

House File 241 - Introduced

HOUSE FILE 241

BY ISENHART

A BILL FOR

1 An Act authorizing counties to prepare, adopt, administer,
2 and enforce riparian buffer ordinances, including by
3 providing for the adoption of rules by the division of soil
4 conservation and water quality, providing penalties, and
5 including effective date provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 161A.4, subsection 2, Code 2021, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. *j.* To adopt rules pursuant to chapter 17A
4 necessary for a county board of supervisors to prepare, adopt,
5 administer, and enforce a riparian buffer ordinance as provided
6 in chapter 466B, subchapter V.

7 Sec. 2. NEW SECTION. **161A.77 Riparian buffer ordinance.**

8 A person who is in violation of a riparian buffer ordinance
9 authorized under chapter 466B, subchapter V, is not eligible
10 to receive financial incentives to establish a permanent soil
11 and water conservation practice or erosion control practice on
12 land which is subject to the ordinance, unless such person is
13 granted a waiver by the county board of supervisors as provided
14 in that subchapter.

15 Sec. 3. Section 331.382, Code 2021, is amended by adding the
16 following new subsection:

17 NEW SUBSECTION. 11. The board may adopt, administer, and
18 enforce a riparian buffer ordinance as provided in chapter
19 466B, subchapter V.

20 Sec. 4. NEW SECTION. **466B.51 Definitions.**

21 As used in this subchapter, unless the context otherwise
22 requires:

23 1. "*Authority*" means a watershed management authority
24 created pursuant to a chapter 28E agreement as provided in this
25 subchapter.

26 2. "*Commissioners*" means the commissioners elected to govern
27 a soil and water conservation district as provided in section
28 161A.5.

29 3. "*Division*" means the division of soil conservation and
30 water quality created within the department of agriculture and
31 land stewardship pursuant to section 159.5.

32 4. "*Local government entity*" means the commissioners of a
33 soil and water conservation district, a watershed management
34 authority, or a city.

35 5. "*Riparian buffer*" means a tract located adjacent to

1 a water source where there exists during the growing season
2 perennial vegetation, excluding invasive plants and noxious
3 weeds.

4 6. "*Riparian buffer ordinance*" or "*ordinance*" means an
5 ordinance as defined in section 331.101 that establishes
6 riparian buffers in a county.

7 7. "*Tract*" means a contiguous part of a section of land
8 adjoining a water source that is suitable for row crop
9 production.

10 8. "*Water source*" means a lake, river, reservoir, creek,
11 stream, ditch, or other body of water or channel having a bed
12 with water flow, except a lake or pond without outlet to which
13 only one landowner is riparian.

14 Sec. 5. NEW SECTION. **466B.52 Riparian buffer ordinance.**

15 1. A county board of supervisors may adopt a riparian buffer
16 ordinance as provided in this section, upon the recommendation
17 of a local government entity, according to an assessment and
18 plan approved by the local government entity.

19 2. The purpose of the ordinance shall be to accomplish one
20 or more of the following:

21 a. Reduce soil erosion and sediment loss.

22 b. Manage nutrients and reduce contributing contaminant
23 loads to receiving surface waters.

24 c. Preserve and enhance soil health.

25 d. Reduce the volume or velocity of precipitation-induced
26 surface water.

27 3. The ordinance may do any of the following:

28 a. Identify water sources located in the county and
29 establish riparian buffer requirements for each tract adjacent
30 to a water source.

31 b. Provide for the issuance of permits, provide for
32 inspections, and set forth standards related to the
33 establishment and maintenance of riparian buffers.

34 4. The ordinance shall not require the establishment of a
35 riparian buffer that is more than thirty feet.

1 5. The ordinance may allow the county board of supervisors
2 to approve an alternative method proposed by a person owning
3 a legal or equitable interest in the tract to achieve the
4 purpose of the ordinance, including but not limited to the
5 establishment of a wetland, improvement, structure, or practice
6 designed to improve water quality.

7 6. The county board of supervisors shall publish a copy of
8 the proposed ordinance on the county's internet site not less
9 than ten days and not more than twenty days prior to a hearing
10 for its consideration or adoption. A notice of the hearing
11 shall be posted as otherwise provided in section 21.4. The
12 board shall set a time and place for a public hearing to vote on
13 final passage of the ordinance and shall publish notice of the
14 hearing not less than ten and not more than twenty days prior
15 to the hearing in the county newspapers selected under chapter
16 349. At the hearing, a resident of the county may present to
17 the county board of supervisors objections to or arguments in
18 support of the ordinance.

19 Sec. 6. NEW SECTION. 466B.53 **Duty of landowners.**

20 A person holding a legal or equitable interest in a tract
21 adjacent to a water source identified in a riparian buffer
22 ordinance shall comply with the requirements of the ordinance,
23 unless granted a waiver as provided in section 466B.54.

24 Sec. 7. NEW SECTION. 466B.54 **Enforcement — penalty.**

25 1. *a.* The county board of supervisors may issue an order
26 requiring a person holding a legal or equitable interest in a
27 tract to comply with a riparian buffer ordinance.

28 *b.* If the person fails to comply with the order, the county
29 board of supervisors may petition the district court to order
30 compliance or order the person to cease engaging in any conduct
31 that is in violation of the ordinance.

32 *c.* A county board of supervisors may grant a person a waiver
33 from the application of the ordinance during any period that
34 the county board of supervisors determines that the person is
35 unable to practicably comply with the ordinance.

1 2. A person violating a riparian buffer ordinance is guilty
2 of a county infraction as provided in section 331.307.

3 a. In lieu of the amount of the civil penalty provided in
4 section 331.307, a county board of supervisors may assess a
5 civil penalty in an amount equal to not more than the market
6 value of any crop produced on the tract during any period that
7 the tract does not comply with the ordinance.

8 b. A person is not subject to a civil penalty for the period
9 that a person has been granted a waiver as provided in this
10 section.

11 Sec. 8. NEW SECTION. 466B.55 Cooperation with local
12 government entities.

13 1. A county board of supervisors may enter into an
14 agreement under chapter 28E with a local government entity
15 having jurisdiction over the same tract to assist the county
16 in preparing, administering, and enforcing a riparian buffer
17 ordinance.

18 2. Two or more boards of supervisors may enter into an
19 agreement under chapter 28E to prepare, adopt, administer, and
20 enforce a riparian buffer ordinance on a joint basis.

21 Sec. 9. NEW SECTION. 466B.56 Division rules.

22 The division shall adopt rules pursuant to chapter 17A
23 as required for a county board of supervisors to effectively
24 prepare, administer, and enforce a riparian buffer ordinance.

25 Sec. 10. Section 468.8, Code 2021, is amended by adding the
26 following new subsection:

27 NEW SUBSECTION. 2A. Certification by the county board
28 of supervisors that all land which is part of the district
29 to be established complies with the requirements of the
30 county's riparian buffer ordinance as provided in chapter
31 466B, subchapter V, unless such land is subject to a waiver
32 granted by the county board of supervisors as provided in that
33 subchapter.

34 Sec. 11. IMPLEMENTATION. The division of soil conservation
35 and water quality of the department of agriculture and land

1 stewardship shall adopt rules pursuant to chapter 17A necessary
2 for a county board of supervisors to prepare, administer, and
3 enforce a riparian buffer ordinance as provided in this Act,
4 which rules shall take effect not later than January 1, 2023.

5 Sec. 12. EFFECTIVE DATE.

6 1. Except as provided in subsection 2, this Act takes effect
7 January 1, 2023.

8 2. The section of this Act requiring the division of soil
9 conservation and water quality of the department of agriculture
10 and land stewardship to adopt rules to implement this Act takes
11 effect upon enactment.

12 EXPLANATION

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

15 GENERAL. This bill authorizes a county board of supervisors
16 (board), upon the recommendation of a local government entity
17 (commissioners of a soil and water conservation district,
18 a watershed management authority, or a city), to adopt and
19 enforce a riparian buffer ordinance to achieve a purpose of
20 reducing soil erosion and sediment loss; managing nutrients and
21 reducing contributing contaminant loads to receiving surface
22 waters; preserving and enhancing soil health; or reducing the
23 volume or velocity of precipitation-induced surface water. A
24 riparian buffer (buffer) constitutes a tract of agricultural
25 land (tract) located adjacent to a water source where there
26 exists during the growing season perennial vegetation. The
27 buffer cannot exceed 30 feet. The board may approve a measure
28 in lieu of a buffer (e.g., a wetland) that accomplishes the
29 same objective.

30 COMPLIANCE. A person holding a legal or equitable interest
31 in the tract is required to comply with the ordinance,
32 unless granted a waiver by the board based on the board's
33 determination that it is not practical to comply with the
34 ordinance. A person violating an ordinance and not granted
35 a waiver is guilty of a county infraction (Code section

1 331.307). The board may assess a civil penalty for a violation
2 of the ordinance. Under current law, the civil penalty for
3 a violation of a county infraction cannot exceed \$750 for
4 each violation or \$1,000 for a repeat violation. The bill
5 authorizes the board to assess an alternative civil penalty
6 for an amount equal to not more than the market value of any
7 crop produced on the tract. The person is not eligible to
8 receive financial incentives (cost-share moneys) to establish
9 permanent soil and water conservation practices or erosion
10 control practices (Code chapter 161A). A petition to establish
11 a drainage or levee district must include a certification that
12 all land which is part of the proposed district complies with
13 the requirements of the county's riparian buffer ordinance or
14 is subject to a waiver (Code chapter 468).

15 COOPERATION. The board may enter into a cooperative
16 agreement with a local government entity in order to prepare,
17 administer, and enforce the ordinance. Two or more boards may
18 enter into an agreement to adopt, administer, and enforce an
19 ordinance on a joint basis. The division of soil conservation
20 and water quality (division) within the department of
21 agriculture and land stewardship is required to adopt rules
22 required for a board to effectively prepare, administer, and
23 enforce the ordinance.

24 EFFECTIVE DATES. Generally, the bill takes effect January
25 1, 2023. However, the section of the bill requiring the
26 division to adopt rules necessary for a board to prepare,
27 administer, and enforce an ordinance by that date takes effect
28 upon enactment.