

House File 717 - Introduced

HOUSE FILE _____
BY BEARD

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

A BILL FOR

1 An Act providing for a county groundwater pollution control
2 program, and providing for penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2408YH 83
5 da/nh/5

PAG LIN

1 1 Section 1. Section 455B.171, Code 2009, is amended by
1 2 adding the following new subsections:
1 3 NEW SUBSECTION. 1A. "Agricultural drainage well area"
1 4 means the same as defined in section 460.101.
1 5 NEW SUBSECTION. 7A. "Groundwater" means the same as
1 6 defined in section 455E.2.
1 7 NEW SUBSECTION. 9A. "Karst terrain" means the same as
1 8 defined in section 459.102.
1 9 SUBPART B
1 10 COUNTY GROUNDWATER POLLUTION CONTROL PROGRAM
1 11 Sec. 2. NEW SECTION. 455B.201 DEFINITIONS.
1 12 As used in this subpart, unless the context otherwise
1 13 requires:
1 14 1. "Board" means a county board of supervisors.
1 15 2. "County control program" or "program" means the program
1 16 conducted by a county board of supervisors as provided in this
1 17 subpart.
1 18 3. "State groundwater protection regulations" means the
1 19 provisions of state law described in section 455B.202.
1 20 Sec. 3. NEW SECTION. 455B.202 AUTHORIZATION.
1 21 1. A county board of supervisors that has been issued a
1 22 certificate of acceptance by the department pursuant to
1 23 section 455B.203 may conduct a county groundwater pollution
1 24 control program.
1 25 2. If the department issues a certificate of acceptance to
1 26 a county board of supervisors pursuant to section 455B.203,
1 27 the department cedes its powers and duties to administer and
1 28 enforce state groundwater protection regulations that apply to
1 29 sources that are located in sensitive groundwater access areas
1 30 located in the county. The scope of such state groundwater
1 31 protection regulations is limited to the provisions of
1 32 division I, this division, and division IV, of this chapter,
1 33 including rules adopted by the department pursuant to such
1 34 divisions; the provisions of chapter 459, subchapter III,
1 35 including rules adopted by the department pursuant to that
2 1 subchapter; chapter 459A, including rules adopted by the
2 2 department pursuant to that chapter; and chapter 460,
2 3 including rules adopted by the department pursuant to that
2 4 chapter.
2 5 Sec. 4. NEW SECTION. 455B.203 CERTIFICATE OF ACCEPTANCE
2 6 == REQUEST AND APPROVAL.
2 7 1. In order to conduct a county groundwater pollution
2 8 control program, a county board of supervisors must make a
2 9 request to the department. The request shall include a
2 10 resolution adopted by the board and any supporting
2 11 documentation required by the department relating to the
2 12 board's implementation and administration of the program.
2 13 2. The department shall approve or disapprove a request
2 14 submitted by a county board of supervisors based on a
2 15 determination of whether the board is capable of conducting
2 16 the program in lieu of the department administering and
2 17 enforcing state groundwater protection regulations as provided
2 18 in section 455B.202.
2 19 3. In evaluating a request submitted by a county board of
2 20 supervisors under this section, the department shall consider

2 21 all of the following:

2 22 a. The types of ordinances, rules, or standards that the
2 23 board plans to adopt in order to conduct the program. The
2 24 ordinances, rules, or standards must be consistent with or
2 25 more strict than state law.

2 26 b. The county's administrative organization, staff, and
2 27 financial or other resources available to effectively conduct
2 28 the program.

2 29 c. The location of monitoring devices that may provide a
2 30 reasonably consistent measurement of groundwater contamination
2 31 in compliance with uniform state standards that shall be
2 32 adopted by the department.

2 33 4. The department may conduct a public hearing before
2 34 approving or disapproving a request submitted by a county
2 35 board of supervisors under this section.

3 1 5. The department shall notify a county board of
3 2 supervisors of the department's decision in regard to a
3 3 request within one hundred eighty days of the date that it
3 4 received the request. Once the department approves a request,
3 5 it shall issue a certificate of acceptance to the board. The
3 6 department may limit or qualify the certificate of acceptance
3 7 as necessary in order to perform duties reserved by law to the
3 8 department or to perform concurrent functions with the board,
3 9 including the issuance of permits. The department shall not
3 10 reduce the scope of the certificate of acceptance so that it
3 11 cedes less than the requested authority to conduct the
3 12 program. The department shall continue to administer and
3 13 enforce the state groundwater protection regulations within
3 14 the county that are not ceded to the county board of
3 15 supervisors.

3 16 Sec. 5. NEW SECTION. 455B.204 SUSPENSION OR REVOCATION
3 17 OF CERTIFICATE OF ACCEPTANCE.

3 18 The department may determine at any time that a county
3 19 board of supervisors is not conducting a county groundwater
3 20 control program in a manner consistent with its certificate of
3 21 acceptance. Upon making the determination, the department
3 22 shall notify the county board of supervisors, citing all
3 23 inconsistencies and corrective measures required to be
3 24 completed by the board within a reasonable amount of time. If
3 25 the board does not implement corrective measures within the
3 26 reasonable amount of time, the department shall suspend or
3 27 revoke the certificate of acceptance. The department's
3 28 suspension may reduce the scope of the certificate of
3 29 acceptance so that it cedes less authority to conduct the
3 30 program to the board. Upon receipt of evidence that the board
3 31 has taken corrective action, the department may reinstate a
3 32 suspended certificate of acceptance with or without
3 33 limitation, and the board shall resume conducting the county
3 34 groundwater control program as provided by the reinstated
3 35 certificate of acceptance. The department shall temporarily
4 1 administer and enforce the state groundwater protection
4 2 regulations until the matter is concluded.

4 3 Sec. 6. NEW SECTION. 455B.205 CONTEST OF DEPARTMENTAL
4 4 ACTION.

4 5 A board of supervisors may contest a decision by the
4 6 department as provided in this part. The board shall contest
4 7 the decision as a contested case proceeding conducted by the
4 8 department of inspections and appeals pursuant to chapter 17A.
4 9 The burden of proof shall be on the board.

4 10 Sec. 7. NEW SECTION. 455B.206 ATTORNEY GENERAL.

4 11 The department's issuance of a certificate of acceptance
4 12 pursuant to section 455B.203 does not limit the authority of
4 13 the attorney general to enforce state groundwater protection
4 14 regulations.

4 15 Sec. 8. NEW SECTION. 455B.207 PROSECUTION == CRIMINAL
4 16 PENALTIES.

4 17 A county board of supervisors conducting a county
4 18 groundwater control program may refer any matter requiring
4 19 enforcement of state groundwater protection regulations that
4 20 has been ceded to the board to the attorney general for a
4 21 civil or criminal action, in the same manner as the
4 22 department. The board may also refer the matter to the county
4 23 attorney for civil or criminal action. Moneys collected in
4 24 fines and civil penalties shall be credited to the state in
4 25 the same manner as if the fines or civil penalties were
4 26 collected by the attorney general.

4 27 Sec. 9. NEW SECTION. 455B.208 CIVIL PENALTIES.

4 28 Notwithstanding sections 331.302 and 331.307, a county
4 29 board of supervisors conducting a county groundwater control
4 30 program may administratively establish, assess, and collect
4 31 civil penalties consistent with state groundwater protection

4 32 regulations. Civil penalties shall be credited to the state
4 33 in the same manner as civil penalties collected by the
4 34 department for the same violation.

4 35 Sec. 10. NEW SECTION. 455B.301B COUNTY GROUNDWATER
5 1 POLLUTION CONTROL PROGRAM.

5 2 A county board of supervisors issued a certificate of
5 3 acceptance to conduct a county groundwater pollution control
5 4 program by the department pursuant to division III, part 1,
5 5 subpart B, of this chapter may administer and enforce the
5 6 provisions of this division within sensitive groundwater
5 7 access areas located in the county.

5 8 Sec. 11. NEW SECTION. 459.302A COUNTY GROUNDWATER
5 9 POLLUTION CONTROL PROGRAM.

5 10 A county board of supervisors issued a certificate of
5 11 acceptance to conduct a county groundwater pollution control
5 12 program by the department pursuant to chapter 455B, division
5 13 III, part 1, subpart B, may administer and enforce the
5 14 provisions of this subchapter within sensitive groundwater
5 15 access areas located in the county.

5 16 Sec. 12. NEW SECTION. 459A.106 COUNTY GROUNDWATER
5 17 POLLUTION CONTROL PROGRAM.

5 18 A county board of supervisors issued a certificate of
5 19 acceptance to conduct a county groundwater pollution control
5 20 program by the department pursuant to chapter 455B, division
5 21 III, part 1, subpart B, may administer and enforce the
5 22 provisions of this chapter within sensitive groundwater access
5 23 areas located in the county.

5 24 Sec. 13. NEW SECTION. 460.102 COUNTY GROUNDWATER
5 25 POLLUTION CONTROL PROGRAM.

5 26 A county board of supervisors issued a certificate of
5 27 acceptance to conduct a county groundwater pollution control
5 28 program by the department pursuant to chapter 455B, division
5 29 III, part 2, subpart B, may administer and enforce the
5 30 provisions of this chapter within sensitive groundwater access
5 31 areas located in the county.

5 32 EXPLANATION

5 33 GENERAL. This bill authorizes the department of natural
5 34 resources to cede some of its authority to regulate certain
5 35 environmental statutes and its rules to a county board of
6 1 supervisors upon the board's request. A board that has been
6 2 granted such authority conducts a county groundwater pollution
6 3 control program according to the terms of a certificate of
6 4 acceptance issued by the department.

6 5 CERTIFICATE OF ACCEPTANCE == ISSUANCE. A certificate of
6 6 acceptance allows a county board of supervisors to administer
6 7 and enforce state groundwater protection regulations that
6 8 apply to sources that are located in sensitive groundwater
6 9 access areas (where there is karst terrain, or land where
6 10 there is located an agricultural drainage well area, or known
6 11 sinkhole). The regulations are limited to those in statute or
6 12 rule under Code chapter 455B, division I, division III, and
6 13 division IV (providing general administrative authority, water
6 14 quality regulations, and solid waste disposal regulations);
6 15 Code chapter 459, division III, and Code chapter 459
6 16 (providing for water quality regulation applicable to animal
6 17 feeding operations); and Code chapter 460 (regulating sources
6 18 that may contaminate groundwater from agricultural drainage
6 19 wells). The department may approve or disapprove a request
6 20 but cannot limit or qualify the certificate of acceptance or
6 21 reduce the scope of the certificate of acceptance so that it
6 22 cedes less authority to conduct the program than requested by
6 23 the board. A county board of supervisors may adopt
6 24 ordinances, rules, or standards more strict than state law.

6 25 CERTIFICATE OF ACCEPTANCE == SUSPENSION OR REVOCATION. The
6 26 bill provides that the department may suspend or revoke a
6 27 certificate of acceptance if it determines that the board is
6 28 not conducting the program in a manner consistent with the
6 29 certificate of acceptance. If a certificate is suspended or
6 30 revoked, a county may take measures to correct the
6 31 inconsistencies and the department may reinstate the
6 32 certificate with or without limitation. The board may contest
6 33 a departmental decision by bringing a contested case
6 34 proceeding to be decided by the department of inspections and
6 35 appeals.

7 1 ENFORCEMENT. The department's issuance of a certificate of
7 2 acceptance does not limit the authority of the attorney
7 3 general to enforce state groundwater protection regulations,
7 4 and the board may refer any matter requiring enforcement to
7 5 the attorney general or a county attorney for judicial
7 6 enforcement.

7 7 VIOLATIONS AND PENALTIES. The bill provides for both

7 8 administrative and judicial enforcement of violations of state
7 9 groundwater protection regulations. The board may assess,
7 10 impose, and collect civil penalties up to \$10,000 (Code
7 11 section 455B.109). The board may also seek judicial
7 12 enforcement of civil penalties not to exceed \$5,000 per each
7 13 day of a violation (Code section 455B.191). A person who
7 14 fails to prevent surface water from draining into an
7 15 agricultural drainage well is subject to a civil penalty of
7 16 not more than \$1,000 (Code sections 460.202, 460.203, and
7 17 460.206), and a person who constructs or expands an earthen
7 18 storage structure within an agricultural drainage well area is
7 19 subject to a civil penalty of not more than \$5,000 for each
7 20 day of the violation (Code sections 460.205 and 460.206).
7 21 Criminal penalties also apply. A person who negligently or
7 22 knowingly disposes of a pollutant in a water of the state is
7 23 guilty of a serious misdemeanor or an aggravated misdemeanor
7 24 depending on the type of violation, punishable by a range of
7 25 fines and imprisonment (Code sections 455B.186 and 455B.191).
7 26 Moneys assessed as part of an administrative or civil
7 27 proceeding are to be credited to the state in the same manner
7 28 as if the department had not issued a certificate of
7 29 acceptance. Civil penalties assessed by the department must
7 30 be deposited in the general fund of the state (Code section
7 31 455B.109). Moneys from civil penalties assessed for
7 32 violations involving animal feeding operations are to be
7 33 credited to the animal feeding operations compliance fund
7 34 (Code section 459.401). Moneys from civil penalties for
7 35 violations involving contamination of groundwater from
8 1 agricultural drainage wells are credited to the manure storage
8 2 indemnity fund (Code section 459.501). Moneys from criminal
8 3 fines and restitution awarded to the attorney general as part
8 4 of a judgment in an environmental criminal case are credited
8 5 to the environmental crimes investigation and prosecution fund
8 6 (Code section 455B.112A).
8 7 LSB 2408YH 83
8 8 da/nh/5.1