

**House File 661 - Introduced**

HOUSE FILE 661

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HF 500)

(SUCCESSOR TO HSB 48)

**A BILL FOR**

1 An Act relating to rulemaking authority of the department  
2 of natural resources and including effective date and  
3 applicability provisions.

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

1 Section 1. Section 455A.4, subsection 1, unnumbered  
2 paragraph 1, Code 2011, is amended to read as follows:

3 Except as otherwise provided by law ~~and subject to~~  
4 ~~rules adopted by the natural resource commission and the~~  
5 ~~environmental protection commission~~, the director shall:

6 Sec. 2. Section 455A.4, subsection 1, paragraph i, Code  
7 2011, is amended to read as follows:

8 *i.* Adopt rules in accordance with chapter 17A as necessary  
9 or desirable ~~for the organization or reorganization of the~~  
10 department to provide for the administration of chapter 321G,  
11 321I, 455B, 455C, 456A, 456B, 457A, 459, 459A, 459B, 461A,  
12 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.  
13 Rulemaking authority held by the natural resource commission  
14 or the environmental protection commission is vested in the  
15 director upon the effective date of this Act. Rules adopted by  
16 the natural resource commission or the environmental protection  
17 commission prior to the effective date of this Act, shall  
18 remain effective until modified or rescinded by action of the  
19 director in accordance with the provisions of chapter 17A. The  
20 director shall ensure that all policies and guidelines of the  
21 department for the administration of the chapters listed in  
22 this paragraph shall be adopted by rule.

23 Sec. 3. Section 455A.5, subsection 6, paragraph a, Code  
24 2011, is amended to read as follows:

25 *a.* ~~Establish Recommend~~ policy and ~~adopt~~ rules, pursuant  
26 ~~to chapter 17A, necessary~~ to provide for the effective  
27 administration of chapter 321G, 321I, 456A, 456B, 457A, 461A,  
28 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

29 Sec. 4. Section 455A.5, subsection 6, paragraph e, Code  
30 2011, is amended by striking the paragraph.

31 Sec. 5. NEW SECTION. 455A.5A Schedule of fees — rules.

32 1. The director, in consultation with the natural resource  
33 commission, shall adopt, by rule, a schedule of fees for  
34 permits issued by the natural resource commission, including  
35 conditional permits, and a schedule of fees for administration

1 of the permits. The fees shall be collected by the department  
2 and used to offset costs incurred in administrating a program  
3 for which the issuance of the permit is made or under which  
4 enforcement is carried out.

5 2. In determining the fee schedule, the director shall  
6 consider all of the following:

- 7 a. The reasonable costs associated with reviewing  
8 applications, issuing permits, and monitoring compliance with  
9 the terms of issued permits.
- 10 b. The relative benefits to the applicant and to the public  
11 of a permit review, permit issuance, and monitoring compliance  
12 with the terms of the permit.
- 13 c. The typical costs associated with a type of project or  
14 activity for which a permit is required.
- 15 d. The impact of the considerations included in paragraphs  
16 "a" through "c" on the private sector.

17 3. However, a fee shall not exceed the actual costs incurred  
18 by the department.

19 Sec. 6. Section 455A.6, subsection 6, paragraph a, Code  
20 2011, is amended to read as follows:

21 a. ~~Establish~~ Recommend policy for the department ~~and adopt~~  
22 ~~rules, pursuant to chapter 17A,~~ necessary to provide for the  
23 effective administration of chapter 455B, 455C, or 459.

24 Sec. 7. Section 455B.103, subsection 1, Code 2011, is  
25 amended by striking the subsection and inserting in lieu  
26 thereof the following:

27 1. Adopt, modify, or repeal rules pursuant to chapter 17A.  
28 The director shall have only the authority and discretion that  
29 is expressly delegated or granted by this chapter, chapter  
30 455C, chapter 459, chapter 459A, and chapter 459B and shall not  
31 exercise such authority and discretion except to the extent  
32 necessary to implement this chapter, chapter 455C, chapter 459,  
33 chapter 459A, and chapter 459B. Any rulemaking authority held  
34 by the commission is vested in the director upon the effective  
35 date of this Act. Rules adopted by the commission prior to

1 the effective date of this Act shall remain in effect until  
2 modified or rescinded by action of the director in accordance  
3 with the provisions of chapter 17A.

4     *a.* The director shall include in the preamble of a rule a  
5 statement referencing the authority delegated to the director  
6 pursuant to which the rule is adopted. The preamble for the  
7 rule shall indicate when the director is implementing a federal  
8 rule by reference and include a financial impact statement  
9 detailing the general impact of the rule upon the regulated  
10 parties.

11     *b.* When proposing or adopting rules to implement a specific  
12 federal environmental program, the director shall not impose  
13 requirements more restrictive than the requirements of  
14 the federal program being implemented. The director shall  
15 not propose a rule related to a federal regulation until  
16 the federal regulation has received final approval by the  
17 applicable federal agency.

18     *c.* When proposing or adopting rules, the director shall  
19 include departmental policy relating to the disclosure of  
20 information concerning a violation or alleged violation  
21 of the rules, standards, permits, or orders issued by the  
22 department and the confidentiality of information obtained by  
23 the department in the administration and enforcement of this  
24 chapter, chapter 455C, chapter 459, chapter 459A, and chapter  
25 459B.

26     Sec. 8. Section 455B.103, subsection 2, Code 2011, is  
27 amended by striking the subsection.

28     Sec. 9. Section 455B.105, subsections 3 and 11, Code 2011,  
29 are amended by striking the subsections.

30     Sec. 10. NEW SECTION. **455B.106 Schedule of fees — rules.**

31     1. The director, in consultation with the environmental  
32 protection commission, shall adopt, by rule, procedures and  
33 forms necessary to implement the provisions of this chapter and  
34 chapters 459, 459A, and 459B relating to permits, conditional  
35 permits, and general permits.

1 2. The director, in consultation with the environmental  
2 protection commission, may also adopt, by rule, a schedule  
3 of fees for permit and conditional permit applications  
4 and a schedule of fees which may be periodically assessed  
5 for administration of permits and conditional permits. In  
6 determining the fee schedules, the director shall consider:

7 a. The state's reasonable cost of reviewing applications,  
8 issuing permits and conditional permits, and checking  
9 compliance with the terms of the permits.

10 b. The relative benefits to the applicant and to the  
11 public of permit and conditional permit review, issuance, and  
12 monitoring compliance. It is the intention of the general  
13 assembly that permit fees shall not cover any costs connected  
14 with correcting violation of the terms of any permit and shall  
15 not impose unreasonable costs on any municipality.

16 c. The typical costs of the particular types of projects  
17 or activities for which permits or conditional permits are  
18 required, provided that in no circumstances shall fees be in  
19 excess of the actual costs to the department.

20 d. The impact of the considerations included in paragraphs  
21 "a" through "c" on the private sector.

22 3. Except as otherwise provided in this chapter and chapter  
23 459, fees collected by the department under this section shall  
24 be remitted to the treasurer of state and credited to the  
25 general fund of the state.

26 4. The director shall adopt rules for applications or  
27 permits related to the national pollutant discharge elimination  
28 system (NPDES) coverage as described in section 455B.197,  
29 including fees, only to the extent that the rules are  
30 consistent with that section.

31 Sec. 11. Section 455B.183A, subsection 2, Code 2011, is  
32 amended to read as follows:

33 2. The ~~commission~~ director shall adopt fees as required  
34 pursuant to section ~~455B.105~~ 455B.106 for permits required for  
35 public water supply systems as provided in sections 455B.174

1 and 455B.183. Fees paid pursuant to this section shall not be  
2 subject to the sales or services tax. The fees shall be for  
3 each of the following:

4 a. The construction, installation, or modification of a  
5 public water supply system. The amount of the fees may be  
6 based on the type of system being constructed, installed, or  
7 modified.

8 b. The operation of a public water supply system, including  
9 any part of the system. The ~~commission~~ director shall adopt  
10 a fee schedule which shall be based on the total number of  
11 persons served by public water supply systems in this state.  
12 However, a public water supply system shall be assessed a fee  
13 of at least twenty-five dollars. A public water supply system  
14 not owned or operated by a community and serving a transient  
15 population shall be assessed a fee of twenty-five dollars. The  
16 ~~commission~~ director shall calculate all fees in the schedule to  
17 produce total revenues equaling three hundred fifty thousand  
18 dollars for each fiscal year, commencing with the fiscal year  
19 beginning July 1, 1995, and ending June 30, 1996. For each  
20 fiscal year, the fees shall be deposited into the public water  
21 supply system account. By May 1 of each year, the department  
22 shall estimate the total revenue expected to be collected from  
23 the overpayment of fees, which are all fees in excess of the  
24 amount of the total revenues which are expected to be collected  
25 under the current fee schedule, and the total revenue expected  
26 to be collected from the payment of fees during the next fiscal  
27 year. The ~~commission~~ director shall adjust the fees if the  
28 estimate exceeds the amount of revenue required to be deposited  
29 in the account pursuant to this paragraph.

30 Sec. 12. Section 455B.310, subsection 5, Code 2011, is  
31 amended to read as follows:

32 5. Solid waste disposal facilities with special provisions  
33 which limit the site to disposal of construction and demolition  
34 waste, landscape waste, coal combustion waste, cement kiln  
35 dust, foundry sand, and solid waste materials approved by the

1 department for lining or capping, or for construction berms,  
2 dikes, or roads in a sanitary disposal project or sanitary  
3 landfill are exempt from the tonnage fees imposed under this  
4 section. However, solid waste disposal facilities under  
5 this subsection are subject to the fees imposed pursuant to  
6 section ~~455B.105, subsection 11, paragraph "a"~~ 455B.106.  
7 Notwithstanding the provisions of section ~~455B.105, subsection~~  
8 ~~11, paragraph "b"~~ 455B.106, the fees collected pursuant to this  
9 subsection shall be deposited in the solid waste account as  
10 established in section 455E.11, subsection 2, paragraph "a",  
11 to be used by the department for the regulation of these solid  
12 waste disposal facilities.

13 Sec. 13. Section 459B.104, subsections 1 and 2, Code 2011,  
14 are amended to read as follows:

15 1. ~~The environmental protection commission~~ director of the  
16 department shall establish by rule adopted pursuant to chapter  
17 17A, requirements relating to the construction, including  
18 expansion, or operation of dry bedded confinement feeding  
19 operations, including related dry bedded manure confinement  
20 feeding operation buildings and stockpiles.

21 2. Any provision referring generally to compliance with  
22 the requirements of this chapter as applied to dry bedded  
23 confinement feeding operations also includes compliance with  
24 requirements in rules adopted by the ~~environmental protection~~  
25 ~~commission~~ director of the department pursuant to this section,  
26 orders issued by the department as authorized under this  
27 chapter, and the terms and conditions applicable to manure  
28 management plans required under this chapter.

29 Sec. 14. INTENT. It is the intent of the general assembly  
30 that upon the effective date of this Act, the director of  
31 the department of natural resources shall have the powers  
32 and duties and shall assume the sole responsibility for  
33 proposing and adopting rules as necessary for the effective  
34 administration of the duties of the department of natural  
35 resources. All references in statute or rules to the

1 rulemaking authority of the natural resource commission or  
2 the environmental protection commission of the department of  
3 natural resources shall upon the effective date of this Act be  
4 construed to refer only to the director of the department of  
5 natural resources.

6     Sec. 15. APPLICABILITY. This Act applies to all rules  
7 noticed or adopted after the effective date of this Act. If a  
8 rule with an effective date prior to the effective date of this  
9 Act is amended after the effective date of this Act, then the  
10 provisions of this Act are applicable to the entire rule being  
11 amended and not only to the precise portion of the rules that  
12 is being amended. For purposes of applying the provisions of  
13 this Act, the effective date of the amendment to a rule shall  
14 be the new effective date of the rule as a whole.

15     Sec. 16. EFFECTIVE UPON ENACTMENT. This Act, being deemed  
16 of immediate importance, takes effect upon enactment.

17   EXPLANATION

18     This bill relates to rulemaking authority of the department  
19 of natural resources.

20     Currently, the environmental protection commission and the  
21 natural resources commission both have rulemaking authority  
22 for Code chapters administered by the department of natural  
23 resources. The bill transfers the rulemaking authority for  
24 both commissions to the director of the department of natural  
25 resources, in consultation with each of the commissions. The  
26 bill makes conforming amendments. The bill prohibits the  
27 director from proposing a rule related to a federal regulation  
28 until the regulation has received final approval by the  
29 applicable federal agency.

30     The bill takes effect upon enactment and applies to rules  
31 noticed or adopted after the date of enactment.