
15 standards shall not be identical for each designated use
16 unless required for the appropriate level of protection. The
17 appropriate level of protection and standards shall be
18 determined on a scientific basis. In the development process
19 for the water quality standards, input shall be received from
20 a water quality standards advisory committee convened by the
21 department. The water quality standards advisory committee
22 shall be comprised of experts in the scientific fields
23 relating to water quality, such as environmental engineering,
24 aquatic toxicology, fisheries biology, and other life sciences
25 and experts in the development of the appropriate levels of
26 aquatic life protection and standards. The water quality
27 standards shall be reviewed and revised by the department as
28 new scientific data becomes available to support revision.
29 6. Prior to any changes in a national pollutant discharge
30 elimination system permit use designation, the department or a
31 designee of the department shall conduct a use attainability
32 analysis. The commission shall adopt rules that establish
33 procedures and criteria to be used in the development of a use
34 attainability analysis. The rules shall, at a minimum,
35 provide all of the following:

1 a. A designated use, which is not an existing use as
2 defined by the federal Water Pollution Control Act, may be
3 removed due to any of the following:

4 (1) Naturally occurring pollutant concentrations prevent
5 the attainment of the use.

6 (2) Natural, ephemeral, intermittent, or low flow
7 conditions or water levels prevent the attainment of the use,
8 unless these conditions may be compensated for by the
9 discharge of sufficient volume of effluent discharges without
10 violating state water conservation requirements to enable uses
11 to be met.

12 (3) Human caused conditions or sources of pollution
13 prevent the attainment of the use and cannot be remedied or
14 would cause more environmental damage to correct than to leave
15 in place.

16 (4) Dams, diversions, or other types of hydrologic
17 modifications preclude the attainment of the use, and it is
18 not feasible to restore the water body to its original
19 condition or to operate such modification in a way that would
20 result in the attainment of the use.

21 (5) Physical conditions related to the natural features of
22 the water body, such as the lack of a proper substrate, cover,
23 flow, depth, pools, riffles, and the like, unrelated to water
24 quality, preclude attainment of aquatic life protection uses.

25 (6) Controls more stringent than those required by
26 sections 1311(b) and 1316 of the federal Water Pollution
27 Control Act would result in substantial and widespread
28 economic and social impact.

29 b. A designated use shall not be removed if any of the
30 following occur:

31 (1) The designated use is an existing use, as defined by
32 the federal Water Pollution Control Act, unless a use
33 requiring more stringent criteria is added.

34 (2) Such uses will be attained by implementing effluent
35 limits required under sections 1311(b) and 1316 of the federal

1 Water Pollution Control Act and by implementing cost-effective
2 and reasonable best management practices for nonpoint source
3 control.

4 c. Where existing water quality standards specify
5 designated uses less than those which are presently being
6 attained, the commission shall revise its standards to reflect
7 the uses actually being attained.

8 7. The department shall consider the substantial and
9 widespread economic and social impact that may occur as a
10 result of a designation. To make this determination, the
11 department shall review circumstances that are unique to each
12 regulated entity to determine whether substantial and
13 widespread economic and social impact would occur. The
14 analysis shall demonstrate whether the regulated entity would
15 face substantial financial impacts due to the costs of
16 compliance and that the affected community would bear
17 significant adverse impacts. The department shall work with
18 the regulated entity to gather necessary information to make
19 this determination.

20 a. The commission shall adopt rules to determine when a
21 regulated entity and the affected community would suffer
22 substantial and widespread economic and social impact due to
23 the costs of complying with a water quality standard. To make
24 this determination, the department shall review the
25 circumstances that are unique to each regulated entity and the
26 affected community. The rules shall include but not be
27 limited to all of the following elements:

28 (1) A financial analysis of the discharger to determine if
29 the capital, operating, and maintenance costs of pollution
30 control will have a substantial impact.

31 (2) The financial impact on households resulting from
32 compliance.

33 (3) The ability of the person releasing a pollutant into a
34 water of the state to obtain pollution control financing and
35 the general economic health of that person.

1 (4) The change in socioeconomic conditions that would
2 occur as a result of compliance. Factors to consider should
3 include but not be limited to median household income,
4 unemployment, and overall net debt as a percent of full market
5 value of taxable property.

6 (5) The benefits of improved water quality, such as the
7 expansion of consumptive markets, enhanced recreational use,
8 and increased property values in the community.

9 b. The department may grant a regulated entity a variance
10 from meeting a water quality standard pursuant to section
11 455B.181 if it is determined that the regulated entity or the
12 affected community would suffer substantial and widespread
13 economic and social impact. The department shall ensure the
14 conditions of any discharge permit variance represent
15 reasonable progress toward complying with water quality
16 standards but do not result in substantial and widespread
17 economic and social impact.

18 8. A regulated entity may use an alternative technology
19 system to meet water quality standards for either technology-
20 based or water quality-based effluent limits. The department
21 shall convene a technical advisory committee to assist in the
22 development of rules to allow for the use of appropriate
23 alternative technologies that include but are not limited to
24 all of the following:

25 a. Performance-based standards for alternative technology
26 systems.

27 b. Effluent reuse standards.

28 c. Criteria for large subsurface, midsize treatment, and
29 small cluster wastewater systems.

30 d. Setback requirements appropriate to the alternative
31 treatment technology.

32 e. Monitoring requirements appropriate to the alternative
33 technology and size of the treatment system.

34 f. Sizing factors based on soil morphology.

35 g. Design standards for alternative technology system

1 types.

2 9. The commission shall adopt rules for a review process
3 for standardized treatment systems, and expedited technical
4 reviews for projects that meet the design standards adopted
5 pursuant to subsection 8, paragraph "g", including
6 standardized review checklists for the systems.

7 10. a. The commission shall adopt rules pursuant to
8 chapter 17A to administer this section. All new or revised
9 stream segment use designations shall be adopted by rule. Any
10 rule that establishes, modifies, or repeals existing water
11 quality standards in this state shall be adopted in
12 conformance with this section.

13 b. Data to substantiate a use designation for a stream
14 segment shall be collected and used in accordance with the
15 credible data standards as described in subsection 1 and in
16 sections 455B.193 through 455B.195.

17 c. A new or revised use designation for a stream segment
18 shall only occur as the result of a use attainability
19 analysis.

20 d. A stream segment designation in existence on the
21 effective date of this Act that is identified on the 2004 Iowa
22 surface water classification list shall remain in effect until
23 the department or its professional designee completes a use
24 attainability analysis on each designated stream segment. The
25 use designation shall continue in effect without further
26 rulemaking if, after the use attainability analysis is
27 completed, the department determines that the 2004 Iowa
28 surface water classification for that designated stream
29 segment is the appropriate designated use for that stream
30 segment.

31 e. All use attainability analyses shall be conducted in
32 accordance with the following:

33 (1) A use attainability analysis for each designated
34 stream segment shall be conducted by either the department or
35 a professional designee.

1 (2) A use attainability analysis conducted by a
2 professional designee shall comply with the following review
3 process:

4 (a) Within thirty days after receipt of submission of a
5 use attainability analysis, the department shall review and
6 provide a written determination of whether the documentation
7 submitted is complete.

8 (b) Within ninety days after receipt of submission of a
9 completed use attainability analysis, the department shall
10 review and provide a written determination of whether a new or
11 revised designated use is appropriate for the stream segment.

12 (3) A use attainability analysis for a classified stream
13 segment and the written determination of the appropriate
14 designated use for the designated stream segment shall be made
15 available to the public.

16 (4) Any regulated entity aggrieved by such a determination
17 may make a written request, within thirty days from the date
18 the written determination of the appropriate designated use is
19 made available to the public, for a meeting with the director
20 or the director's designee to appeal the determination. The
21 regulated entity shall be allowed to provide evidence that the
22 designation is not appropriate under the criteria as
23 established in this section.

24 f. (1) By December 31, 2006, the department shall publish
25 a list of all designated stream segments that receive a
26 permitted discharge for which a use attainability analysis for
27 recreational use and aquatic life has not been completed and a
28 list of all designated stream segments that receive a
29 permitted discharge for which a use attainability analysis for
30 recreational use and aquatic life has been completed and
31 whether a recreational or aquatic use has been determined to
32 be or not to be attainable. By December 31, 2007, a use
33 attainability analysis shall be completed for all newly
34 designated stream segments that receive a permitted discharge.

35 (2) A use attainability analysis for a designated stream

1 segment receiving a permitted discharge shall be conducted by
2 either the department or a professional designee.

3 (3) The department shall make public a written
4 determination of whether a new or revised use designation is
5 appropriate for the designated stream segment prior to
6 adoption by rule of the proposed changes.

7 g. The department shall complete, upon request, a use
8 attainability analysis for recreational and aquatic uses on
9 any designated stream segment not receiving a permitted
10 discharge in accordance with the following provisions:

11 (1) The department shall make public a written
12 determination of whether a new or revised designated use is
13 appropriate for the designated stream segment within ninety
14 days of completion of the use attainability analysis prior to
15 adoption by rule of the proposed changes.

16 (2) The department shall accept a use attainability
17 analysis submitted by someone other than a professional
18 designee.

19 (a) Within thirty days after receipt of submission of a
20 use attainability analysis, the department shall review and
21 provide a written determination of whether the documentation
22 submitted is complete. |

23 (b) Within ninety days after receipt of submission of a
24 completed use attainability analysis, the department shall
25 review and make available to the public a written
26 determination of whether a new or revised use designation is
27 appropriate for the designated stream segment.

28 h. Any regulated entity or property owner adjacent to the
29 accessed stream segment aggrieved by such a determination may
30 make a written request, within thirty days from the date the
31 written determination of the appropriate use designation is
32 made available to the public, for a meeting with the director
33 or the director's designee to appeal the determination. A
34 regulated entity shall be allowed to provide evidence that the
35 designation is not appropriate under the criteria as

1 established in this subsection.

2 11. An operation permit issued pursuant to section
3 455B.173 that expires before a use attainability analysis is
4 performed shall remain in effect and the department shall not
5 renew the permit until a use attainability analysis is
6 completed. If a use attainability analysis demonstrates that
7 a change in the use designation is warranted, the permit shall
8 remain in effect and the department shall not renew the permit
9 until the stream use designation is changed. In order for an
10 expired permit to remain in effect, the permit holder must
11 meet the requirements for a permit renewal. This subsection
12 does not apply if the permit applicant and the department
13 agree that the performance of a use attainability analysis
14 presents no reasonable likelihood of resulting in a change to
15 the existing stream use designations.

16 Sec. 4. WATERSHED QUALITY PLANNING TASK FORCE.

17 1. A watershed quality planning task force is established
18 within the department of natural resources in cooperation with
19 the Iowa department of agriculture and land stewardship. By
20 June 30, 2008, the task force shall report to the general
21 assembly its recommendations for a voluntary statewide water
22 quality program which is designed to achieve all of the
23 following goals:

24 a. Improving water quality and optimizing the costs of
25 voluntarily achieving and maintaining water quality standards.

26 b. Creating economic incentives for voluntary nonpoint
27 source load reductions, point source discharge reductions
28 beyond those required by the federal Water Pollution Control
29 Act, implementation of pollution prevention programs, wetland
30 restoration and creation, and the development of emerging
31 pollution control technologies.

32 c. Facilitating the implementation of total maximum daily
33 loads, urban stormwater control programs, and nonpoint source
34 management practices required or authorized under the federal
35 Water Pollution Control Act. This paragraph shall not be

1 construed to obviate the requirement to develop a total
2 maximum daily load for waters that do not meet water quality
3 standards as required by section 303(d) of the federal Water
4 Pollution Control Act or to delay implementation of a total
5 maximum daily load that has been approved by the department
6 and the director.

7 d. Providing incentives for the development of new and
8 more accurate and reliable pollution control quantification
9 protocols and procedures.

10 e. Providing greater flexibility through community-based,
11 nonregulatory, and performance-driven watershed management
12 planning.

13 2. Membership on the task force shall consist of all of
14 the following:

15 a. Voting members of the task force shall include all of
16 the following:

17 (1) One member selected by the Iowa association of
18 municipal utilities.

19 (2) One member selected by the Iowa league of cities.

20 (3) One member selected by the Iowa association of
21 business and industry.

22 (4) One member selected by the Iowa water pollution
23 control association.

24 (5) One member selected by the Iowa rural water
25 association.

26 (6) One member selected by growing green communities.

27 (7) One member selected by the Iowa environmental council.

28 (8) One member selected by the Iowa farm bureau
29 federation.

30 (9) One member selected by the Iowa corn growers
31 association.

32 (10) One member selected by the Iowa soybean association.

33 (11) One member selected by the Iowa pork producers
34 council.

35 (12) One member selected by the soil and water

1 conservation districts of Iowa.

2 (13) One person representing the department of agriculture
3 and land stewardship selected by the secretary of agriculture.

4 (14) One person representing the department of natural
5 resources selected by the director.

6 (15) Two members selected by the Iowa conservation
7 alliance.

8 b. Nonvoting members of the task force shall include all
9 of the following:

10 (1) Two members of the senate. One senator shall be
11 appointed by the republican leader of the senate and one
12 senator shall be appointed by the democratic leader of the
13 senate.

14 (2) Two members of the house of representatives. One
15 member shall be appointed by the speaker of the house of
16 representatives and one member shall be appointed by the
17 minority leader of the house of representatives.

18 Sec. 5. WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM.

19 1. The Iowa finance authority shall establish and
20 administer a wastewater treatment financial assistance program
21 to provide financial assistance in the form of low-interest
22 loans, no-interest loans, forgivable loans, or grants to
23 enhance water quality.

24 2. Financial assistance under the program shall be used
25 for disadvantaged communities to install or upgrade wastewater
26 treatment facilities and systems. Financial assistance may be
27 used as part of a project funded in whole or in part by
28 financial assistance provided through other state or federally
29 funded programs.

30 EXPLANATION

31 This bill relates to water quality standards.

32 The bill provides that a water of the state shall be a
33 designated stream segment when one of three criteria is met.
34 The criteria include the meeting of certain flow rates,
35 whether the water is a critical habitat of a threatened or

1 endangered aquatic specie, or credible data supports that
2 certain low water flows provide a refuge for certain aquatic
3 life.

4 The bill provides that all waters of the state not
5 designated as a stream segment shall be identified as a
6 general stream segment and be subject to narrative water
7 quality standards.

8 The bill requires the environmental protection commission
9 to adopt rules to define designated uses of stream segments.
10 The bill provides categories including agricultural water
11 supply use, aquatic life support, domestic water supply, food
12 procurement use, industrial water supply use, recreational
13 use, and seasonal use.

14 The bill requires the commission to adopt rules designating
15 water quality standards which shall be specific to each
16 designated use. The bill requires the appropriate level of
17 protection and standards to be determined on a scientific
18 basis. The bill requires input from a water quality standards
19 advisory committee during the development process.

20 The bill provides that prior to any changes in a national
21 pollutant discharge elimination system permit use designation,
22 the department shall conduct a use attainability analysis.
23 The bill provides that a designated use, which is not an
24 existing use, may be removed due to certain existing
25 circumstances listed in the bill. The bill provides
26 circumstances under which designated uses shall not be
27 removed. The bill provides that, where existing water quality
28 standards specify designated uses less than those which are
29 presently being attained, the commission is required to revise
30 standards to reflect the uses actually being attained.

31 The bill requires the department to consider the
32 substantial and widespread economic and social impact that may
33 occur as a result of a designation. The bill requires an
34 analysis to examine whether the regulated entity would face
35 substantial financial impacts due to the costs of compliance

1 and that the affected community would bear significant adverse
2 impacts. The bill allows the department to grant a regulated
3 entity a variance from meeting a water quality standard if it
4 is determined that the regulated entity or the affected
5 community would suffer substantial and widespread economic and
6 social impact. The bill requires the department to ensure
7 that the conditions of any discharge permit variance represent
8 reasonable progress toward complying with water quality
9 standards but do not result in substantial and widespread
10 economic and social impact.

11 The bill allows a regulated entity to use an alternative
12 technology system to meet water quality standards for either
13 technology-based or water quality-based effluent limits. The
14 bill requires assistance from a technical advisory committee
15 to assist in the development of rules to allow for the use of
16 appropriate alternative technologies. The bill requires the
17 commission to adopt rules for a review process for
18 standardized treatment systems, and expedited technical
19 reviews for projects that meet the design standards.

20 The bill requires all new or revised stream segment use
21 designations to be adopted by rule. The bill requires data to
22 substantiate a use designation to be collected using credible
23 data standards. The bill requires a new or revised use
24 designation to only occur as the result of a use attainability
25 analysis. The bill provides that a stream segment designation
26 in existence on the effective date of the bill that is
27 identified on the 2004 Iowa surface water classification list
28 shall remain in effect until the department completes a use
29 attainability analysis on each designated stream segment. The
30 bill provides a procedure for a use attainability analysis.

31 The bill provides that, by December 31, 2006, the
32 department shall publish a list of all designated stream
33 segments that receive a permitted discharge for which a use
34 attainability analysis for recreational use and aquatic life
35 use has not been completed and a list of all designated stream

1 segments that receive a permitted discharge for which a use
2 attainability analysis for recreational use and aquatic life
3 use has been completed and whether a recreational or aquatic
4 life use has been determined to be attainable. The bill
5 provides that, by December 31, 2007, a use attainability
6 analysis shall be completed for all newly designated stream
7 segments that receive a permitted discharge.

8 The bill requires the department, upon request, to complete
9 a use attainability analysis for recreational and aquatic uses
10 on any designated stream segment not receiving a permitted
11 discharge in accordance with certain procedures. The bill
12 provides an appeal process.

13 The bill provides for the continuation of operation permits
14 scheduled to expire before a use attainability analysis is
15 performed.

16 The bill establishes a watershed quality planning task
17 force to report to the general assembly recommendations for a
18 voluntary statewide water quality program designed to achieve
19 improving water quality and optimizing the costs of
20 voluntarily achieving and maintaining water quality standards;
21 creating economic incentives for voluntary reductions;
22 facilitating the implementation of total maximum daily loads,
23 urban stormwater control programs, and nonpoint source
24 management practices required or authorized under the federal
25 Water Pollution Control Act; providing incentives for the
26 development of new and more accurate and reliable pollution
27 control quantification protocols and procedures; and providing
28 greater flexibility through community-based, nonregulatory,
29 and performance-driven watershed management planning.

30 The bill requires the Iowa finance authority to establish
31 and administer a wastewater treatment financial assistance
32 program to provide financial assistance in the form of low-
33 interest loans, no-interest loans, forgivable loans, or grants
34 to enhance water quality.

35

SENATE FILE 2363

S-5075

1 Amend Senate File 2363 as follows:

- 2 1. Page 3, line 5, by striking the words and
3 figure "pursuant to subsection 2".
4 2. Page 3, by striking lines 7 through 9 and
5 inserting the following: "quality standards."
6 3. Page 4, line 30, by inserting after the word
7 "permit" the following: "effluent limitation based
8 upon a new".
9 4. By striking page 8, line 13, through page 9,
10 line 23.
11 5. Page 10, line 33, by striking the words "to
12 appeal the determination".
13 6. By renumbering and relettering as necessary.

By FRANK B. WOOD

S-5075 FILED MARCH 15, 2006

SENATE FILE 2363

S-5080

1 Amend Senate File 2363 as follows:

2 1. Page 3, line 5, by striking the words and
3 figure "pursuant to subsection 2".

4 2. Page 3, by striking lines 7 through 9 and
5 inserting the following: "quality standards."

6 3. Page 4, line 30, by inserting after the word
7 "permit" the following: "effluent limitation based
8 upon a new".

9 4. Page 8, line 2, by inserting after the word
10 "review" the following: "and approval".

11 5. By striking page 8, line 13, through page 9,
12 line 23.

13 6. Page 10, line 10, by inserting after the word
14 "discharge" the following: "or on any previously
15 designated stream segment".

16 7. Page 10, line 33, by striking the words "to
17 appeal the determination".

18 8. Page 10, line 34, by inserting after the word
19 "entity" the following: "or property owner adjacent
20 to the accessed stream segment".

21 9. Page 13, line 19, by striking the words
22 "finance authority" and inserting the following:
23 "department of economic development".

24 10. Page 13, line 19, by inserting after the word
25 "shall" the following: "adopt rules to".

26 11. Page 13, line 20, by striking the word "a".

27 12. Page 13, lines 21 and 22, by striking the
28 words "financial assistance in the form of low-
29 interest loans, no-interest loans, forgivable loans,
30 or".

31 13. Page 13, line 26, by inserting after the word
32 "systems" the following: ", and for engineering or
33 technical assistance for facility planning and
34 design".

35 14. Page 13, by inserting after line 29 the
36 following:

37 "____. The department shall issue grants
38 quarterly."

39 15. By renumbering and relettering as necessary.

By FRANK B. WOOD

S-5080 FILED MARCH 16, 2006

ADOPTED

Fiscal Services Division
Legislative Services Agency
Fiscal Note

SF 2363 - Water Quality Standards (LSB 5158 SV)

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Fiscal Note Version - New

Description

Senate File 2363 addresses the State's water quality standards. The Bill:

1. Specifies that State water must meet one of the three outlined criteria to become a designated stream segment.
2. Specifies that remaining State water will be designated as general stream segments.
3. Requires the Environmental Protection Commission to adopt administrative rules to define designated uses of stream segments and then adopt water quality standards for each designated use. A Water Quality Standards Advisory Committee will provide scientific information to the Commission during the rules development process.
4. Requires the Department of Natural Resources (DNR) to conduct a use attainability analysis prior to changing a National Pollutant Discharge Elimination System Permit use designation.
5. Specifies the DNR will consider social and economic impacts to a community resulting from the assignment of a use designation. The Environmental Protection Commission will adopt administrative rules for the DNR to use to assist in making that determination.
6. Allows a regulated entity to use approved alternative technologies to meet water quality standards.
7. Specifies the DNR will publish a list of all designated stream segments by December 31, 2006, and whether a use-attainability analysis has been completed.
8. Requires the DNR to complete a use-attainability analysis for all newly designated stream segments by December 31, 2007.
9. Establishes a Watershed Quality Planning Task Force and specifies the membership. Requires the Task Force to submit a report to the General Assembly complete with recommendations by June 30, 2008.
10. Establishes a Wastewater Treatment Financial Assistance Program in the Iowa Finance Authority to provide low-interest loans, no-interest loans, or grants to cities and towns for wastewater treatment facilities.

Assumptions

1. The DNR estimates the cost to complete the stream assessments would be \$400,000 for FY 2007 and \$350,000 for FY 2008.
2. The DNR estimates the cost of the Watershed Quality Planning Task Force to be minimal.

Fiscal Impact

The estimated fiscal impact of SF 2363 is an increase in expenditures of \$400,000 in FY 2007 and \$350,000 in FY 2008 to the DNR. The Bill does not specify a funding source for these expenditures.

Source

Department of Natural Resources

/s/ Holly M. Lyons

March 16, 2006

The fiscal note and correctional impact statement for this bill was prepared pursuant to Joint Rule 17 and pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Fiscal Services Division, Legislative Services Agency to members of the Legislature upon request.

SENATE FILE 2363
BY COMMITTEE ON NATURAL RESOURCES
AND ENVIRONMENT

(SUCCESSOR TO SSB 3069)

(AS AMENDED AND PASSED BY THE SENATE MARCH 16, 2006)

_____ - New Language by the Senate

* - Language Stricken by the Senate

Passed Senate, Date _____

Passed House, Date 4-3-06

Vote: Ayes _____ Nays _____

Vote: Ayes 98 Nays 0

Approved _____

A BILL FOR

1 An Act relating to water quality standards.

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

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S.F. 2363

SF 2363

tm/cc/26

1 Section 1. Section 455B.173, subsection 2, unnumbered
2 paragraph 1, Code 2005, is amended to read as follows:

3 Establish, modify, or repeal water quality standards,
4 pretreatment standards and effluent standards, in accordance
5 with the provisions of this chapter. The effluent standards
6 may provide for maintaining the existing quality of the water
7 of the state that is a navigable water of the United States
8 under the federal Water Pollution Control Act where the
9 quality thereof exceeds the requirements of the water quality
10 standards.

11 Sec. 2. WATER QUALITY STANDARDS. The general assembly
12 makes the following findings:

13 1. The federal Water Pollution Control Act provides that
14 the state is responsible for implementation of the federal Act
15 in a manner that the state deems most appropriate.

16 2. Historically, the state has been and continues to be a
17 responsible steward of the environment, including Iowa's water
18 quality.

19 3. The state has adopted water quality standards that are
20 protecting Iowa's water quality.

21 4. State law provides in section 455B.176 that the
22 environmental protection commission, when establishing,
23 modifying, or repealing water quality standards, must base its
24 decision upon data gathered from sources within the state.

25 5. State law provides in section 455B.176, subsection 11,
26 that the goal of any changes to water quality standards shall
27 be a reasonable balance between total costs to the people and
28 to the economy, and the resultant benefits to the people of
29 Iowa.

30 6. The state shall adopt water quality standards that,
31 where attainable, provide water quality for the protection and
32 propagation of fish, shellfish, and wildlife, and for
33 recreation in and on the water.

34 Sec. 3. NEW SECTION. 455B.176A WATER QUALITY STANDARDS.

35 1. For purposes of this section, unless the context

1 otherwise requires:

2 a. "Base flow conditions" means the flow of a stream
3 segment, as measured during the time period between July 1 and
4 September 30, that occurs during a period of time when the
5 watershed, in which the stream segment is located, receives no
6 twenty-four-hour rainfall in excess of one-quarter inch total
7 rainfall and not more than one-half inch total rainfall for
8 the watershed in the preceding two weeks.

9 b. "Credible data" means the same as defined in section
10 455B.171 and is subject to the same requirements as provided
11 in section 455B.193 and may include, but not rely solely on,
12 data that is older than five years and that is obtained
13 pursuant to the best professional judgment of a professional
14 designee or a state or federal agency.

15 c. "Ephemeral stream" means a stream that flows only in
16 response to precipitation and whose channel is primarily above
17 the water table.

18 d. "Professional designee" means the same as defined in
19 section 455B.193.

20 e. "Use attainability analysis" means a structured
21 scientific assessment that includes physical, chemical,
22 biological, and economic factors.

23 2. A water of the state shall be a designated stream
24 segment when any one of the following is met:

25 a. The most recent ten-year median flow is equal to or in
26 excess of one cubic foot per second based on data collected
27 and evaluated by the United States geological survey between
28 July 1 and September 30 of each year or in the absence of
29 stream segment flow data calculations of flow conducted by
30 extrapolation methods provided by the United States geological
31 survey or based upon a calculation method adopted by rule.

32 b. The water is a critical habitat of a threatened or
33 endangered aquatic specie as determined by the department or
34 the United States fish and wildlife service.

35 c. Credible data developed in accordance with section

1 455B.193 shows that water flows that are less than set out in
2 paragraph "a" provide a refuge for aquatic life that permits
3 biological recolonization of intermittently flowing segments.

4 3. All waters of the state not designated as a stream
*5 segment shall be identified as a general stream segment and
6 shall be subject to narrative water quality standards.

7 4. a. The commission shall adopt rules to define
8 designated uses of stream segments in accordance with the
9 following categories:

10 (1) Agricultural water supply use.

11 (2) Aquatic life support.

12 (3) Domestic water supply.

13 (4) Food procurement use.

14 (5) Industrial water supply use.

15 (6) Recreational use, including primary, secondary, and
16 children's recreational use.

17 (7) Seasonal use. The department may allow for a seasonal
18 use designation for streams that would otherwise be
19 categorized under an aquatic or recreational designation if a
20 varying degree of protection would be sufficient to protect
21 the stream during a seasonal time period.

22 b. The commission shall include subcategories of
23 designated uses of the categories listed in paragraph "a", as
24 deemed appropriate by the commission.

25 c. When reviewing whether a designated use is attainable,
26 the department shall consider at a minimum the following:

27 (1) Whether the natural, ephemeral, intermittent, or low
28 flow conditions or water levels could inhibit recreational
29 activities.

30 (2) If opposite sides of a stream segment would have
31 different designated recreational uses due to differences in
32 public access, the designated use of the entire stream segment
33 may be the higher attainable use.

34 (3) The time period for determining primary contact
35 recreation shall be March 15 through November 15.

1 (4) The degree to which the public has access to the
2 stream segment.

3 (5) The minimum depth of the deepest pool.

4 (6) Stream segments shall be protected for all existing
5 uses as defined by the federal Water Pollution Control Act.

6 5. The commission shall adopt rules designating water
7 quality standards which shall be specific to each designated
8 use adopted pursuant to subsection 4. The standards shall
9 take into account the different characteristics of each
10 designated use and shall provide for only the appropriate
11 level of protection based upon that particular use. The
12 standards shall not be identical for each designated use
13 unless required for the appropriate level of protection. The
14 appropriate level of protection and standards shall be
15 determined on a scientific basis. In the development process
16 for the water quality standards, input shall be received from
17 a water quality standards advisory committee convened by the
18 department. The water quality standards advisory committee
19 shall be comprised of experts in the scientific fields
20 relating to water quality, such as environmental engineering,
21 aquatic toxicology, fisheries biology, and other life sciences
22 and experts in the development of the appropriate levels of
23 aquatic life protection and standards. The water quality
24 standards shall be reviewed and revised by the department as
25 new scientific data becomes available to support revision.

26 6. Prior to any changes in a national pollutant discharge
27 elimination system permit effluent limitation based upon a new
28 use designation, the department or a designee of the
29 department shall conduct a use attainability analysis. The
30 commission shall adopt rules that establish procedures and
31 criteria to be used in the development of a use attainability
32 analysis. The rules shall, at a minimum, provide all of the
33 following:

34 a. A designated use, which is not an existing use as
35 defined by the federal Water Pollution Control Act, may be

1 removed due to any of the following:

2 (1) Naturally occurring pollutant concentrations prevent
3 the attainment of the use.

4 (2) Natural, ephemeral, intermittent, or low flow
5 conditions or water levels prevent the attainment of the use,
6 unless these conditions may be compensated for by the
7 discharge of sufficient volume of effluent discharges without
8 violating state water conservation requirements to enable uses
9 to be met.

10 (3) Human caused conditions or sources of pollution
11 prevent the attainment of the use and cannot be remedied or
12 would cause more environmental damage to correct than to leave
13 in place.

14 (4) Dams, diversions, or other types of hydrologic
15 modifications preclude the attainment of the use, and it is
16 not feasible to restore the water body to its original
17 condition or to operate such modification in a way that would
18 result in the attainment of the use.

19 (5) Physical conditions related to the natural features of
20 the water body, such as the lack of a proper substrate, cover,
21 flow, depth, pools, riffles, and the like, unrelated to water
22 quality, preclude attainment of aquatic life protection uses.

23 (6) Controls more stringent than those required by
24 sections 1311(b) and 1316 of the federal Water Pollution
25 Control Act would result in substantial and widespread
26 economic and social impact.

27 b. A designated use shall not be removed if any of the
28 following occur:

29 (1) The designated use is an existing use, as defined by
30 the federal Water Pollution Control Act, unless a use
31 requiring more stringent criteria is added.

32 (2) Such uses will be attained by implementing effluent
33 limits required under sections 1311(b) and 1316 of the federal
34 Water Pollution Control Act and by implementing cost-effective
35 and reasonable best management practices for nonpoint source

1 control.

2 c. Where existing water quality standards specify
3 designated uses less than those which are presently being
4 attained, the commission shall revise its standards to reflect
5 the uses actually being attained.

6 7. The department shall consider the substantial and
7 widespread economic and social impact that may occur as a
8 result of a designation. To make this determination, the
9 department shall review circumstances that are unique to each
10 regulated entity to determine whether substantial and
11 widespread economic and social impact would occur. The
12 analysis shall demonstrate whether the regulated entity would
13 face substantial financial impacts due to the costs of
14 compliance and that the affected community would bear
15 significant adverse impacts. The department shall work with
16 the regulated entity to gather necessary information to make
17 this determination.

18 a. The commission shall adopt rules to determine when a
19 regulated entity and the affected community would suffer
20 substantial and widespread economic and social impact due to
21 the costs of complying with a water quality standard. To make
22 this determination, the department shall review the
23 circumstances that are unique to each regulated entity and the
24 affected community. The rules shall include but not be
25 limited to all of the following elements:

26 (1) A financial analysis of the discharger to determine if
27 the capital, operating, and maintenance costs of pollution
28 control will have a substantial impact.

29 (2) The financial impact on households resulting from
30 compliance.

31 (3) The ability of the person releasing a pollutant into a
32 water of the state to obtain pollution control financing and
33 the general economic health of that person.

34 (4) The change in socioeconomic conditions that would
35 occur as a result of compliance. Factors to consider should

1 include but not be limited to median household income,
2 unemployment, and overall net debt as a percent of full market
3 value of taxable property.

4 (5) The benefits of improved water quality, such as the
5 expansion of consumptive markets, enhanced recreational use,
6 and increased property values in the community.

7 b. The department may grant a regulated entity a variance
8 from meeting a water quality standard pursuant to section
9 455B.181 if it is determined that the regulated entity or the
10 affected community would suffer substantial and widespread
11 economic and social impact. The department shall ensure the
12 conditions of any discharge permit variance represent
13 reasonable progress toward complying with water quality
14 standards but do not result in substantial and widespread
15 economic and social impact.

16 8. A regulated entity may use an alternative technology
17 system to meet water quality standards for either technology-
18 based or water quality-based effluent limits. The department
19 shall convene a technical advisory committee to assist in the
20 development of rules to allow for the use of appropriate
21 alternative technologies that include but are not limited to
22 all of the following:

23 a. Performance-based standards for alternative technology
24 systems.

25 b. Effluent reuse standards.

26 c. Criteria for large subsurface, midsize treatment, and
27 small cluster wastewater systems.

28 d. Setback requirements appropriate to the alternative
29 treatment technology.

30 e. Monitoring requirements appropriate to the alternative
31 technology and size of the treatment system.

32 f. Sizing factors based on soil morphology.

33 g. Design standards for alternative technology system
34 types.

35 9. The commission shall adopt rules for a review and

1 approval process for standardized treatment systems, and
2 expedited technical reviews for projects that meet the design
3 standards adopted pursuant to subsection 8, paragraph "g",
4 including standardized review checklists for the systems.

5 10. a. The commission shall adopt rules pursuant to
6 chapter 17A to administer this section. All new or revised
7 stream segment use designations shall be adopted by rule. Any
8 rule that establishes, modifies, or repeals existing water
9 quality standards in this state shall be adopted in
10 conformance with this section.

* 11 b. (1) By December 31, 2006, the department shall publish
12 a list of all designated stream segments that receive a
13 permitted discharge for which a use attainability analysis for
14 recreational use and aquatic life has not been completed and a
15 list of all designated stream segments that receive a
16 permitted discharge for which a use attainability analysis for
17 recreational use and aquatic life has been completed and
18 whether a recreational or aquatic use has been determined to
19 be or not to be attainable. By December 31, 2007, a use
20 attainability analysis shall be completed for all newly
21 designated stream segments that receive a permitted discharge.

22 (2) A use attainability analysis for a designated stream
23 segment receiving a permitted discharge shall be conducted by
24 either the department or a professional designee.

25 (3) The department shall make public a written
26 determination of whether a new or revised use designation is
27 appropriate for the designated stream segment prior to
28 adoption by rule of the proposed changes.

29 c. The department shall complete, upon request, a use
30 attainability analysis for recreational and aquatic uses on
31 any designated stream segment not receiving a permitted
32 discharge or on any previously designated stream segment in
33 accordance with the following provisions:

34 (1) The department shall make public a written
35 determination of whether a new or revised designated use is

1 appropriate for the designated stream segment within ninety
2 days of completion of the use attainability analysis prior to
3 adoption by rule of the proposed changes.

4 (2) The department shall accept a use attainability
5 analysis submitted by someone other than a professional
6 designee.

7 (a) Within thirty days after receipt of submission of a
8 use attainability analysis, the department shall review and
9 provide a written determination of whether the documentation
10 submitted is complete.

11 (b) Within ninety days after receipt of submission of a
12 completed use attainability analysis, the department shall
13 review and make available to the public a written
14 determination of whether a new or revised use designation is
15 appropriate for the designated stream segment.

16 d. Any regulated entity or property owner adjacent to the
17 accessed stream segment aggrieved by such a determination may
18 make a written request, within thirty days from the date the
19 written determination of the appropriate use designation is
20 made available to the public, for a meeting with the director

*21 or the director's designee. A regulated entity or property
22 owner adjacent to the accessed stream segment shall be allowed
23 to provide evidence that the designation is not appropriate
24 under the criteria as established in this subsection.

25 11. An operation permit issued pursuant to section
26 455B.173 that expires before a use attainability analysis is
27 performed shall remain in effect and the department shall not
28 renew the permit until a use attainability analysis is
29 completed. If a use attainability analysis demonstrates that
30 a change in the use designation is warranted, the permit shall
31 remain in effect and the department shall not renew the permit
32 until the stream use designation is changed. In order for an
33 expired permit to remain in effect, the permit holder must
34 meet the requirements for a permit renewal. This subsection
35 does not apply if the permit applicant and the department

1 agree that the performance of a use attainability analysis
2 presents no reasonable likelihood of resulting in a change to
3 the existing stream use designations.

4 Sec. 4. WATERSHED QUALITY PLANNING TASK FORCE.

5 1. A watershed quality planning task force is established
6 within the department of natural resources in cooperation with
7 the Iowa department of agriculture and land stewardship. By
8 June 30, 2008, the task force shall report to the general
9 assembly its recommendations for a voluntary statewide water
10 quality program which is designed to achieve all of the
11 following goals:

12 a. Improving water quality and optimizing the costs of
13 voluntarily achieving and maintaining water quality standards.

14 b. Creating economic incentives for voluntary nonpoint
15 source load reductions, point source discharge reductions
16 beyond those required by the federal Water Pollution Control
17 Act, implementation of pollution prevention programs, wetland
18 restoration and creation, and the development of emerging
19 pollution control technologies.

20 c. Facilitating the implementation of total maximum daily
21 loads, urban stormwater control programs, and nonpoint source
22 management practices required or authorized under the federal
23 Water Pollution Control Act. This paragraph shall not be
24 construed to obviate the requirement to develop a total
25 maximum daily load for waters that do not meet water quality
26 standards as required by section 303(d) of the federal Water
27 Pollution Control Act or to delay implementation of a total
28 maximum daily load that has been approved by the department
29 and the director.

30 d. Providing incentives for the development of new and
31 more accurate and reliable pollution control quantification
32 protocols and procedures.

33 e. Providing greater flexibility through community-based,
34 nonregulatory, and performance-driven watershed management
35 planning.

1 2. Membership on the task force shall consist of all of
2 the following:

3 a. Voting members of the task force shall include all of
4 the following:

5 (1) One member selected by the Iowa association of
6 municipal utilities.

7 (2) One member selected by the Iowa league of cities.

8 (3) One member selected by the Iowa association of
9 business and industry.

10 (4) One member selected by the Iowa water pollution
11 control association.

12 (5) One member selected by the Iowa rural water
13 association.

14 (6) One member selected by growing green communities.

15 (7) One member selected by the Iowa environmental council.

16 (8) One member selected by the Iowa farm bureau
17 federation.

18 (9) One member selected by the Iowa corn growers
19 association.

20 (10) One member selected by the Iowa soybean association.

21 (11) One member selected by the Iowa pork producers
22 council.

23 (12) One member selected by the soil and water
24 conservation districts of Iowa.

25 (13) One person representing the department of agriculture
26 and land stewardship selected by the secretary of agriculture.

27 (14) One person representing the department of natural
28 resources selected by the director.

29 (15) Two members selected by the Iowa conservation
30 alliance.

31 b. Nonvoting members of the task force shall include all
32 of the following:

33 (1) Two members of the senate. One senator shall be
34 appointed by the republican leader of the senate and one
35 senator shall be appointed by the democratic leader of the

1 senate.

2 (2) Two members of the house of representatives. One
3 member shall be appointed by the speaker of the house of
4 representatives and one member shall be appointed by the
5 minority leader of the house of representatives.

6 Sec. 5. WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM.

7 1. The Iowa department of economic development shall adopt
* * 8 rules to establish and administer wastewater treatment
9 financial assistance program to provide grants to enhance
10 water quality.

11 2. Financial assistance under the program shall be used
12 for disadvantaged communities to install or upgrade wastewater
13 treatment facilities and systems, and for engineering or
14 technical assistance for facility planning and design.

15 Financial assistance may be used as part of a project funded
16 in whole or in part by financial assistance provided through
17 other state or federally funded programs.

18 3. The department shall issue grants quarterly.

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SENATE FILE 2363

H-8427

1 Amend Senate File 2363, as amended, passed, and
2 reprinted by the Senate, as follows:

3 1. Page 1, by inserting after line 10 the
4 following:

5 "Sec. ____ . Section 455B.173, subsection 3,
6 unnumbered paragraph 3, Code 2005, is amended to read
7 as follows:

8 A publicly owned treatment works whose discharge
9 meets the final effluent limitations which were
10 contained in its discharge permit on the date that
11 construction of the publicly owned treatment works was
12 approved by the department shall not be required to
13 meet more stringent effluent limitations for a period
14 of ten years from the date the construction was
15 completed and accepted but not longer than twelve
16 years from the date that construction was approved by
17 the department. In addition, such publicly owned
18 treatment works shall not be required to build
19 additional treatment facilities for a period of twenty
20 years from the date the construction was completed."

21 2. By renumbering as necessary.

By DOLECHECK of Ringgold

H-8427 FILED MARCH 29, 2006

Lundby co-chair
Wood co-chair
Black
Houser
Schoenjahn
Kettering
Johnson
Bolkecom

Succeeded By
SF / HF 2363

SSB# 3069

Natural Resources

SENATE FILE _____

BY (PROPOSED COMMITTEE ON NATURAL
RESOURCES AND ENVIRONMENT BILL
BY CO-CHAIRPERSONS BLACK AND
HOUSER)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to water quality standards.

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

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1 Section 1. Section 455B.173, subsection 2, unnumbered
2 paragraph 1, Code 2005, is amended to read as follows:

3 Establish, modify, or repeal water quality standards,
4 pretreatment standards and effluent standards, in accordance
5 with the provisions of this chapter. The effluent standards
6 may provide for maintaining the existing quality of the water
7 of the state that is a navigable water of the United States
8 under the federal Water Pollution Control Act where the
9 quality thereof exceeds the requirements of the water quality
10 standards.

11 Sec. 2. Section 455B.174, subsection 4, paragraph b, Code
12 Supplement 2005, is amended to read as follows:

13 ~~b. In-addition-to-the-requirements-of-paragraph-"a"-7-a~~
14 ~~permit-shall-not-be-issued-to-operate-or-discharge-from-any~~
15 ~~disposal-system-unless-the-conditions-of-the-permit-assure~~
16 ~~that-any-discharge-from-the-disposal-system-meets-or-will-meet~~
17 ~~all-applicable-state-and-federal-water-quality-standards-and~~
18 ~~effluent-standards-and-the-issuance-of-the-permit-is-not~~
19 ~~otherwise-prohibited-by-the-federal-Water-Pollution-Control~~
20 ~~Act.~~ All applications for discharge permits are subject to
21 public notice and opportunity for public participation
22 including public hearing as the department may by rule
23 require. The director shall promptly notify the applicant in
24 writing of the director's action and, if the permit is denied,
25 state the reasons for denial. The applicant may appeal to the
26 commission from the denial of a permit or from any condition
27 in any permit if the applicant files notice of appeal with the
28 director within thirty days of the notice of denial or
29 issuance of the permit. The director shall notify the
30 applicant within thirty days of the time and place of the
31 hearing.

32 Sec. 3. WATER QUALITY STANDARDS. The general assembly
33 makes the following findings:

34 1. The federal Water Pollution Control Act provides that
35 the state is responsible for implementation of the federal Act

1 in a manner that the state deems most appropriate.

2 2. Historically, the state has been and continues to be a
3 responsible steward of the environment, including Iowa's water
4 quality.

5 3. The state has adopted water quality standards that are
6 protecting Iowa's water quality.

7 4. State law provides in section 455B.176 that the
8 environmental protection commission, when establishing,
9 modifying, or repealing water quality standards, must base its
10 decision upon data gathered from sources within the state.

11 5. State law provides in section 455B.176, subsection 11,
12 that the goal of any changes to water quality standards shall
13 be a reasonable balance between total costs to the people and
14 to the economy, and the resultant benefits to the people of
15 Iowa.

16 6. An efficient use of the state's limited resources when
17 implementing changes to existing water quality standards is to
18 complete a use attainability analysis for the classified
19 stream segment prior to changing the water quality standards,
20 including the use designation, that apply to that particular
21 stream segment. Using a scientific analysis in accordance
22 with the terms of this section meets the general assembly's
23 goals of protecting the public and the environment and
24 balancing the costs and benefits to the public and to the
25 environment.

26 7. The state should adopt water quality standards that,
27 where attainable, provide water quality for the protection and
28 propagation of fish, shellfish, and wildlife, and for
29 recreation in and on the water.

30 Sec. 4. NEW SECTION. 455B.176A WATER QUALITY STANDARDS.

31 1. For purposes of this section, unless the context
32 otherwise requires:

33 a. "Base flow conditions" means the flow of a classified
34 stream segment, as measured during the time period between
35 July 1 and September 30, that occurs during a period of time

1 when the watershed, in which the classified stream segment is
2 located, receives no twenty-four-hour rainfall in excess of
3 one-quarter of one percent of total average annual rainfall
4 for the watershed and not more than one-half inch total
5 rainfall for the watershed in the preceding two weeks.

6 b. "Classified stream segment" means a water of the state
7 determined to be a classified stream segment pursuant to
8 subsection 2. "Classified stream segment" does not include
9 ephemeral streams, grass, vegetative or other waterways,
10 culverts, ditches, farm ponds, tile lines, irrigation systems,
11 public or private wells, subsurface drainage systems and
12 stormwater management systems, effluent treatment wetlands,
13 isolated wetlands, waters created as a result of a
14 conservation structure or practice, and privately owned
15 wetlands.

16 c. "Conservation structure or practice" means the same as
17 defined by either the United States department of agriculture
18 in the natural resources conservation service field office
19 technical guide or the Iowa department of agriculture and land
20 stewardship including, but not limited to, those soil and
21 conservation practices defined in section 161A.42, designed
22 for the purpose of maintenance, improvement, or restoration of
23 the physical, chemical, and biological functions of soil,
24 water, air, and related plant and animal resources.

25 d. "Credible data" means the same as defined in section
26 455B.171 and is subject to the same requirements as provided
27 in section 455B.193 and may include, but not rely solely on,
28 data that is older than five years and that is obtained
29 pursuant to the best professional judgment of a professional
30 designee.

31 e. "Ephemeral stream" means a stream that flows only in
32 response to precipitation and whose channel is primarily above
33 the water table.

34 f. "Professional designee" means the same as defined in
35 section 455B.193.

1 g. "Use attainability analysis" means a structured
2 scientific assessment that includes physical, chemical,
3 biological, and economic factors.

4 2. A water of the state is a classified stream segment
5 when any one of the following is met:

6 a. The most recent ten-year median flow is equal to or in
7 excess of one cubic foot per second based on data collected
8 and evaluated by the United States geological survey between
9 July 1 and September 30 of each year or in the absence of
10 stream segment flow data calculations of flow conducted by
11 extrapolation methods provided by the United States geological
12 survey or based upon a calculation method adopted by rule.

13 b. The water is actually inhabited by a threatened or
14 endangered aquatic specie as determined by the department or
15 the United States fish and wildlife service.

16 c. Credible data developed in accordance with section
17 455B.193 shows that water flows that are less than set out in
18 paragraph "a" provide a refuge for aquatic life that permits
19 biological recolonization of intermittently flowing segments.

20 3. All waters of the state not classified as a stream
21 segment pursuant to subsection 2 shall be identified as an
22 unclassified stream segment and shall be subject only to
23 narrative water quality standards. The department shall adopt
24 rules defining narrative water quality standards for
25 unclassified stream segments.

26 4. a. The commission shall adopt rules to define
27 designated uses of classified stream segments in accordance
28 with the following categories:

- 29 (1) Agricultural water supply use.
- 30 (2) Aquatic life support.
- 31 (3) Domestic water supply.
- 32 (4) Food procurement use.
- 33 (5) Industrial water supply use.
- 34 (6) Recreational use, including primary, secondary, and
35 children's recreational use.

1 (7) Seasonal use. The department may allow for a seasonal
2 use designation for streams that would otherwise be classified
3 under an aquatic or recreational designation if a varying
4 degree of protection would be sufficient to protect the stream
5 during a seasonal time period.

6 b. The commission shall include subcategories of
7 designated uses of the categories listed in paragraph "a", as
8 deemed appropriate by the commission.

9 c. When reviewing whether a designated use is attainable,
10 the department shall consider the following:

11 (1) Whether the natural, ephemeral, intermittent, or low
12 flow conditions or water levels could inhibit recreational
13 activities.

14 (2) If opposite sides of a stream segment would have
15 different designated recreational uses due to differences in
16 public access, the designated use of the entire classified
17 stream segment may be the higher attainable use.

18 (3) The time period for determining recreational use shall
19 be March 15 through November 15.

20 (4) The degree to which the public has access to the
21 stream segment.

22 (5) The minimum depth of the deepest pool.

23 (6) Classified stream segments shall be protected for all
24 existing uses of the segment.

25 (7) What types of aquatic life may live in streams whose
26 primary flow is from effluent discharges and the frequency and
27 depth of that flow.

28 5. The commission shall adopt rules designating water
29 quality standards which shall be specific to each designated
30 use listed in subsection 4. The standards shall take into
31 account the different characteristics of each designated use
32 and shall provide for only the appropriate level of protection
33 based upon that particular use. The standards shall not be
34 identical for each designated use unless required for the
35 appropriate level of protection. The appropriate level of

1 protection and standards shall be determined on a scientific
2 basis. In the development process for the water quality
3 standards, input shall be received from a water quality
4 standards advisory committee convened by the department to be
5 comprised of experts in the fields of environmental
6 engineering, aquatic toxicology, fisheries biology, and other
7 life sciences and in the development of the appropriate levels
8 of aquatic life protection and standards. The water quality
9 standards shall be reviewed and revised by the department as
10 new scientific data becomes available to support revision.

11 6. Prior to any change in the use designation of any
12 classified stream segment, the department or a designee of the
13 department shall conduct a use attainability analysis. The
14 commission shall adopt rules providing for the following
15 procedures and criteria to be used in the development of a use
16 attainability analysis:

17 a. A review of physical, chemical, biological, economic,
18 and social factors affecting whether a designated use is
19 attainable.

20 b. A review of naturally occurring pollutant
21 concentrations and conditions affecting whether a designated
22 use is attainable.

23 c. A review of natural, ephemeral, intermittent, or low-
24 flow conditions, or water levels affecting whether a
25 designated use is attainable.

26 d. A review of human conditions that prevent the
27 designated use, including state laws, and conditions which
28 cannot be remedied or that would cause more damage or a
29 disproportionate cost to remedy rather than to leave in place.

30 e. A review of hydrologic modifications such as dams and
31 diversions affecting whether a designated use is attainable.

32 f. A review of physical conditions related to natural
33 features, such as lack of proper substrate, soil types and
34 erodibility, cover, flow, depth, pools, riffles, and other
35 stream morphology affecting whether a designated use is

1 attainable.

2 g. A review of the economic and social impact resulting
3 from controls more stringent than those required by sections
4 301(b) and 306 of the federal Water Pollution Control Act.

5 h. Stream evaluations conducted during normal base flow
6 conditions.

7 i. Sampling of fish and invertebrate species populations
8 conducted between July 1 and September 30 each year.

9 7. A stream segment shall not be classified for a
10 designated use if any of the following apply:

11 a. Naturally occurring pollutant concentrations prevent
12 the attainment of the designated use.

13 b. Natural, ephemeral, intermittent, or low-flow
14 conditions, or water levels prevent the attainment of the
15 designated use, unless these conditions or levels may be
16 compensated for by a sufficient volume of effluent discharges
17 without violating state water conservation requirements in
18 order to allow the designated uses to be met.

19 c. Human-caused conditions or sources of pollution prevent
20 the attainment of the designated use and cannot be remedied or
21 correction would result in more environmental damage than if
22 the conditions or sources are left in place.

23 d. Dams, diversions, or other types of hydrologic
24 modifications preclude the attainment of the designated use,
25 and it is not feasible to restore the water body to its
26 original use.

27 e. Physical conditions related to the natural features of
28 the water body, such as the lack of a proper substrate, soil
29 types and erodibility, cover, flow, depth, pools, and riffles,
30 unrelated to water quality, preclude attainment of aquatic
31 life protection uses.

32 f. Controls more stringent than those required by sections
33 301(b) and 306 of the federal Water Pollution Control Act
34 would result in substantial and widespread economic and social
35 impact as defined in subsection 8.

1 g. The imposition of effluent limits required under
2 sections 301(b) and 306 of the federal Water Pollution Control
3 Act and the voluntary utilization of cost-effective and
4 reasonable best management practices for nonpoint source
5 control are not sufficient to allow the designated use. For
6 purposes of this paragraph, a best management practice for an
7 agricultural land use is a site-appropriate conservation
8 structure and a practice.

9 8. Prior to classifying a stream segment for a designated
10 use, the department shall consider the substantial and
11 widespread economic and social impact that may occur as a
12 result of a classification. To make this determination, the
13 department shall review circumstances that are unique to each
14 regulated entity to determine whether substantial and
15 widespread economic and social impact would occur. The
16 analysis shall demonstrate whether the regulated entity would
17 face substantial financial impacts due to the costs of
18 compliance and that the affected community would bear
19 significant adverse impacts. The department shall work with
20 the regulated entity to gather necessary information to make
21 this determination.

22 a. The commission shall adopt rules to determine when a
23 regulated entity and the affected community would suffer
24 substantial and widespread economic and social impact due to
25 the costs of complying with a water quality standard. To make
26 this determination, the department shall review the
27 circumstances that are unique to each regulated entity and the
28 affected community. The rules shall include but not be
29 limited to all of the following elements:

30 (1) A financial analysis of the discharger to determine if
31 the capital, operating, and maintenance costs of pollution
32 control will have a substantial impact.

33 (2) The financial impact on households resulting from
34 compliance.

35 (3) The ability of the person releasing a pollutant into a

1 water of the state to obtain pollution control financing and
2 the general economic health of that person.

3 (4) The change in socioeconomic conditions that would
4 occur as a result of compliance. Factors to consider should
5 include but not be limited to median household income,
6 unemployment, and overall net debt as a percent of full market
7 value of taxable property.

8 (5) The benefits of improved water quality, such as the
9 expansion of consumptive markets, enhanced recreational use,
10 and increased property values in the community.

11 b. The department may grant a regulated entity a variance
12 from meeting a water quality standard pursuant to section
13 455B.181 if it is determined that the regulated entity or the
14 affected community would suffer substantial and widespread
15 economic and social impact. The variance shall be based on
16 the availability of funding that minimizes the impact on the
17 regulated entity's customers or the affected community's
18 taxpayers. The department shall ensure the conditions of any
19 discharge permit variance represent reasonable progress toward
20 complying with water quality standards but do not result in
21 substantial and widespread economic and social impact.

22 9. A regulated entity may use an alternative technology
23 system to meet technology standards. The department shall
24 convene a technical advisory committee to assist in the
25 development of rules to allow for the use of appropriate
26 alternative technologies that include but are not limited to
27 all of the following:

28 a. Performance-based standards for alternative technology
29 systems.

30 b. Effluent reuse standards.

31 c. Criteria for large subsurface, midsize treatment, and
32 small cluster wastewater systems.

33 d. Setback requirements appropriate to the alternative
34 treatment technology.

35 e. Monitoring requirements appropriate to the alternative

1 technology and size of the treatment system.

2 f. Sizing factors based on soil morphology.

3 g. Design standards for preapproved alternative technology
4 system types.

5 10. The commission shall adopt rules for an expedited
6 review and approval process for standardized treatment
7 systems, expedited technical reviews for projects that meet
8 the design standards adopted pursuant to subsection 9,
9 paragraph "g", including standardized review checklists for
10 the systems, and streamlined permit processing for systems
11 that promote ecological wastewater management.

12 11. a. The commission shall adopt rules pursuant to
13 chapter 17A to administer this section. All new or revised
14 stream segment classifications and use designations shall be
15 adopted by rule. Any rule that establishes, modifies, or
16 repeals existing water quality standards in this state shall
17 be adopted in conformance with this section.

18 b. Data to substantiate a use designation for a classified
19 stream segment shall be collected and used in accordance with
20 the credible data standards as described in subsection 1 and
21 in sections 455B.193 through 455B.195.

22 c. A new or revised use designation for a classified
23 stream segment shall only occur as the result of a use
24 attainability analysis.

25 d. A stream segment classification in existence on the
26 effective date of this Act that is identified on the 2004 Iowa
27 surface water classification list shall remain in effect until
28 the department or its professional designee completes a use
29 attainability analysis on each classified stream segment. The
30 use designation shall continue in effect without further
31 rulemaking if, after the use attainability analysis is
32 completed, the department determines that the 2004 Iowa
33 surface water classification for that classified stream
34 segment is the appropriate designated use for that stream
35 segment.

1 e. All use attainability analyses shall be conducted in
2 accordance with the following:

3 (1) A use attainability analysis for each classified
4 stream segment shall be conducted by either the department or
5 a professional designee.

6 (2) A use attainability analysis conducted by a
7 professional designee shall comply with the following review
8 process:

9 (a) Within thirty days after receipt of submission of a
10 use attainability analysis, the department shall review and
11 provide a written determination of whether the documentation
12 submitted is complete.

13 (b) Within ninety days after receipt of submission of a
14 completed use attainability analysis, the department shall
15 review and provide a written determination of whether a new or
16 revised designated use is appropriate for the classified
17 stream segment.

18 (3) A use attainability analysis for a classified stream
19 segment and the written determination of the appropriate
20 designated use for the classified stream segment shall be made
21 available to the public.

22 (4) Any regulated entity aggrieved by such a determination
23 may make a written request, within thirty days from the date
24 the written determination of the appropriate designated use is
25 made available to the public, for a meeting with the director
26 or the director's designee to appeal the determination. The
27 regulated entity shall be allowed to provide evidence that the
28 designation is not appropriate under the criteria as
29 established in this section.

30 f. The department shall comply with the following
31 implementation schedule:

32 (1) By December 31, 2006, the department shall publish a
33 list of all classified stream segments for which a use
34 attainability analysis for recreational use has been
35 completed, and whether recreational use has been determined to

1 be or not to be attainable; and a list of all classified
2 stream segments for which a use attainability analysis for
3 recreational use has not been completed. By November 30,
4 2007, a minimum of twenty-five percent of the classified
5 stream segments that have not had a use attainability analysis
6 for recreational use completed shall have a use attainability
7 analysis completed. Each year, for the period beginning
8 December 1, 2007, and ending November 30, 2010, a minimum of
9 twenty-five percent of the classified stream segments that
10 have not had an attainability analysis for recreational use
11 completed that were listed on the list published by the
12 department pursuant to this subparagraph shall have a use
13 attainability analysis completed, unless less than twenty-five
14 percent of such classified stream segments remain on the list.

15 (2) By October 31, 2007, the department shall review all
16 stream segments to determine whether each stream segment can
17 be classified as a classified stream segment as required
18 pursuant to this section. All stream segments classified for
19 a designated use as of January 1, 2006, shall remain in effect
20 until a date that is no earlier than the completion of the
21 required review for the specific stream segment by the
22 department or the department's professional designee.

23 (3) By December 31, 2007, the department shall publish a
24 list of all classified stream segments for which a use
25 attainability analysis for use other than recreational use has
26 been completed, and a list of all classified stream segments
27 for which a use other than recreational use has been
28 determined to be or not to be attainable; and a list of all
29 classified stream segments for which a use attainability
30 analysis for a use other than recreational use has not been
31 completed. By November 30, 2008, a minimum of twenty-five
32 percent of the classified stream segments that have not had a
33 use attainability analysis for use other than recreational use
34 completed shall have a use attainability analysis completed.
35 Each year, for the period beginning December 1, 2008, and

1 ending November 30, 2011, a minimum of twenty-five percent of
2 the classified stream segments that have not had a use
3 attainability analysis for use other than recreational use
4 completed that were listed on the list published by the
5 department pursuant to this subparagraph shall have a use
6 attainability analysis completed, unless less than twenty-five
7 percent of such classified stream segments remain on the list.

8 12. An operation permit issued pursuant to section
9 455B.173 that expires before a use attainability analysis is
10 performed shall remain in effect and the department shall not
11 renew the permit until a use attainability analysis is
12 completed. If a use attainability analysis demonstrates that
13 a change in the use designation is warranted, the permit shall
14 remain in effect and the department shall not renew the permit
15 until the stream use designation is changed. In order for an
16 expired permit to remain in effect, the permit holder must
17 meet the requirements for a permit renewal.

18 13. This section shall not be construed to authorize
19 public access to private property unless such public access is
20 otherwise authorized by law or by written permission of the
21 landowner.

22 Sec. 5. Section 455B.194, subsection 2, Code 2005, is
23 amended by striking the subsection.

24 Sec. 6. WATERSHED QUALITY TRADING TASK FORCE.

25 1. A watershed quality trading task force is established
26 within the department of natural resources in cooperation with
27 the Iowa department of agriculture and land stewardship. By
28 June 30, 2008, the task force shall report to the general
29 assembly its recommendations for a voluntary statewide water
30 quality trading program which is designed to achieve all of
31 the following goals:

32 a. Improving water quality and optimizing the costs of
33 voluntarily achieving and maintaining water quality standards.

34 b. Creating economic incentives for voluntary nonpoint
35 source load reductions, point source discharge reductions

1 beyond those required by the federal Clean Water Act,
2 implementation of pollution prevention programs, wetland
3 restoration and creation, and the development of emerging
4 pollution control technologies.

5 c. Facilitating the implementation of total maximum daily
6 loads, urban stormwater control programs, and nonpoint source
7 management practices required or authorized under the federal
8 Clean Water Act. This paragraph shall not be construed to
9 obviate the requirement to develop a total maximum daily load
10 for waters that do not meet water quality standards as
11 required by section 303(d) of the federal Clean Water Act or
12 to delay implementation of a total maximum daily load that has
13 been approved by the department and the director.

14 d. Providing incentives for the development of new and
15 more accurate and reliable pollution control quantification
16 protocols and procedures.

17 e. Providing greater flexibility through community-based,
18 nonregulatory, and performance-driven watershed management
19 planning.

20 2. Membership on the task force shall consist of all of
21 the following:

22 a. Voting members of the task force shall include all of
23 the following:

24 (1) One member selected by the Iowa association of
25 municipal utilities.

26 (2) One member selected by the Iowa league of cities.

27 (3) One member selected by the Iowa association of
28 business and industry.

29 (4) One member selected by the Iowa water pollution
30 control association.

31 (5) One member selected by the Iowa rural water
32 association.

33 (6) One member selected by growing green communities.

34 (7) One member selected by the Iowa environmental council.

35 (8) One member selected by the Iowa farm bureau

1 federation.

2 (9) One member selected by the Iowa corn growers
3 association.

4 (10) One member selected by the Iowa soybean association.

5 (11) One member selected by the Iowa pork producers
6 council.

7 (12) One member selected by the department of natural
8 resources representing soil and water conservation districts
9 of Iowa.

10 (13) One person representing the department of agriculture
11 and land stewardship selected by the secretary of agriculture.

12 (14) One person representing the department of natural
13 resources selected by the director.

14 b. Nonvoting members of the task force shall include all
15 of the following:

16 (1) Two members of the senate. One senator shall be
17 appointed by the republican leader of the senate and one
18 senator shall be appointed by the democratic leader of the
19 senate.

20 (2) Two members of the house of representatives. One
21 member shall be appointed by the speaker of the house of
22 representatives and one member shall be appointed by the
23 minority leader of the house of representatives.

24 EXPLANATION

25 This bill relates to water quality standards.

26 The bill eliminates a requirement that a disposal system
27 permit shall not be issued unless the conditions of the permit
28 assure that any discharge from the disposal system meets or
29 will meet all applicable state and federal water quality
30 standards and effluent standards and the issuance of the
31 permit is not otherwise prohibited by the federal Water
32 Pollution Control Act.

33 The bill provides that a water of the state is a classified
34 stream segment when one of three possible criteria is met.
35 The possible criteria include certain median flow rates of the

1 stream segment, inhabitation by a threatened or endangered
2 aquatic specie, or certain waters which provide a refuge for
3 aquatic life and permit biological recolonization of
4 intermittently flowing segments.

5 The bill provides that all waters of the state not
6 classified as a stream segment shall be identified as an
7 unclassified stream segment and shall be subject only to
8 narrative water quality standards.

9 The bill requires the environmental protection commission
10 to adopt rules to define designated uses of classified stream
11 segments in categories of agricultural water supply use,
12 aquatic life support, domestic water supply, food procurement
13 use, industrial water supply use, recreational use including
14 primary, secondary, and children's recreational use, and
15 seasonal use. The bill requires the commission to include
16 subcategories of designated uses as deemed necessary by the
17 commission. The bill provides considerations for the
18 department's determination of whether a designated use is
19 attainable.

20 The bill provides that the environmental protection
21 commission shall adopt rules designating water quality
22 standards which shall be specific to each designated use of
23 classified stream segments. The bill requires the standards
24 to take into account the different characteristics of each
25 designated use and provide for only the appropriate level of
26 protection based upon that particular use. The bill requires
27 that the appropriate level of protection and standards be
28 determined on a scientific basis. The bill provides that the
29 water quality standards shall be reviewed and revised by the
30 department of natural resources as new scientific data become
31 available to support revision.

32 The bill provides that, prior to any change in the use
33 designation of any classified stream segment, the department
34 or a designee of the department shall conduct a use
35 attainability analysis. The bill requires the commission to

1 adopt rules providing for certain criteria to be used in the
2 development of a use attainability analysis.

3 The bill provides that a stream segment shall not be
4 classified for a designated use if certain conditions exist
5 which prevent designated uses from being attainable. The
6 conditions include pollutant concentrations, certain flow
7 rates, hydrologic modifications, physical conditions related
8 to the natural features of the water body, and restrictive
9 controls placed on the water body.

10 The bill provides that, prior to classifying a stream
11 segment for a specific use, the department shall consider the
12 substantial and widespread economic and social impact that may
13 occur as a result of a classification. To make this
14 determination, the bill requires the department to review
15 circumstances that are unique to each regulated entity to
16 determine whether substantial and widespread economic and
17 social impact would occur. The bill allows the department to
18 grant a regulated entity a variance from meeting a water
19 quality standard if it is determined that the regulated entity
20 or the affected community would suffer substantial and
21 widespread economic and social impact. The bill requires the
22 variance to be based on the availability of funding that
23 minimizes the impact on the regulated entity's customers or
24 the affected community's taxpayers.

25 The bill provides that a regulated entity may use an
26 alternative technology system to meet technology standards.
27 The bill requires the department to convene a technical
28 advisory committee to assist in the development of rules to
29 allow for the use of appropriate alternative technologies.

30 The bill provides that all new or revised stream
31 classifications and use designations shall be adopted by rule.
32 The bill provides that data collected to substantiate a use
33 designation for a classified stream segment shall be in
34 accordance with the credible data standards of current law.
35 The bill provides that a new or revised use designation for a

1 classified stream segment shall only occur as the result of a
2 use attainability analysis. The bill provides that a stream
3 classification in existence on the effective date of the bill
4 that is identified on the 2004 Iowa surface water
5 classification list shall remain in effect until the
6 department or its professional designee completes a use
7 attainability analysis on each classified stream segment. The
8 bill provides that a use designation shall continue in effect
9 without further rulemaking if, after the use attainability
10 analysis is completed, the department determines that the 2004
11 surface water classification for that classified stream
12 segment is the appropriate designated use for that segment.

13 The bill provides that all use attainability analyses shall
14 be conducted by either the department or a professional
15 designee, that a use attainability analysis for a classified
16 stream segment and the written determination of the
17 appropriate designated use for such a classified stream
18 segment shall be made available to the public, and any
19 regulated entity aggrieved by such a determination may make a
20 written request, within 30 days from the date the written
21 determination of the appropriate designated use is made
22 available to the public, for a meeting with the director or
23 the director's designee to appeal the determination.

24 The bill provides that the department shall comply with an
25 implementation schedule for the provisions of the bill.

26 The bill provides that, by December 31, 2006, the
27 department shall publish a list of all classified stream
28 segments for which a use attainability analysis for
29 recreational use has been completed, and whether recreational
30 use has been determined to be or not to be attainable, and a
31 list for which a use attainability analysis for recreational
32 use has not been completed. The bill provides a schedule for
33 the incremental completion of use attainability analyses of
34 classified stream segments for recreational use. The bill
35 requires completion by November 30, 2010.

1 The bill provides that, by October 31, 2007, the department
2 shall review all stream segments to determine whether each
3 stream segment can be classified as a classified stream
4 segment as required pursuant to the bill. All stream segments
5 classified for a designated use as of January 1, 2006, shall
6 remain in effect until a date that is no earlier than the
7 completion of the required analysis for the specific stream
8 segment by the department or the department's designee.

9 The bill provides that, by December 31, 2007, the
10 department shall publish a list of all classified stream
11 segments for which a use attainability analysis for use other
12 than recreational use has been completed, and whether a use
13 other than recreational use has been determined to be or not
14 to be attainable, and a list for which a use attainability
15 analysis for a use other than recreational use has not been
16 completed. The bill provides a schedule for the incremental
17 completion of use attainability analyses of classified stream
18 segments for uses other than a recreational use. The bill
19 requires completion by November 30, 2011.

20 The bill provides that an operation permit issued to a
21 disposal system that expires before a use attainability
22 analysis is performed shall remain in effect and the
23 department shall not renew the permit until a use
24 attainability analysis is completed. The bill provides that,
25 if a use attainability analysis demonstrates that a change in
26 the use designation is warranted, the permit shall remain in
27 effect and the department shall not renew the permit until the
28 stream use designation is changed. The bill provides that, in
29 order for an expired permit to remain in effect, the permit
30 holder must meet the requirements for a permit renewal.

31 The bill provides that the bill shall not be construed to
32 allow public access to private property unless such public
33 access is otherwise authorized by law or by written permission
34 of the landowner.

35 The bill eliminates the provision that credible data is not

1 required for a report required by section 305(b) of the
2 federal Water Pollution Control Act and that credible data is
3 not required for the establishment of a designated use or
4 other classification of a water of the state.

5 The bill establishes a watershed quality trading task force
6 within the department in cooperation with the Iowa department
7 of agriculture and land stewardship. The bill provides that,
8 by June 30, 2008, the task force shall report to the general
9 assembly its recommendations for a voluntary statewide water
10 quality trading program.

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SENATE FILE 2363

AN ACT
RELATING TO WATER QUALITY STANDARDS.

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

Section 1. Section 455B.173, subsection 2, unnumbered paragraph 1, Code 2005, is amended to read as follows:

Establish, modify, or repeal water quality standards, pretreatment standards and effluent standards, in accordance with the provisions of this chapter. The effluent standards may provide for maintaining the existing quality of the water of the state that is a navigable water of the United States under the federal Water Pollution Control Act where the quality thereof exceeds the requirements of the water quality standards.

Sec. 2. WATER QUALITY STANDARDS. The general assembly makes the following findings:

1. The federal Water Pollution Control Act provides that the state is responsible for implementation of the federal Act in a manner that the state deems most appropriate.
2. Historically, the state has been and continues to be a responsible steward of the environment, including Iowa's water quality.
3. The state has adopted water quality standards that are protecting Iowa's water quality.
4. State law provides in section 455B.176 that the environmental protection commission, when establishing, modifying, or repealing water quality standards, must base its decision upon data gathered from sources within the state.
5. State law provides in section 455B.176, subsection 11, that the goal of any changes to water quality standards shall

be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa.

6. The state shall adopt water quality standards that, where attainable, provide water quality for the protection and propagation of fish, shellfish, and wildlife, and for recreation in and on the water.

Sec. 3. NEW SECTION. 455B.176A WATER QUALITY STANDARDS.

1. For purposes of this section, unless the context otherwise requires:

a. "Base flow conditions" means the flow of a stream segment, as measured during the time period between July 1 and September 30, that occurs during a period of time when the watershed, in which the stream segment is located, receives no twenty-four-hour rainfall in excess of one-quarter inch total rainfall and not more than one-half inch total rainfall for the watershed in the preceding two weeks.

b. "Credible data" means the same as defined in section 455B.171 and is subject to the same requirements as provided in section 455B.193 and may include, but not rely solely on, data that is older than five years and that is obtained pursuant to the best professional judgment of a professional designee or a state or federal agency.

c. "Ephemeral stream" means a stream that flows only in response to precipitation and whose channel is primarily above the water table.

d. "Professional designee" means the same as defined in section 455B.193.

e. "Use attainability analysis" means a structured scientific assessment that includes physical, chemical, biological, and economic factors.

2. A water of the state shall be a designated stream segment when any one of the following is met:

a. The most recent ten-year median flow is equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey between July 1 and September 30 of each year or in the absence of stream segment flow data calculations of flow conducted by extrapolation methods provided by the United States geological survey or based upon a calculation method adopted by rule.

b. The water is a critical habitat of a threatened or endangered aquatic specie as determined by the department or the United States fish and wildlife service.

c. Credible data developed in accordance with section 455B.193 shows that water flows that are less than set out in paragraph "a" provide a refuge for aquatic life that permits biological recolonization of intermittently flowing segments.

3. All waters of the state not designated as a stream segment shall be identified as a general stream segment and shall be subject to narrative water quality standards.

4. a. The commission shall adopt rules to define designated uses of stream segments in accordance with the following categories:

- (1) Agricultural water supply use.
- (2) Aquatic life support.
- (3) Domestic water supply.
- (4) Food procurement use.
- (5) Industrial water supply use.
- (6) Recreational use, including primary, secondary, and children's recreational use.
- (7) Seasonal use. The department may allow for a seasonal use designation for streams that would otherwise be categorized under an aquatic or recreational designation if a varying degree of protection would be sufficient to protect the stream during a seasonal time period.

b. The commission shall include subcategories of designated uses of the categories listed in paragraph "a", as deemed appropriate by the commission.

c. When reviewing whether a designated use is attainable, the department shall consider at a minimum the following:

(1) Whether the natural, ephemeral, intermittent, or low flow conditions or water levels could inhibit recreational activities.

(2) If opposite sides of a stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire stream segment may be the higher attainable use.

(3) The time period for determining primary contact recreation shall be March 15 through November 15.

(4) The degree to which the public has access to the stream segment.

(5) The minimum depth of the deepest pool.

(6) Stream segments shall be protected for all existing uses as defined by the federal Water Pollution Control Act.

5. The commission shall adopt rules designating water quality standards which shall be specific to each designated use adopted pursuant to subsection 4. The standards shall take into account the different characteristics of each designated use and shall provide for only the appropriate level of protection based upon that particular use. The standards shall not be identical for each designated use unless required for the appropriate level of protection. The appropriate level of protection and standards shall be determined on a scientific basis. In the development process for the water quality standards, input shall be received from a water quality standards advisory committee convened by the department. The water quality standards advisory committee shall be comprised of experts in the scientific fields relating to water quality, such as environmental engineering, aquatic toxicology, fisheries biology, and other life sciences and experts in the development of the appropriate levels of aquatic life protection and standards. The water quality

standards shall be reviewed and revised by the department as new scientific data becomes available to support revision.

6. Prior to any changes in a national pollutant discharge elimination system permit effluent limitation based upon a new use designation, the department or a designee of the department shall conduct a use attainability analysis. The commission shall adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The rules shall, at a minimum, provide all of the following:

a. A designated use, which is not an existing use as defined by the federal Water Pollution Control Act, may be removed due to any of the following:

- (1) Naturally occurring pollutant concentrations prevent the attainment of the use.
- (2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met.
- (3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.
- (4) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.
- (5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(6) Controls more stringent than those required by sections 1311(b) and 1316 of the federal Water Pollution Control Act would result in substantial and widespread economic and social impact.

b. A designated use shall not be removed if any of the following occur:

- (1) The designated use is an existing use, as defined by the federal Water Pollution Control Act, unless a use requiring more stringent criteria is added.
- (2) Such uses will be attained by implementing effluent limits required under sections 1311(b) and 1316 of the federal Water Pollution Control Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

c. Where existing water quality standards specify designated uses less than those which are presently being attained, the commission shall revise its standards to reflect the uses actually being attained.

7. The department shall consider the substantial and widespread economic and social impact that may occur as a result of a designation. To make this determination, the department shall review circumstances that are unique to each regulated entity to determine whether substantial and widespread economic and social impact would occur. The analysis shall demonstrate whether the regulated entity would face substantial financial impacts due to the costs of compliance and that the affected community would bear significant adverse impacts. The department shall work with the regulated entity to gather necessary information to make this determination.

a. The commission shall adopt rules to determine when a regulated entity and the affected community would suffer substantial and widespread economic and social impact due to the costs of complying with a water quality standard. To make

this determination, the department shall review the circumstances that are unique to each regulated entity and the affected community. The rules shall include but not be limited to all of the following elements:

(1) A financial analysis of the discharger to determine if the capital, operating, and maintenance costs of pollution control will have a substantial impact.

(2) The financial impact on households resulting from compliance.

(3) The ability of the person releasing a pollutant into a water of the state to obtain pollution control financing and the general economic health of that person.

(4) The change in socioeconomic conditions that would occur as a result of compliance. Factors to consider should include but not be limited to median household income, unemployment, and overall net debt as a percent of full market value of taxable property.

(5) The benefits of improved water quality, such as the expansion of consumptive markets, enhanced recreational use, and increased property values in the community.

b. The department may grant a regulated entity a variance from meeting a water quality standard pursuant to section 455B.181 if it is determined that the regulated entity or the affected community would suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any discharge permit variance represent reasonable progress toward complying with water quality standards but do not result in substantial and widespread economic and social impact.

8. A regulated entity may use an alternative technology system to meet water quality standards for either technology-based or water quality-based effluent limits. The department shall convene a technical advisory committee to assist in the development of rules to allow for the use of appropriate

alternative technologies that include but are not limited to all of the following:

a. Performance-based standards for alternative technology systems.

b. Effluent reuse standards.

c. Criteria for large subsurface, midsize treatment, and small cluster wastewater systems.

d. Setback requirements appropriate to the alternative treatment technology.

e. Monitoring requirements appropriate to the alternative technology and size of the treatment system.

f. Sizing factors based on soil morphology.

g. Design standards for alternative technology system types.

9. The commission shall adopt rules for a review and approval process for standardized treatment systems, and expedited technical reviews for projects that meet the design standards adopted pursuant to subsection 8, paragraph "g", including standardized review checklists for the systems.

10. a. The commission shall adopt rules pursuant to chapter 17A to administer this section. All new or revised stream segment use designations shall be adopted by rule. Any rule that establishes, modifies, or repeals existing water quality standards in this state shall be adopted in conformance with this section.

b. (1) By December 31, 2006, the department shall publish a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has not been completed and a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has been completed and whether a recreational or aquatic use has been determined to be or not to be attainable. By December 31, 2007, a use

attainability analysis shall be completed for all newly designated stream segments that receive a permitted discharge.

(2) A use attainability analysis for a designated stream segment receiving a permitted discharge shall be conducted by either the department or a professional designee.

(3) The department shall make public a written determination of whether a new or revised use designation is appropriate for the designated stream segment prior to adoption by rule of the proposed changes.

c. The department shall complete, upon request, a use attainability analysis for recreational and aquatic uses on any designated stream segment not receiving a permitted discharge or on any previously designated stream segment in accordance with the following provisions:

(1) The department shall make public a written determination of whether a new or revised designated use is appropriate for the designated stream segment within ninety days of completion of the use attainability analysis prior to adoption by rule of the proposed changes.

(2) The department shall accept a use attainability analysis submitted by someone other than a professional designee.

(a) Within thirty days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(b) Within ninety days after receipt of submission of a completed use attainability analysis, the department shall review and make available to the public a written determination of whether a new or revised use designation is appropriate for the designated stream segment.

d. Any regulated entity or property owner adjacent to the accessed stream segment aggrieved by such a determination may make a written request, within thirty days from the date the

written determination of the appropriate use designation is made available to the public, for a meeting with the director or the director's designee. A regulated entity or property owner adjacent to the accessed stream segment shall be allowed to provide evidence that the designation is not appropriate under the criteria as established in this subsection.

11. An operation permit issued pursuant to section 455B.173 that expires before a use attainability analysis is performed shall remain in effect and the department shall not renew the permit until a use attainability analysis is completed. If a use attainability analysis demonstrates that a change in the use designation is warranted, the permit shall remain in effect and the department shall not renew the permit until the stream use designation is changed. In order for an expired permit to remain in effect, the permit holder must meet the requirements for a permit renewal. This subsection does not apply if the permit applicant and the department agree that the performance of a use attainability analysis presents no reasonable likelihood of resulting in a change to the existing stream use designations.

Sec. 4. WATERSHED QUALITY PLANNING TASK FORCE.

1. A watershed quality planning task force is established within the department of natural resources in cooperation with the Iowa department of agriculture and land stewardship. By June 30, 2008, the task force shall report to the general assembly its recommendations for a voluntary statewide water quality program which is designed to achieve all of the following goals:

a. Improving water quality and optimizing the costs of voluntarily achieving and maintaining water quality standards.

b. Creating economic incentives for voluntary nonpoint source load reductions, point source discharge reductions beyond those required by the federal Water Pollution Control Act, implementation of pollution prevention programs, wetland

restoration and creation, and the development of emerging pollution control technologies.

c. Facilitating the implementation of total maximum daily loads, urban stormwater control programs, and nonpoint source management practices required or authorized under the federal Water Pollution Control Act. This paragraph shall not be construed to obviate the requirement to develop a total maximum daily load for waters that do not meet water quality standards as required by section 303(d) of the federal Water Pollution Control Act or to delay implementation of a total maximum daily load that has been approved by the department and the director.

d. Providing incentives for the development of new and more accurate and reliable pollution control quantification protocols and procedures.

e. Providing greater flexibility through community-based, nonregulatory, and performance-driven watershed management planning.

2. Membership on the task force shall consist of all of the following:

a. Voting members of the task force shall include all of the following:

- (1) One member selected by the Iowa association of municipal utilities.
- (2) One member selected by the Iowa league of cities.
- (3) One member selected by the Iowa association of business and industry.
- (4) One member selected by the Iowa water pollution control association.
- (5) One member selected by the Iowa rural water association.
- (6) One member selected by growing green communities.
- (7) One member selected by the Iowa environmental council.

(8) One member selected by the Iowa farm bureau federation.

(9) One member selected by the Iowa corn growers association.

(10) One member selected by the Iowa soybean association.

(11) One member selected by the Iowa pork producers council.

(12) One member selected by the soil and water conservation districts of Iowa.

(13) One person representing the department of agriculture and land stewardship selected by the secretary of agriculture.

(14) One person representing the department of natural resources selected by the director.

(15) Two members selected by the Iowa conservation alliance.

b. Nonvoting members of the task force shall include all of the following:

(1) Two members of the senate. One senator shall be appointed by the republican leader of the senate and one senator shall be appointed by the democratic leader of the senate.

(2) Two members of the house of representatives. One member shall be appointed by the speaker of the house of representatives and one member shall be appointed by the minority leader of the house of representatives.

Sec. 5. WASTEWATER TREATMENT FINANCIAL ASSISTANCE PROGRAM.

1. The Iowa department of economic development shall adopt rules to establish and administer wastewater treatment financial assistance program to provide grants to enhance water quality.

2. Financial assistance under the program shall be used for disadvantaged communities to install or upgrade wastewater treatment facilities and systems, and for engineering or technical assistance for facility planning and design.

Financial assistance may be used as part of a project funded in whole or in part by financial assistance provided through other state or federally funded programs.

3. The department shall issue grants quarterly.

JEFFREY M. LAMBERTI
President of the Senate

CHRISTOPHER C. RANTS
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2363, Eighty-first General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved _____, 2006

THOMAS J. VILSACK
Governor