

Senate Study Bill 1120 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
NATURAL RESOURCES AND
ENVIRONMENT BILL BY
CHAIRPERSON ROZENBOOM)

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 be based upon
21 market price of available mitigation bank credits and a program
22 shall review the market price of mitigation banks by geographic
23 service areas to establish costs for the program by geographic
24 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.