

House File 416 - Introduced

HOUSE FILE 416

BY ISENHART

A BILL FOR

1 An Act relating to water quality and soil conservation efforts,
2 including election requirements and powers and duties of
3 commissioners of soil and water conservation districts, and
4 related powers and duties of county boards of supervisors,
5 county treasurers, the state soil conservation committee,
6 the department of agriculture and land stewardship's
7 division of soil and water conservation, and the attorney
8 general.

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

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DIVISION I
ELECTIONS

Section 1. Section 161A.5, subsection 2, Code 2017, is amended to read as follows:

2. The governing body of each district shall consist of five commissioners elected at large on a nonpartisan basis for staggered four-year terms commencing on the first day of January that is not a Sunday or holiday following their election. Any eligible elector residing in the district is eligible to the office of commissioner, ~~except that no more than one commissioner shall at any one time be a resident of any one township. A vacancy is created in the office of any commissioner who changes residence into a township where another commissioner then resides.~~ If a commissioner is absent for sixty or more percent of monthly meetings during any twelve-month period, the other commissioners by their unanimous vote may declare the member's office vacant. A vacancy in the office of commissioner shall be filled by appointment of the ~~state soil conservation committee~~ remaining district commissioners until the next succeeding general election. The new appointee shall not serve out any unexpired time of term beyond the next succeeding general election, at which time the balance of the unexpired term shall be filled as provided by section 69.12. Appointees to unexpired terms may choose to stand for election at the next succeeding general election. The state soil conservation committee shall not name or otherwise have authority to approve of commissioner appointments to fill unexpired terms.

Sec. 2. Section 161A.5, subsection 3, paragraph e, Code 2017, is amended by striking the paragraph.

DIVISION II
SOIL LOSS LIMITS

Sec. 3. Section 161A.44, unnumbered paragraph 1, Code 2017, is amended to read as follows:

The commissioners of each soil and water conservation

1 district shall, ~~with approval of and within time limits set by~~
2 ~~administrative order of the state soil conservation committee,~~
3 adopt any reasonable regulations as are regulation deemed
4 necessary to establish a soil loss limit ~~or limits~~ for the
5 district, and provide for the implementation of the soil loss
6 ~~limit or limits,~~ and may subsequently amend or repeal their
7 ~~regulations~~ a regulation as they deem necessary. However, a
8 soil loss limit shall not exceed five tons per acre occurring
9 within any twelve-month period. The committee shall review
10 the soil loss limit regulations adopted by the ~~soil and water~~
11 ~~conservation districts~~ commissioners at least once every five
12 years, and shall recommend changes in the regulations ~~of a~~
13 ~~soil and water conservation district~~ which the committee deems
14 necessary to assure that the district's soil loss limits are
15 reasonable and attainable. The adoption, amendment, or repeal
16 of a regulation shall not take effect until after a public
17 hearing on the matter is conducted pursuant to section 161A.45.
18 The commissioners may do any of the following:

19 Sec. 4. Section 161A.45, Code 2017, is amended to read as
20 follows:

21 **161A.45 Submission of regulations to committee — hearing.**

22 1. Regulations A regulation, other than a regulation
23 establishing soil loss limits, which the commissioners propose
24 to adopt, amend, or repeal shall be submitted to the committee,
25 in a form prescribed by the committee, for ~~its~~ the committee's
26 approval. The committee may approve ~~the regulations~~ any
27 regulation as submitted, or with ~~amendments~~ any related
28 amendment as ~~it~~ the committee deems necessary.

29 2. The commissioners shall, and after committee approval
30 if necessary, publish notice of a hearing on the any proposed
31 ~~regulations, as approved,~~ regulation under section 161A.44 in
32 a newspaper of general circulation in the district, setting a
33 date and time not less than ten nor more than thirty days after
34 the publication when a hearing on the proposed ~~regulations~~
35 regulation will be held at a specified place. The notice shall

1 include the full text of the proposed ~~regulations~~ regulation
2 or shall state that the proposed ~~regulations~~ are regulation is
3 on file and available for review at the office of the affected
4 ~~soil and water conservation~~ district.

5 Sec. 5. Section 161A.46, Code 2017, is amended to read as
6 follows:

7 **161A.46 Conduct of hearing.**

8 At the hearing, the commissioners or their designees shall
9 explain, in reasonable detail, the reasons why the adoption,
10 amendment, or repeal of ~~the regulations~~ a regulation is
11 deemed necessary or advisable. Any landowner, or any occupant
12 of land who would be affected by the ~~regulations~~ proposed
13 regulation, shall be afforded an opportunity to be heard
14 for or against the proposed ~~regulations~~ regulation. At the
15 conclusion of the hearing, the commissioners shall announce
16 and enter of record their decision whether to adopt or modify
17 the proposed ~~regulations~~ regulation. Any modification, other
18 than establishing soil loss limits, must be approved by the
19 committee, which may at its discretion order the commissioners
20 to republish the ~~regulations~~ regulation and hold another
21 hearing in the manner prescribed by this chapter.

22 Sec. 6. Section 161A.47, Code 2017, is amended to read as
23 follows:

24 **161A.47 Inspection of land on complaint — administrative**
25 **order.**

26 1. a. The commissioners shall inspect or cause to be
27 inspected any land located within the district to ~~determine~~
28 find if ~~land is being damaged by sediment, from there exists~~
29 credible evidence of significant soil loss caused by erosion
30 occurring on neighboring that land ~~in excess of the limits~~
31 ~~established by the district's soil erosion control regulations~~
32 or neighboring land. ~~If the land is privately owned, the~~ The
33 commissioners shall make or cause to be made the inspection,
34 ~~upon receiving a~~ under any of the following circumstances:

35 (1) Receipt of a written complaint signed by an owner,

1 lessee, or occupant of land claiming that the owner's or,
2 lessee's, or occupant's land is being damaged by sediment
3 erosion occurring on neighboring land. If the land is subject
4 to a public interest, the commissioners shall make or cause to
5 be made the inspection upon a

6 (2) Receipt of a written complaint by any person, if the
7 complaint contains allegations or information that would cause
8 a reasonable person to conclude that significant soil loss
9 caused by erosion has occurred.

10 (3) A majority vote of commissioners at an open meeting held
11 pursuant to chapter 21. Land is subject to a public interest
12 if the land is publicly held, subject to an easement held by
13 the public, or the subject of an improvement made at public
14 expense.

15 (4) By the discretionary authority of the commissioners as
16 provided in section 161A.61.

17 b. The commissioners shall establish criteria to determine
18 what constitutes credible evidence of significant soil loss
19 based on the soil loss limits established for the district.

20 2. If, after the inspection, the commissioners find that
21 sediment damages are occurring to land which is owned or
22 occupied by the person filing the complaint or subject to a
23 public interest, and that excess soil erosion is occurring
24 on neighboring land soil loss exceeding the soil loss limits
25 for the land in question, the commissioners shall issue
26 an administrative order. The administrative order shall
27 describe the commissioners' findings, including the cause of
28 the significant soil loss, the extent to which the soil loss
29 exceeds the soil loss limits, the location of the erosion,
30 and whether land has been damaged by soil loss due to erosion
31 occurring on neighboring land. The administrative order
32 shall be delivered to the persons responsible for causing the
33 significant soil loss, including each landowner or landowners
34 of record, lessee of the land, and to the occupant of the land,
35 if known to the commissioners. The order shall describe the

1 ~~land and state as nearly as possible the extent to which soil~~
2 ~~erosion on the land exceeds the limits established by the~~
3 ~~district's regulations. Upon request, the commissioners shall~~
4 ~~deliver a copy of the administrative order to the owner of any~~
5 ~~land damaged by erosion occurring on neighboring land. The~~
6 ~~administrative~~

7 3.—~~The order shall be delivered either by personal service~~
8 ~~or by restricted certified mail to each of the persons to whom~~
9 ~~it is directed, and shall:.~~

10 3. The administrative order shall establish a compliance
11 period as follows:

12 a. In the case of erosion occurring on the site of any
13 a construction project or similar undertaking involving the
14 removal of all or a major portion of the vegetation or other
15 cover, ~~and exposing bare soil directly to water or wind, state~~
16 ~~a time not more than five days after service or mailing of~~
17 ~~the notice of the order when work necessary to establish or~~
18 maintain all erosion control practices must be commenced, ~~and a~~
19 ~~time not more than thirty days after service or mailing of the~~
20 ~~notice of the order when the~~ not later than five days after the
21 administrative order has been delivered. The work is to must
22 be satisfactorily completed not later than thirty days after
23 the administrative order has been delivered.

24 b. In all other cases, ~~state a time not more than six~~
25 ~~months after service or mailing of the notice of the order,~~
26 ~~by which work needed necessary to establish or maintain the~~
27 all necessary soil and water conservation practices or erosion
28 control measures practices must be commenced, ~~and a time not~~
29 ~~more than one year after the service or mailing of the notice~~
30 ~~of the order when the work is to be satisfactorily completed~~
31 and satisfactorily completed not later than one year after
32 the administrative order has been delivered, unless the
33 requirements of the administrative order are superseded by the
34 provisions of [section 161A.48](#).

35 Sec. 7. Section 161A.48, subsection 2, Code 2017, is amended

1 to read as follows:

2 2. Evidence that an application for cost-share or other
3 public moneys, from a source or sources having authority to
4 pay a portion of the cost of work needed to comply with an
5 administrative order issued pursuant to [section 161A.47](#), has
6 been submitted to the proper officer or agency constitutes
7 commencement of the work within the meaning of sections 161A.43
8 through 161A.53. The commissioners shall give preference to
9 applications that seek to comply with an administrative order
10 issued pursuant to section 161A.47.

11 Sec. 8. Section 161A.49, Code 2017, is amended to read as
12 follows:

13 **161A.49 ~~Petition for court order~~ Administrative order —**
14 **noncompliance.**

15 ~~The commissioners shall petition the district court for a~~
16 ~~court order requiring immediate compliance with an~~ Upon the
17 expiration of the compliance period for an administrative order
18 ~~previously~~ issued by the commissioners as provided in section
19 161A.47, if the person to whom the order is directed shall be
20 deemed to be in noncompliance if any of the following apply:

21 1. The work necessary to comply with the administrative
22 order ~~is~~ has not commenced on or before the date specified
23 in such order, or in any supplementary order subsequently
24 issued as provided in [section 161A.48](#), ~~unless.~~ However,
25 this subsection does not apply if, in the judgment of the
26 commissioners, the failure to commence or complete the work
27 as required by the administrative order is due to factors
28 beyond the control of the person or persons to whom such order
29 is directed and the person or persons can be relied upon to
30 commence and complete the necessary work at the earliest
31 possible time.

32 2. ~~Such~~ The work is not being performed with due diligence,
33 or is not satisfactorily completed by the date specified in
34 the administrative order, or when completed does not reduce
35 soil erosion from ~~such~~ the land below the ~~limits~~ applicable

1 soil loss limits established by the soil and water conservation
2 district's regulations.

3 3. The person or persons to whom the administrative order is
4 directed ~~advise~~ have advised the commissioners that they do not
5 intend to commence or complete such work.

6 Sec. 9. NEW SECTION. 161A.49A **Administrative order —**
7 **referral or petition to enforce.**

8 1. *a.* Upon the expiration of the compliance period
9 described in sections 161A.47 and 161A.48, the commissioners
10 shall enforce the administrative order against a person who
11 is deemed to be in noncompliance under section 161A.49 by
12 referring the matter to any of the following:

13 (1) The board of supervisors of a county in which the land
14 causing the erosion is located.

15 (2) The attorney general pursuant to section 161A.6.

16 *b.* The referral shall include a copy of the administrative
17 order and other information required by the recipient.

18 2. The commissioners shall notify any person whose land
19 is damaged by erosion occurring on neighboring land that the
20 compliance period has expired. The person may petition the
21 board of supervisors of the county in which the land causing
22 the erosion is located to take action necessary to enforce
23 the administrative order. The petition shall include a copy
24 of the administrative order and other information required by
25 the board. A copy of the petition must be delivered to the
26 commissioners who issued the administrative order.

27 3. A board of supervisors receiving a referral or petition
28 under this section shall do any of the following:

29 *a.* Take action necessary to enforce compliance with the
30 administrative order. Upon completion of board action,
31 the board shall deliver a statement to the county treasurer
32 certifying the costs of taking the action plus a penalty equal
33 to five percent of that amount, together with a copy of the
34 administrative order. The total amount due shall be assessed
35 against the property which is the subject of the administrative

1 order, shall be placed upon the county system, and shall be
2 collected in the same manner as ordinary taxes. The amount due
3 shall be a lien on the land until paid.

4 *b.* Refer the matter to the attorney general.

5 Sec. 10. Section 161A.50, Code 2017, is amended to read as
6 follows:

7 **161A.50 ~~Burden — court order~~ Court action.**

8 1. Upon the expiration of the compliance period for an
9 administrative order issued by the commissioners as provided in
10 sections 161A.47 through 161A.49, the commissioners, or either
11 a county board of supervisors or attorney general acting upon a
12 referral under section 161A.49A, shall petition the district
13 court to order a person deemed to be in noncompliance with
14 the administrative order under section 161A.49 to immediately
15 comply with the order.

16 2. In any action brought under ~~section 161A.49~~ subsection
17 1, the burden of proof shall be upon the commissioners to
18 show that soil erosion is in fact occurring in excess of the
19 applicable soil loss ~~limits~~ and that the defendant has not
20 established or maintained soil and water conservation practices
21 or erosion control practices in compliance with the soil and
22 water conservation district's regulations. With respect to
23 construction, repair, or maintenance of any public street,
24 road, or highway, evidence that the defendant has met soil
25 erosion control standards equivalent to or in excess of those
26 currently imposed by the United States government on the
27 project or like projects involving use of federal funds shall
28 create a presumption of compliance with the applicable soil
29 loss limit.

30 3. Upon receiving satisfactory proof of the defendant's
31 noncompliance, the court shall issue an order directing
32 the ~~landowner or landowners~~ defendant to comply with the
33 administrative order previously issued by the commissioners.
34 The court may modify such administrative order if deemed
35 necessary. Notice of the court order shall be given either by

1 personal service or by restricted certified mail to each of the
2 persons to whom the order is directed, who may within thirty
3 days from the date of the court order appeal to the supreme
4 court. Any person who fails to comply with a court order
5 issued pursuant to **this section** within the time specified in
6 such order, unless the order has been stayed pending an appeal,
7 shall be deemed in contempt of court and may be punished
8 accordingly.

9 DIVISION III

10 WATER QUALITY INITIATIVES

11 Sec. 11. Section 161A.4, Code 2017, is amended by adding the
12 following new subsection:

13 NEW SUBSECTION. 8. The committee and division shall
14 establish policies that prioritize the allocation of moneys,
15 personnel, and technical expertise necessary to administer this
16 chapter and chapter 466B to support water quality initiatives
17 sponsored by a watershed management authority as described in
18 section 466B.43.

19 Sec. 12. NEW SECTION. **466B.43 Priority allocations.**

20 The state soil conservation committee established in
21 section 161A.4 and the division shall establish policies that
22 prioritize the allocation of moneys, personnel, and technical
23 expertise necessary to administer this chapter and chapter 161A
24 to support water quality initiatives sponsored by a watershed
25 management authority created by two or more soil and water
26 conservation districts under section 466B.22. The highest
27 priority shall be given to support initiatives carried out in
28 high-priority watersheds identified by the water resources
29 coordinating council pursuant to section 466B.3.

30 EXPLANATION

31 The inclusion of this explanation does not constitute agreement with
32 the explanation's substance by the members of the general assembly.

33 GENERAL. This bill relates to the powers and duties of
34 the five soil commissioners who govern each soil and water
35 conservation district (district) and who are elected to serve

1 four-year terms on a nonpartisan basis. The bill also relates
2 to the powers and duties of a number of other state and local
3 entities, including county boards of supervisors (boards),
4 county treasurers, the state soil conservation committee
5 (committee), the soil conservation division of the department
6 of agriculture and land stewardship (division), and the
7 attorney general.

8 ELECTION OF COMMISSIONERS. The bill removes the prohibition
9 against more than one commissioner residing in the same
10 township, requiring only residence within the district to be
11 eligible for election at large to the office of commissioner.
12 Provisions relating to appointments for vacancies in the
13 office of commissioner are changed to allow for appointments
14 to be made by the remaining commissioners, not the state soil
15 conservation committee. The bill specifies that the person
16 appointed does not serve out the full remaining term, but
17 only for the time until the next succeeding general election.
18 Appointed commissioners are then able to stand for election if
19 they so choose.

20 COMMISSIONERS, BOARDS, AND THE ATTORNEY GENERAL —
21 ESTABLISHING AND ENFORCING SOIL LOSS LIMITS. The commissioners
22 are to establish criteria for determining what constitutes
23 significant soil loss for land located within the district,
24 including soil loss caused by erosion occurring on neighboring
25 land. The commissioners are to adopt a regulation establishing
26 soil loss limits which shall be not more than five tons per
27 acre during any 12-month period. The regulations establishing
28 soil loss limits are no longer required to be approved by the
29 committee.

30 The commissioners must perform an inspection of land located
31 in their district after receipt of a written complaint or upon
32 a majority vote at an open meeting. After the inspection,
33 the commissioners must issue an administrative order against
34 a person if the commissioners find the loss of soil exceeds
35 the soil loss limit for the land in question. The order must

1 describe the commissioners' findings, be delivered to the
2 person responsible for causing the soil loss, and establish a
3 period for compliance with the order. Evidence of compliance
4 with the order includes applying for public moneys, such as
5 cost-share financing, in order to defray a portion of the costs
6 associated with complying with the order. The bill requires
7 the commissioners to give preference to applications which seek
8 to comply with an administrative order.

9 After the compliance period expires, if work to comply
10 with the order is not being performed, the commissioners must
11 enforce the order by referring the matter to the attorney
12 general or the board of supervisors in the county in which
13 the land is located. A person whose land is damaged due to
14 neighboring land's erosion may also petition the board of
15 supervisors to enforce the order. If the board takes action
16 to enforce compliance with the order, the board must notify
17 the county treasurer of the costs associated with taking its
18 action. The treasurer must enter an amount equal to the costs
19 plus a 5 percent penalty on the tax books, which shall be
20 collected as ordinary taxes and constitutes a lien against
21 the property. However, the board of supervisors may instead
22 refer the matter to the attorney general. The commissioners,
23 or the board or attorney general acting under a referral, must
24 petition the district court to enforce the order.

25 COMMITTEE AND DIVISION — PRIORITIZING SOIL CONSERVATION
26 EFFORTS AND WATER QUALITY INITIATIVES. The committee and
27 division are to establish policies that prioritize the
28 allocation of moneys, personnel, and technical expertise
29 to support soil conservation efforts (Code chapter 161A),
30 and water quality initiatives as sponsored by a watershed
31 management authority formed by two or more districts (Code
32 section 466B.43). The highest priority is to be given to
33 support efforts in high-priority watersheds identified by the
34 water resources coordinating council (Code section 466B.3).