

House Study Bill 48 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
ENVIRONMENTAL PROTECTION
BILL BY CHAIRPERSON OLSON)

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18 remain effective until modified or rescinded by action of the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.

20 Sec. 3. Section 455A.5, subsection 6, paragraph a, Code
21 2011, is amended to read as follows:

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

26 Sec. 4. Section 455A.5, subsection 6, paragraph e, Code
27 2011, is amended by striking the paragraph.

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

29 1. The director shall adopt, by rule, a schedule of fees for
30 permits issued by the natural resource commission, including
31 conditional permits, and a schedule of fees for administration
32 of the permits. The fees shall be collected by the department
33 and used to offset costs incurred in administering a program
34 for which the issuance of the permit is made or under which
35 enforcement is carried out.

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

3 a. The reasonable costs associated with reviewing
4 applications, issuing permits, and monitoring compliance with
5 the terms of issued permits.

6 b. The relative benefits to the applicant and to the public
7 of a permit review, permit issuance, and monitoring compliance
8 with the terms of the permit.

9 c. The typical costs associated with a type of project or
10 activity for which a permit is required.

11 3. However, a fee shall not exceed the actual costs incurred
12 by the department.

13 Sec. 6. Section 455A.6, subsection 6, paragraph a, Code
14 2011, is amended to read as follows:

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

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

21 1. Adopt, modify, or repeal rules necessary to implement
22 this chapter, chapter 455C, chapter 459, chapter 459A, and
23 chapter 459B, only to the extent that the rules are consistent
24 with the provisions of these chapters. Any rulemaking
25 authority held by the commission is vested in the director
26 upon the effective date of this Act. Rules adopted by the
27 commission prior to the effective date of this Act shall remain
28 in effect until modified or rescinded by action of the director
29 in accordance with the provisions of chapter 17A.

30 a. The director shall include in the preamble of a rule a
31 statement referencing the authority delegated to the director
32 pursuant to which the rule is adopted. The preamble for the
33 rule shall indicate when the director is implementing a federal
34 rule by reference and include a financial impact statement
35 detailing the general impact of the rule upon the regulated

1 parties.

2 *b.* When proposing or adopting rules to implement a specific
3 federal environmental program, the director shall not impose
4 requirements more restrictive than the requirements of the
5 federal program being implemented.

6 *c.* When proposing or adopting rules, the director shall
7 include departmental policy relating to the disclosure of
8 information concerning a violation or alleged violation
9 of the rules, standards, permits, or orders issued by the
10 department and the confidentiality of information obtained by
11 the department in the administration and enforcement of this
12 chapter, chapter 455C, chapter 459, chapter 459A, and chapter
13 459B.

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

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

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

19 1. The director shall adopt, by rule, procedures and forms
20 necessary to implement the provisions of this chapter and
21 chapters 459, 459A, and 459B relating to permits, conditional
22 permits, and general permits.

23 2. The director may also adopt, by rule, a schedule of fees
24 for permit and conditional permit applications and a schedule
25 of fees which may be periodically assessed for administration
26 of permits and conditional permits. In determining the fee
27 schedules, the director shall consider:

28 *a.* The state's reasonable cost of reviewing applications,
29 issuing permits and conditional permits, and checking
30 compliance with the terms of the permits.

31 *b.* The relative benefits to the applicant and to the
32 public of permit and conditional permit review, issuance, and
33 monitoring compliance. It is the intention of the general
34 assembly that permit fees shall not cover any costs connected
35 with correcting violation of the terms of any permit and shall

1 not impose unreasonable costs on any municipality.

2 *c.* The typical costs of the particular types of projects
3 or activities for which permits or conditional permits are
4 required, provided that in no circumstances shall fees be in
5 excess of the actual costs to the department.

6 3. Except as otherwise provided in this chapter and chapter
7 459, fees collected by the department under this section shall
8 be remitted to the treasurer of state and credited to the
9 general fund of the state.

10 4. The director shall adopt rules for applications or
11 permits related to the national pollutant discharge elimination
12 system (NPDES) coverage as described in section 455B.197,
13 including fees, only to the extent that the rules are
14 consistent with that section.

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

17 2. The ~~commission~~ director shall adopt fees as required
18 pursuant to section ~~455B.105~~ 455B.106 for permits required for
19 public water supply systems as provided in sections 455B.174
20 and 455B.183. Fees paid pursuant to this section shall not be
21 subject to the sales or services tax. The fees shall be for
22 each of the following:

23 *a.* The construction, installation, or modification of a
24 public water supply system. The amount of the fees may be
25 based on the type of system being constructed, installed, or
26 modified.

27 *b.* The operation of a public water supply system, including
28 any part of the system. The ~~commission~~ director shall adopt
29 a fee schedule which shall be based on the total number of
30 persons served by public water supply systems in this state.
31 However, a public water supply system shall be assessed a fee
32 of at least twenty-five dollars. A public water supply system
33 not owned or operated by a community and serving a transient
34 population shall be assessed a fee of twenty-five dollars. The
35 ~~commission~~ director shall calculate all fees in the schedule to

1 produce total revenues equaling three hundred fifty thousand
2 dollars for each fiscal year, commencing with the fiscal year
3 beginning July 1, 1995, and ending June 30, 1996. For each
4 fiscal year, the fees shall be deposited into the public water
5 supply system account. By May 1 of each year, the department
6 shall estimate the total revenue expected to be collected from
7 the overpayment of fees, which are all fees in excess of the
8 amount of the total revenues which are expected to be collected
9 under the current fee schedule, and the total revenue expected
10 to be collected from the payment of fees during the next fiscal
11 year. The ~~commission~~ director shall adjust the fees if the
12 estimate exceeds the amount of revenue required to be deposited
13 in the account pursuant to this paragraph.

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

16 5. Solid waste disposal facilities with special provisions
17 which limit the site to disposal of construction and demolition
18 waste, landscape waste, coal combustion waste, cement kiln
19 dust, foundry sand, and solid waste materials approved by the
20 department for lining or capping, or for construction berms,
21 dikes, or roads in a sanitary disposal project or sanitary
22 landfill are exempt from the tonnage fees imposed under this
23 section. However, solid waste disposal facilities under
24 this subsection are subject to the fees imposed pursuant to
25 section ~~455B.105, subsection 11, paragraph "a"~~ 455B.106.
26 Notwithstanding the provisions of section ~~455B.105, subsection~~
27 ~~11, paragraph "b"~~ 455B.106, the fees collected pursuant to this
28 subsection shall be deposited in the solid waste account as
29 established in section 455E.11, subsection 2, paragraph "a",
30 to be used by the department for the regulation of these solid
31 waste disposal facilities.

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

34 1. The ~~environmental protection commission~~ director of the
35 department shall establish by rule adopted pursuant to chapter

1 17A, requirements relating to the construction, including
2 expansion, or operation of dry bedded confinement feeding
3 operations, including related dry bedded manure confinement
4 feeding operation buildings and stockpiles.

5 2. Any provision referring generally to compliance with
6 the requirements of this chapter as applied to dry bedded
7 confinement feeding operations also includes compliance with
8 requirements in rules adopted by the ~~environmental protection~~
9 ~~commission~~ director of the department pursuant to this section,
10 orders issued by the department as authorized under this
11 chapter, and the terms and conditions applicable to manure
12 management plans required under this chapter.

13 Sec. 14. INTENT. It is the intent of the general assembly
14 that upon the effective date of this Act, the director of
15 the department of natural resources shall have the powers
16 and duties and shall assume the sole responsibility for
17 proposing and adopting rules as necessary for the effective
18 administration of the duties of the department of natural
19 resources. All references in statute or rules to the
20 rulemaking authority of the natural resource commission or
21 the environmental protection commission of the department of
22 natural resources shall upon the effective date of this Act be
23 construed to refer only to the director of the department of
24 natural resources.

25 Sec. 15. APPLICABILITY. This Act applies to all rules
26 noticed or adopted after the effective date of this Act. If a
27 rule with an effective date prior to the effective date of this
28 Act is amended after the effective date of this Act, then the
29 provisions of this Act are applicable to the entire rule being
30 amended and not only to the precise portion of the rules that
31 is being amended. For purposes of applying the provisions of
32 this Act, the effective date of the amendment to a rule shall
33 be the new effective date of the rule as a whole.

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

EXPLANATION

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2 This bill relates to rulemaking authority of the department
3 of natural resources.

4 Currently, the environmental protection commission and the
5 natural resources commission both have rulemaking authority
6 for Code chapters administered by the department of natural
7 resources. The bill transfers the rulemaking authority for
8 both commissions to the director of the department of natural
9 resources. The bill makes conforming amendments.

10 The bill takes effect upon enactment.