

Senate File 442 - Introduced

SENATE FILE _____
BY COMMITTEE ON ENVIRONMENT
AND ENERGY INDEPENDENCE

(SUCCESSOR TO SSB 1260)

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

A BILL FOR

1 An Act relating to antidegradation protection for surface waters.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
3 TLSB 2137SV 83
4 tm/nh/8

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1 1 Section 1. NEW SECTION. 455B.176B ANTIDegradation.
1 2 1. The department shall establish and administer a tiered
1 3 antidegradation policy which is in accordance with the federal
1 4 Water Pollution Control Act and the federal rule governing
1 5 state antidegradation policies in 40 C.F.R. } 131.12.
1 6 2. Tier one review shall protect existing instream water
1 7 uses and the level of water quality necessary to protect those
1 8 existing uses, as required by 40 C.F.R. } 131.12.
1 9 3. For the purposes of tier two review and tier two
1 10 compliance requirements, the department shall consider
1 11 alternatives with costs less than one hundred ten percent of
1 12 the base cost of the pollution control measures for the
1 13 discharge as economically feasible. Alternatives with costs
1 14 greater than one hundred ten percent of the base cost may be
1 15 considered if the alternative is proven to produce a
1 16 substantial improvement in the resulting discharge and
1 17 significantly improve and protect water quality. The base
1 18 cost of a pollution control measure is the cost of those
1 19 controls required to protect existing uses or technology-based
1 20 effluent limits.
1 21 4. a. The department may create a classification for
1 22 outstanding Iowa waters. Only high-quality surface waters
1 23 that provide exceptional recreational or ecological
1 24 significance to the state may be considered for classification
1 25 as an outstanding Iowa water.
1 26 b. The department may classify a surface water of the
1 27 state as an outstanding Iowa water after considering all of
1 28 the following:
1 29 (1) Whether the surface water is a perennial water and is
1 30 in free-flowing condition.
1 31 (2) Whether the surface water has pristine water quality
1 32 which meets or exceeds all designated uses.
1 33 (3) Whether the surface water has exceptional recreational
1 34 or ecological significance to the state because of its unique
1 35 attributes.
2 1 (4) Whether the surface water supports threatened or
2 2 endangered species or provides critical habitat for threatened
2 3 or endangered species.
2 4 c. Any person may nominate a surface water of the state as
2 5 an outstanding Iowa water by filing a nomination with the
2 6 department. Notwithstanding the provisions for petition of
2 7 adoption and request for review of rules as provided for under
2 8 section 17A.7, the department may consider such nominations
2 9 during a triennial review of surface water quality standards.
2 10 All nominations must be submitted in conformance with this
2 11 subsection.
2 12 (1) A nomination shall include a map and description of
2 13 the surface water, a statement in support of the nomination,
2 14 supporting evidence that the applicable criteria are met, and
2 15 available relevant water quality data for establishing
2 16 existing water quality.

2 17 (2) The nominating party has the burden of establishing
2 18 the basis for classifying a surface water as an outstanding
2 19 Iowa water.

2 20 (3) The department shall hold at least one public meeting
2 21 in the local area of a surface water nominated under this
2 22 subsection to solicit public comment and to educate the public
2 23 on the classification process and potential impacts of the
2 24 classification. The department shall notify the public
2 25 officials in the affected community regarding the
2 26 classification process and potential impacts of the
2 27 classification.

2 28 (4) The department shall consider all of the following
2 29 factors when determining whether to classify a nominated
2 30 surface water as an outstanding Iowa water:

2 31 (a) Whether there is an ability to manage the surface
2 32 water and its watershed in order to maintain and protect
2 33 existing water quality and beneficial uses.

2 34 (b) The social and economic impact of classifying the
2 35 surface water as an outstanding Iowa water, including impacts
3 1 on upstream facilities with discharge permits.

3 2 (c) Public comments in support of or opposition to the
3 3 outstanding Iowa water classification for the surface water.

3 4 (d) The consistency of an outstanding Iowa water
3 5 classification with applicable water quality management plans.

3 6 (e) Whether the nominated surface water is located within
3 7 a state park, state recreation area, state wilderness area,
3 8 state riparian conservation area, state wildlife management
3 9 area, or area of critical environmental concern to the state,
3 10 or has another special use or unique attributes to the state.

3 11 (5) The department shall initiate an action to classify a
3 12 surface water as deserving of an outstanding Iowa water
3 13 classification pursuant to chapter 17A.

3 14 5. For purposes of a tier three review, the department
3 15 shall comply with all of the following:

3 16 a. The department shall prohibit permanent degradation of
3 17 water quality in a water designated for a tier three level of
3 18 protection. Any proposed activity that would result in a
3 19 permanent new or expanded direct source of pollutants of
3 20 concern to any segment which has been classified as a tier
3 21 three level protected water is prohibited. Temporary and
3 22 limited degradation of a water receiving tier three protection
3 23 may be allowed by the department on a case-by-case basis. A
3 24 water receiving tier three review shall be assessed against
3 25 the existing water quality data or other appropriate reference
3 26 stream data accounting for existing permitted discharges.

3 27 b. Any person may nominate a surface water of the state
3 28 for a tier three level of protection by filing a nomination
3 29 with the department. Notwithstanding the provisions for
3 30 petition of adoption and request for review of rules as
3 31 provided for under section 17A.7, the department may consider
3 32 such nominations during a triennial review of surface water
3 33 quality standards. All nominations must be submitted in
3 34 conformance with this paragraph "b".

3 35 (1) A nomination shall include a map and description of
4 1 the surface water, a statement in support of the nomination,
4 2 supporting evidence that the applicable criteria are met, and
4 3 available relevant water quality data for establishing
4 4 existing water quality.

4 5 (2) The nominating party has the burden of establishing
4 6 the basis for classifying a surface water for a tier three
4 7 level of protection.

4 8 (3) The department shall hold at least one public meeting
4 9 in the local area of a surface water nominated for tier three
4 10 level of protection to solicit public comment and to educate
4 11 the public on the classification process and potential impacts
4 12 of the classification. The department shall notify the public
4 13 officials in the affected community regarding the
4 14 classification process and potential impacts of the
4 15 classification.

4 16 (4) The department may classify a surface water as a tier
4 17 three level protected water after considering all of the
4 18 following criteria:

4 19 (a) Whether the surface water is perennial and in a
4 20 free-flowing condition.

4 21 (b) Whether the surface water has pristine water quality
4 22 which meets or exceeds all designated uses.

4 23 (c) The unique location of the surface water such as on
4 24 federal land, a national park, or a national wildlife refuge.

4 25 (d) Whether the surface water is of exceptional
4 26 recreational or ecological significance to the nation because
4 27 of its unique attributes.

4 28 (e) Whether the surface water serves as habitat for
4 29 threatened or endangered species and classification is
4 30 necessary for the protection of the species.

4 31 (5) The department shall consider all of the following
4 32 factors when determining whether to classify a nominated
4 33 surface water as a tier three level protected water:

4 34 (a) Whether there is an ability to manage the surface
4 35 water and its watershed in order to maintain and protect
5 1 existing water quality and beneficial uses.

5 2 (b) The social and economic impact of tier three
5 3 antidegradation protection, including impacts on upstream
5 4 facilities with discharge permits.

5 5 (c) Public comments in support of or opposition to the
5 6 tier three level classification for the surface water.

5 7 (d) The consistency of a tier three level classification
5 8 with applicable water quality management plans.

5 9 (e) Whether the nominated surface water is located within
5 10 a national park, national monument, national recreation area,
5 11 national wilderness area, or national riparian conservation
5 12 area, national wildlife management area, or national area of
5 13 critical environmental concern, or has another special use or
5 14 unique attributes to the nation.

5 15 (6) The department shall initiate an action to designate a
5 16 water as deserving of tier three level of protection pursuant
5 17 to chapter 17A.

5 18 6. In support of antidegradation objectives, the
5 19 department shall promote implementation of best management
5 20 practices for nonpoint sources through voluntary programs as
5 21 necessary to comply with federal and state law.

5 22 7. Rules adopted by the department shall apply to permits
5 23 submitted for regulated activities after July 1, 2009, which
5 24 result in new or expanded discharges of pollutants of concern
5 25 that will degrade water quality in designated stream segments
5 26 of surface waters of the state.

5 27 8. A new discharge into tier two waters that replaces an
5 28 existing septic system is not subject to antidegradation
5 29 review. Such new discharges to outstanding Iowa waters or
5 30 tier three level protected waters are only allowable if the
5 31 analysis shows that treatment and discharge of existing septic
5 32 system flows will result in a net improvement in water quality
5 33 for such waters. Combined sewer overflow control projects
5 34 resulting in a net decrease in the combined sewer overflow
5 35 related pollutant loadings to surface waters shall be excluded
6 1 from review requirements when these loadings are included in
6 2 department-approved plans in accordance with federal guidance
6 3 or policies.

6 4 9. A regulated activity shall not be considered to result
6 5 in degradation if activity is occurring within the design
6 6 capacity of the pollution control measure or treatment
6 7 facility as specified in the existing construction permit or a
6 8 permit for an existing facility does not propose less
6 9 stringent permit limits, or when treatment is added to a
6 10 previously unpermitted discharge resulting in improvements to
6 11 the receiving water, or when the activity will only result in
6 12 temporary or limited degradation of water quality.

6 13 10. In the approval process for a regulated activity that
6 14 would degrade surface water, the department shall ensure the
6 15 appropriate public and interagency participation in the
6 16 process and shall act in accordance with the following:

6 17 a. The applicant shall, in the political jurisdiction of
6 18 the proposed project, provide public notice and opportunity
6 19 for public comment on the alternatives analysis and the social
6 20 and economic importance review, before the alternatives
6 21 analysis is finalized by the applicant. If the applicant is a
6 22 municipal facility, rural water association, or rural water
6 23 district, public notice and opportunity to comment shall
6 24 conform to notice procedures required by section 362.3. If
6 25 the applicant is a concentrated animal feeding operation,
6 26 public notice and opportunity to comment shall conform to the
6 27 notice procedures required by section 459A.208.

6 28 b. The department shall carry out an intergovernmental
6 29 coordination and review process in tandem with the public
6 30 comment period held by the applicant pursuant to paragraph
6 31 "a", prior to approving a regulated activity that would
6 32 degrade surface water.

6 33 11. For purposes of this section, "pollutants of concern"
6 34 for antidegradation reviews shall include only those
6 35 pollutants that are reasonably expected to be present in the
7 1 discharge, may reasonably be expected to negatively affect the
7 2 existing beneficial uses of the receiving water, and meet the
7 3 requirements of section 455B.195.

EXPLANATION

7 4
7 5 This bill relates to antidegradation protection for surface
7 6 waters.
7 7 The bill requires the department of natural resources to
7 8 establish and administer a tiered antidegradation policy which
7 9 is in accordance with the federal Water Pollution Control Act.
7 10 The bill provides that tier one review shall protect
7 11 existing instream water uses and the level of water quality
7 12 necessary to protect those existing uses.
7 13 The bill provides that for purposes of tier two review and
7 14 tier compliance requirements, the department shall consider
7 15 alternatives with costs less than 110 percent of the base cost
7 16 of the pollution control measures for the discharge, as
7 17 economically feasible. Alternatives with costs greater than
7 18 110 percent may be considered if the alternative is proven to
7 19 produce a substantial improvement in the resulting discharge
7 20 and significantly improve and protect water quality.
7 21 The bill allows the department to create a classification
7 22 for outstanding Iowa waters for high-quality surface waters
7 23 that provide exceptional recreational or ecological
7 24 significance to the state. The bill provides a method for
7 25 nominating surface waters for outstanding Iowa waters
7 26 classification and criteria for the department to consider for
7 27 classification purposes.
7 28 The bill requires the department to prohibit permanent
7 29 degradation of water quality in a water designated for a tier
7 30 three level of protection. The bill prohibits any proposed
7 31 activity that would result in a permanent new or expanded
7 32 direct source of pollutants of concern to any segment which
7 33 has been classified as a tier three level protected water.
7 34 The bill allows a temporary and limited degradation of a water
7 35 receiving tier three protection. The bill provides a method
8 1 for nominating a surface water of the state for a tier three
8 2 level of protection and criteria for the department to
8 3 consider in determining whether to classify a nominated
8 4 surface water as a tier three level protected water.
8 5 The bill requires the department to promote implementation
8 6 of best management practices for nonpoint sources through
8 7 voluntary programs.
8 8 The bill provides that a new discharge into tier two waters
8 9 that replaces an existing septic system is not subject to
8 10 antidegradation review.
8 11 The bill provides that a regulated activity shall not be
8 12 considered to result in degradation if the activity is
8 13 occurring within the design capacity of the pollution control
8 14 measure or treatment facility.
8 15 The bill provides an approval process for a regulated
8 16 activity that would degrade surface water.
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