

**House Study Bill 80 - Introduced**

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
NATURAL RESOURCES BILL)

**A BILL FOR**

1 An Act relating to fee programs for permittee participation  
2 in lieu of required compensatory mitigation of stream and  
3 wetland impacts and making appropriations.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. PURPOSE. The general assembly finds and declares  
2 that because the federal Water Pollution Control Act of 1972,  
3 Pub. L. No. 92-500, as amended by the Water Quality Act of  
4 1987, Pub. L. No. 100-4, as published in 33 U.S.C. §1251 -  
5 1387, as amended, provides for a permit system to regulate the  
6 discharge of dredge and fill materials to the waters subject  
7 to the jurisdiction of that Act, and because the terms of such  
8 federal permits may provide for the mitigation of impacts to  
9 aquatic resources by permitted entities, it is in the interest  
10 of the people of Iowa to enact provisions authorizing the  
11 establishment of programs for the payment of a fee in lieu of  
12 other compensatory mitigation actions required by the United  
13 States army corps of engineers.

14 Sec. 2. NEW SECTION. 456B.16 Definitions.

15 As used in this subchapter, unless the context otherwise  
16 requires:

17 1. "*Compensatory mitigation*" means the restoration,  
18 establishment, enhancement, or preservation of aquatic  
19 resources for the purpose of offsetting unavoidable adverse  
20 impacts that remain after all appropriate and practicable  
21 avoidance and minimization have been achieved.

22 2. "*Federal Water Pollution Control Act*" means the federal  
23 Water Pollution Control Act of 1972, Pub. L. No. 92-500, as  
24 amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as  
25 published in 33 U.S.C. §1251 - 1387, as amended.

26 3. "*Geographic service area*" means the geographic area  
27 within which impacts can be mitigated at a specific mitigation  
28 bank or an in-lieu fee program, as designated in the mitigation  
29 bank or in-lieu fee program instrument.

30 4. "*In-lieu fee program*" means a program involving the  
31 restoration, establishment, enhancement, or preservation  
32 of aquatic resources through funds paid to a governmental  
33 or nonprofit natural resources management entity to satisfy  
34 compensatory mitigation requirements for permits issued by the  
35 United States army corps of engineers.

1 5. "*Mitigation bank*" means a site, or suite of sites, where  
2 resources such as wetlands, streams, and riparian areas are  
3 restored, established, enhanced, or preserved for the purpose  
4 of providing compensatory mitigation for impacts authorized by  
5 permits issued by the United States army corps of engineers.

6 6. "*Mitigation credit*" means a unit of measure such  
7 as a functional or areal measure or other suitable metric  
8 representing the accrual or attainment of aquatic functions  
9 at a compensatory mitigation site. The measure of aquatic  
10 functions is based on the resources restored, established,  
11 enhanced, or preserved.

12 Sec. 3. NEW SECTION. 456B.17 Authorization.

13 1. The department may establish in-lieu fee programs  
14 providing for the payment of a fee to compensate for impacts  
15 to aquatic resources by permittees under section 404 of the  
16 federal Water Pollution Control Act whose activities have been  
17 determined by the United States army corps of engineers to  
18 require mitigation.

19 2. Any in-lieu fee program established by the department  
20 shall:

21 a. Provide a mitigation alternative that will effectively  
22 replace aquatic life functions and values lost through  
23 permitted impacts.

24 b. Provide permittees with an additional method to  
25 compensate for adverse impacts to aquatic resources.

26 c. Achieve ecological success on a watershed basis by  
27 directing funds to protected natural resource types and  
28 functions that are appropriate to the geographic service area,  
29 and by integrating projects with other conservation activities  
30 whenever possible.

31 d. Provide for the sale of mitigation credits to be  
32 purchased by permittees in lieu of other forms of compensatory  
33 mitigation.

34 e. Using the proceeds from the sale of mitigation  
35 credits, provide funding for the restoration, establishment,

1 enhancement, and preservation of aquatic resources within the  
2 state.

3 3. The department may enter into agreements with entities  
4 for the administration of all or part of an in-lieu fee  
5 program, the establishment of appropriate compensation for  
6 such administration, and such further terms and conditions  
7 as necessary to fulfill the purposes of the program and the  
8 requirements of state and federal law.

9 4. If the department establishes an in-lieu fee program, it  
10 shall enter into agreements with the army corps of engineers as  
11 required for the establishment of an in-lieu fee program.

12 5. If a mitigation bank authorized by the army corps of  
13 engineers exists in a given geographic service area, the  
14 program shall only accept payment of fees in lieu of mitigation  
15 for projects in that geographic service area if the mitigation  
16 bank is unavailable to provide the needed credits. Payment of  
17 fees in lieu of mitigation made prior to the authorization of a  
18 mitigation bank in a geographic service area shall be expended  
19 as soon as practicable by the department.

20 6. Utilization of an in-lieu fee program shall not be based  
21 upon market price of available mitigation bank credits and a  
22 program shall review the market price of mitigation banks by  
23 geographic service areas to establish costs for the program by  
24 geographic service area.

25 **Sec. 4. NEW SECTION. 456B.18 Compensatory mitigation fund**  
26 **established.**

27 1. A compensatory mitigation fund is created in the state  
28 treasury. Moneys received from payments of fees in lieu of  
29 mitigation shall be deposited into the fund. Notwithstanding  
30 section 8.33, any unexpended balances in the compensatory  
31 mitigation fund and in any accounts within the compensatory  
32 mitigation fund at the end of each fiscal year shall be  
33 retained in the fund and any respective accounts within the  
34 fund. Notwithstanding section 12C.7, subsection 2, interest  
35 or earnings on investments or time deposits of the moneys in

1 the compensatory mitigation fund or in any accounts within the  
2 compensatory mitigation fund shall be credited to the fund or  
3 accounts within the fund.

4 2. Moneys in the fund are appropriated to the department for  
5 the restoration, establishment, enhancement, and preservation  
6 of aquatic resources within the state to offset impacts to  
7 aquatic resources by permittees who are required to provide  
8 compensatory mitigation pursuant to section 404 of the federal  
9 Water Pollution Control Act. In establishing the amount of  
10 the in-lieu fee to be charged, the department shall include  
11 an amount for the expenses of administering the program. The  
12 administrative costs shall be a percentage of the fee.

13 Sec. 5. NEW SECTION. 456B.19 Rules.

14 The department shall adopt rules pursuant to chapter 17A as  
15 necessary to carry out the purposes of this subchapter.

16 Sec. 6. CODE EDITOR DIRECTIVE. The Code editor is directed  
17 to divide chapter 456B into subchapters.

18 EXPLANATION

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

21 The United States army corps of engineers may require that a  
22 permittee under the federal Water Pollution Control Act section  
23 404 permitting program provide mitigation of impacts to the  
24 streams and wetlands that arise from the permitted project.  
25 Federal rules authorize states to establish fee programs in  
26 lieu of requiring on-site mitigation.

27 This bill authorizes the department of natural resources  
28 to establish in-lieu fee programs to provide for the payment  
29 of a fee by a permit holder in lieu of performing mitigation.  
30 The bill allows the department to enter into agreements with  
31 entities for the administration of all or part of an in-lieu  
32 fee program. Any in-lieu fee program must be approved by the  
33 army corps of engineers. Fees collected from an in-lieu fee  
34 program shall be deposited into a compensatory mitigation  
35 fund created in the state treasury. The moneys in the fund

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1 are appropriated to the department for the restoration,  
2 establishment, enhancement, and preservation of aquatic  
3 resources within the state to offset impacts to aquatic  
4 resources by entities permitted under section 404 of the  
5 federal Water Pollution Control Act. The departments shall  
6 adopt rules to carry out the purpose of the bill.