

Senate File 334 - Introduced

SENATE FILE 334

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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:

1 Section 1. Section 455B.171, Code 2017, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 1A. "*Agricultural drainage well area*" means
4 the same as defined in section 460.101.

5 NEW SUBSECTION. 8A. "*Groundwater*" means the same as defined
6 in section 455E.2.

7 NEW SUBSECTION. 10A. "*Karst terrain*" means the same as
8 defined in section 459.102.

9 NEW SUBSECTION. 29A. "*Sensitive groundwater access area*"
10 means karst terrain or a location that drains into a known
11 sinkhole.

12 Sec. 2. NEW SECTION. 455B.201 **Definitions.**

13 As used in this subpart, unless the context otherwise
14 requires:

15 1. "*Board*" means a county board of supervisors.

16 2. "*County groundwater pollution control program*" or
17 "*program*" means the program conducted by a county board of
18 supervisors as provided in this subpart.

19 3. "*State groundwater protection regulations*" means the
20 provisions of state law described in section 455B.202.

21 Sec. 3. NEW SECTION. 455B.202 **Authorization.**

22 1. A county board of supervisors that has been issued a
23 certificate of acceptance by the department pursuant to section
24 455B.203 may conduct a county groundwater pollution control
25 program.

26 2. If the department issues a certificate of acceptance to
27 a county board of supervisors pursuant to section 455B.203,
28 the department cedes its powers and duties to the county board
29 of supervisors to administer and enforce state groundwater
30 protection regulations that apply to sources that are located
31 in sensitive groundwater access areas in the county. The scope
32 of such state groundwater protection regulations is limited
33 to the provisions of division I and this division, including
34 rules adopted by the department pursuant to such divisions;
35 the provisions of chapter 459, subchapter III, including rules

1 adopted by the department pursuant to that subchapter; chapter
2 459A, including rules adopted by the department pursuant to
3 that chapter; chapter 459B, including rules adopted by the
4 department pursuant to that chapter; and chapter 460, including
5 rules adopted by the department pursuant to that chapter.

6 Sec. 4. NEW SECTION. **455B.203 Certificate of acceptance —**
7 **request and approval.**

8 1. In order to conduct a county groundwater pollution
9 control program, a county board of supervisors must make
10 a request to the department. The request shall include
11 a resolution adopted by the board and any supporting
12 documentation required by the department relating to the
13 board's implementation and administration of the program.

14 2. The department shall approve or disapprove a request
15 submitted by a county board of supervisors based on a
16 determination of whether the board is capable of conducting the
17 program in lieu of the department administering and enforcing
18 state groundwater protection regulations as provided in section
19 455B.202.

20 3. In evaluating a request submitted by a county board of
21 supervisors under this section, the department shall consider
22 all of the following:

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

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

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

34 4. The department may conduct a public hearing before
35 approving or disapproving a request submitted by a county board

1 of supervisors under this section.

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

16 Sec. 5. NEW SECTION. 455B.204 **Suspension or revocation of**
17 **certificate of acceptance.**

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

1 administer and enforce the state groundwater protection
2 regulations until the matter is concluded.

3 Sec. 6. NEW SECTION. **455B.205 Contest of departmental**
4 **action.**

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

10 Sec. 7. NEW SECTION. **455B.206 Attorney general.**

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

15 Sec. 8. NEW SECTION. **455B.207 Prosecution — criminal**
16 **penalties.**

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

27 Sec. 9. NEW SECTION. **455B.208 Civil penalties.**

28 Notwithstanding sections 331.302 and 331.307, a county
29 board of supervisors conducting a county groundwater pollution
30 control program may administratively establish, assess, and
31 collect civil penalties consistent with state groundwater
32 protection regulations. Civil penalties shall be credited to
33 the state in the same manner as civil penalties collected by
34 the department for the same violation.

35 Sec. 10. NEW SECTION. **455B.301B County groundwater**

1 **pollution control program.**

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

8 Sec. 11. NEW SECTION. **459.302A County groundwater pollution**
9 **control program.**

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

16 Sec. 12. NEW SECTION. **459A.106 County groundwater pollution**
17 **control program.**

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

24 Sec. 13. NEW SECTION. **459B.105 County groundwater pollution**
25 **control program.**

26 A county board of supervisors issued a certificate of
27 acceptance to conduct a county groundwater pollution control
28 program by the department pursuant to chapter 455B, division
29 III, part 1, may administer and enforce the provisions of this
30 chapter within sensitive groundwater access areas located in
31 the county.

32 Sec. 14. NEW SECTION. **460.102 County groundwater pollution**
33 **control program.**

34 A county board of supervisors issued a certificate of
35 acceptance to conduct a county groundwater pollution control

1 program by the department pursuant to chapter 455B, division
2 III, part 1, may administer and enforce the provisions of this
3 chapter within sensitive groundwater access areas located in
4 the county.

5 EXPLANATION

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

8 GENERAL. This bill authorizes the department of natural
9 resources to cede some of its authority to administer certain
10 environmental statutes and its rules to a county board of
11 supervisors upon the board's request. A board that has been
12 granted such authority conducts a county groundwater pollution
13 control program according to the terms of a certificate of
14 acceptance issued by the department.

15 CERTIFICATE OF ACCEPTANCE — ISSUANCE. A certificate of
16 acceptance allows a county board of supervisors to administer
17 and enforce state groundwater protection regulations that apply
18 to sources that are located in sensitive groundwater access
19 areas (where there is karst terrain, or land where there is
20 located an agricultural drainage well area, or known sinkhole).
21 The regulations are limited to those in statute or rule under
22 Code chapter 455B, division I and division III (providing
23 general authority and water quality regulations); Code chapter
24 459, subchapter III, and Code chapters 459, 459A, and 459B
25 (providing for water quality regulation applicable to animal
26 feeding operations); and Code chapter 460 (regulating sources
27 that may contaminate groundwater from agricultural drainage
28 wells). The department may approve or disapprove a request
29 but cannot limit or qualify the certificate of acceptance or
30 reduce the scope of the certificate of acceptance so that it
31 cedes less authority to conduct the program than requested by
32 the board. A county board of supervisors may adopt ordinances,
33 rules, or standards either consistent with or more strict than
34 state law.

35 CERTIFICATE OF ACCEPTANCE — SUSPENSION OR REVOCATION.

1 The bill provides that the department may suspend or revoke
2 a certificate of acceptance if it determines that the
3 board is not conducting the program in a manner consistent
4 with the certificate of acceptance. If a certificate is
5 suspended or revoked, a county may take measures to correct
6 the inconsistencies and the department may reinstate the
7 certificate with or without limitation. The board may contest
8 a departmental decision by bringing a contested case proceeding
9 to be decided by the department of inspections and appeals.

10 ENFORCEMENT. The department's issuance of a certificate
11 of acceptance does not limit the authority of the attorney
12 general to enforce state groundwater protection regulations,
13 and the board may refer any matter requiring enforcement to the
14 attorney general or a county attorney for judicial enforcement.

15 VIOLATIONS AND PENALTIES. The bill provides for both
16 administrative and judicial enforcement of violations of
17 state groundwater protection regulations. The board may
18 assess, impose, and collect civil penalties up to \$10,000
19 (Code section 455B.109). The board may also seek judicial
20 enforcement of civil penalties not to exceed \$5,000 per each
21 day of a violation (Code section 455B.191). A person who fails
22 to prevent surface water from draining into an agricultural
23 drainage well is subject to a civil penalty of not more than
24 \$1,000 (Code sections 460.202, 460.203, and 460.206), and a
25 person who constructs or expands an earthen storage structure
26 within an agricultural drainage well area is subject to a civil
27 penalty of not more than \$5,000 for each day of the violation
28 (Code sections 460.205 and 460.206).

29 Criminal penalties also apply. A person who negligently or
30 knowingly disposes of a pollutant in a water of the state is
31 guilty of a serious misdemeanor or an aggravated misdemeanor
32 depending on the type of violation, punishable by a range of
33 fines and imprisonment (Code sections 455B.186 and 455B.191).

34 Moneys assessed as part of an administrative or civil
35 proceeding are to be credited to the state in the same

1 manner as if the department had not issued a certificate of
2 acceptance. Civil penalties assessed by the department must
3 be deposited in the general fund of the state (Code section
4 455B.109). Moneys from civil penalties assessed for violations
5 involving animal feeding operations are to be credited to the
6 Iowa nutrient research fund created in section 466B.46 (Code
7 sections 459.602, 459.603, 459A.502, and 459B.402). Moneys
8 from civil penalties for violations involving contamination of
9 groundwater from agricultural drainage wells are credited to
10 the livestock remediation fund (Code section 459.501). Moneys
11 from criminal fines and restitution awarded to the attorney
12 general as part of a judgment in an environmental criminal case
13 are credited to the environmental crimes investigation and
14 prosecution fund (Code section 455B.112A).