

Senate File 2198 - Introduced

SENATE FILE 2198

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(COMPANION TO HF 2029 BY
WESSEL-KROESCHELL)

A BILL FOR

1 An Act relating to surface water quality by requiring the
2 establishment and maintenance of riparian protection
3 measures, providing for financing, and providing penalties.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 161A.4, Code 2024, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 2A. The division, in consultation with
4 the state soil conservation and water quality committee, and
5 in cooperation with the commissioners of the soil and water
6 conservation districts and the department of natural resources,
7 shall adopt rules pursuant to chapter 17A to implement,
8 administer, and enforce chapter 466B, subchapter V.

9 Sec. 2. Section 161A.42, subsection 4, Code 2024, is amended
10 by adding the following new paragraph:

11 NEW PARAGRAPH. *d.* The establishment of riparian protection
12 measures as provided in chapter 466B, subchapter V.

13 Sec. 3. Section 161A.42, subsection 9, paragraph a, Code
14 2024, is amended to read as follows:

15 *a.* (1) ~~“Permanent soil and water conservation practices”~~

16 “Permanent soil and water conservation practice” means

17 planting of perennial grasses, legumes, shrubs, or trees, the
18 establishment of grassed waterways, ~~and~~ or the construction of
19 terraces, or other permanent soil and water practices approved
20 by the committee.

21 (2) “Permanent soil and water conservation practice” includes

22 riparian protection measures as provided in chapter 466B,
23 subchapter V.

24 Sec. 4. Section 161A.48, subsection 1, Code 2024, is amended
25 to read as follows:

26 1. *a.* ~~An~~ Except as provided in paragraph “b”, the owner
27 or occupant of agricultural land in this state is not required
28 to establish any new permanent or temporary soil and water
29 conservation practice unless cost-share or other public
30 moneys have been specifically approved for that land and made
31 available to the owner or occupant pursuant to [section 161A.74](#).

32 *b.* Paragraph “a” does not apply to riparian protection
33 measures as provided in chapter 466B, subchapter V.

34 Sec. 5. Section 161A.49, Code 2024, is amended to read as
35 follows:

1 **161A.49 Petition for court order.**

2 1. The Except as provided in subsection 2, the commissioners
3 shall petition the district court for a court order requiring
4 immediate compliance with an administrative order previously
5 issued by the commissioners as provided in [section 161A.47](#), if
6 all of the following apply:

7 ~~1.~~ a. The work necessary to comply with the administrative
8 order is not commenced on or before the date specified in such
9 order, or in any supplementary order subsequently issued as
10 provided in [section 161A.48](#), unless in the judgment of the
11 commissioners the failure to commence or complete the work
12 as required by the administrative order is due to factors
13 beyond the control of the person or persons to whom such order
14 is directed and the person or persons can be relied upon to
15 commence and complete the necessary work at the earliest
16 possible time.

17 ~~2.~~ b. Such work is not being performed with due diligence,
18 or is not satisfactorily completed by the date specified in the
19 administrative order, or when completed does not reduce soil
20 erosion from such land below the limits established by the soil
21 and water conservation district's regulations.

22 ~~3.~~ c. The person or persons to whom the administrative
23 order is directed advise the commissioners that they do not
24 intend to commence or complete such work.

25 2. Subsection 1 does not apply to the extent that the
26 division proceeds against a landowner for violating a riparian
27 protection measure as provided in chapter 466B, subchapter V.

28 Sec. 6. Section 161A.72, Code 2024, is amended by adding the
29 following new subsection:

30 NEW SUBSECTION. 1A. The division shall provide a priority
31 to financing the establishment of riparian protection measures
32 as provided in chapter 466B, subchapter V.

33 Sec. 7. Section 161C.2, subsection 1, paragraph a, Code
34 2024, is amended to read as follows:

35 a. Each soil and water conservation district, alone and

1 whenever practical in conjunction with other districts,
2 shall carry out district-wide and multiple-district projects
3 to support water protection practices in the district
4 or districts, including projects to protect this state's
5 groundwater and surface water from point and nonpoint sources
6 of contamination, including but not limited to contamination
7 by agricultural drainage wells, sinkholes, sedimentation, or
8 chemical pollutants. A district acting alone or in conjunction
9 with other districts shall provide priority to establishing
10 riparian protection measures as provided in chapter 466B,
11 subchapter V.

12 Sec. 8. Section 455B.171, subsection 11, Code 2024, is
13 amended to read as follows:

14 11. "*Iowa nutrient reduction strategy*" means a water
15 quality initiative developed and updated by the department of
16 agriculture and land stewardship, the department of natural
17 resources, and the college of agriculture and life sciences at
18 Iowa state university of science and technology in order to
19 assess do all of the following:

20 a. Assess and reduce nutrients in this state's watersheds
21 that utilize a pragmatic, strategic, and coordinated approach
22 with the goal of accomplishing reductions over time.

23 b. Evaluate the progress of water quality initiatives
24 including but not limited to the programs and riparian
25 protection measures provided in chapter 466B, subchapter V.

26 Sec. 9. Section 466B.5, Code 2024, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 2A. *Riparian protection.* The department
29 of natural resources shall provide for the assessment of
30 regional watersheds and subwatersheds that are identified in
31 the riparian protection inventory and map.

32 Sec. 10. Section 466B.6, Code 2024, is amended by adding the
33 following new subsection:

34 NEW SUBSECTION. 3. *Riparian protection.* A community-based
35 subwatershed improvement plan shall provide for methods to

1 increase compliance with riparian protection measures provided
2 in subchapter V.

3 Sec. 11. Section 466B.7, subsection 2, Code 2024, is amended
4 to read as follows:

5 2. *Data collection and use.* Local communities in which
6 the department of natural resources conducts subwatershed
7 monitoring shall use the information to support subwatershed
8 planning activities, do local data collection, and identify
9 priority areas needing additional resources. Local communities
10 shall also collect data regarding the effect of riparian
11 protection measures, and collect data over time and use the
12 data to evaluate for use in evaluating the impacts of their
13 management efforts.

14 Sec. 12. NEW SECTION. **466B.51 Definitions.**

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

17 1. "*Department*" means the department of natural resources.

18 2. "*District*" means a soil and water conservation district
19 established in section 161A.5.

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

23 4. "*Landowner*" means a person listed on the tax assessment
24 rolls as responsible for the payment of real estate taxes
25 imposed on the land adjacent to a public water source.

26 5. "*Normal water level*" means the level evidenced by the
27 long-term presence of surface water as indicated directly by
28 hydrophytic plants or hydric soils or indirectly determined via
29 hydrological models or analysis.

30 6. "*Public water source*" means waters of the state having
31 definite banks and a bed.

32 7. "*Riparian protection measure*" means a riparian protection
33 buffer or an alternative riparian protection practice as
34 provided in section 466B.55.

35 8. "*Waters of the state*" means any stream, lake, pond,

1 marsh, watercourse, waterway, well, spring, reservoir, aquifer,
2 irrigation system, drainage system, and any other body or
3 accumulation of water, surface or underground, natural or
4 artificial, public or private, which is contained within, flows
5 through, or borders upon the state or any portion of the state.

6 Sec. 13. NEW SECTION. **466B.52 Purposes and goals.**

7 1. The purpose of this subchapter is to establish riparian
8 protection measures for public water sources that do all of the
9 following:

10 a. Provide protection from erosion and runoff pollution.

11 b. Stabilize soils, shores, and banks.

12 c. Protect or provide riparian corridors for public use.

13 2. In administering this subchapter, the division, in
14 consultation with the department, shall advance all of the
15 following goals:

16 a. Reduce soil erosion and sediment loss, including by doing
17 any of the following:

18 (1) Stabilizing the soil or otherwise limiting sediment
19 from being conveyed by surface water runoff.

20 (2) Filtering sediment-laden water.

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

23 c. Provide a setback distance from an input applied to
24 adjacent land, including pesticides as defined in section
25 206.2, nutrients as defined in section 455B.171, commercial
26 fertilizers as defined in section 200.3, and manure as defined
27 in section 459.102.

28 d. Reduce the volume or velocity of precipitation-induced
29 surface water.

30 e. Improve stream or ditch bank stability with deep-rooted
31 plants.

32 f. Provide an infiltration area for surface water.

33 g. Provide an uptake and denitrification zone for shallow
34 subsurface flow.

35 h. Retire adjacent land from crop production in areas that

1 have low productivity or are inefficient to farm.

2 *i.* Provide habitat for beneficial wildlife species if a
3 corridor is sufficiently wide or the buffer connects larger
4 habitat areas together.

5 **Sec. 14. NEW SECTION. 466B.53 Administration and**
6 **enforcement.**

7 1. The division shall administer and enforce this chapter
8 in consultation with the department. The division shall adopt
9 all rules necessary or desirable to carry out this subchapter,
10 including rules necessary or desirable to effectuate this
11 subchapter's purposes and goals as provided in section 466B.52.

12 2. The division shall assist the department and the water
13 resources coordinating council established in section 466B.3,
14 including in the completion of a statewide regional watershed
15 assessment, prioritization, and planning process described in
16 section 466B.5.

17 3. *a.* The commissioners of a district shall consult with
18 department field office staff in assisting the division in the
19 administration and enforcement of this subchapter.

20 *b.* The commissioners of a district shall assist landowners
21 in establishing and maintaining riparian protection measures.
22 The assistance may be in the form of planning, technical
23 support, and tracking progress toward compliance with the
24 requirements of this subchapter.

25 4. The division, acting on its own or on behalf of the
26 commissioners of a district, may obtain an administrative
27 search warrant to determine compliance with this subchapter as
28 provided in section 808.14.

29 **Sec. 15. NEW SECTION. 466B.54 Riparian protection inventory**
30 **and map.**

31 1. The department shall prepare, revise, and publish a
32 riparian protection inventory and map for each county which
33 shall be used as the basis of designating public water sources
34 that require riparian protection from nonpoint sources of
35 pollution as provided in this subchapter.

1 2. In preparing and revising a riparian protection
2 inventory and map, the department shall provide priority to a
3 public water source classified as any of the following:

4 a. Part of a subwatershed that drains into a water body or
5 water segment placed on the department's section 303(d) list
6 as defined in section 455B.171, regardless of whether a total
7 maximum daily load for that water body or water segment has
8 been developed.

9 b. A high-quality water resource as defined in section
10 459.102.

11 c. The Mississippi river basin as part of the Mississippi
12 river basin initiative as provided in chapter 161G.

13 3. Each tract of land where each riparian protection measure
14 is to be established shall be identified according to a system
15 of parcels identified by a property identification number
16 according to uniform criteria developed by the department.

17 4. The division, and a board governing a drainage or
18 levee district as provided in chapter 468, shall provide all
19 cooperation requested by the department in order to prepare and
20 revise a riparian protection inventory and map.

21 Sec. 16. NEW SECTION. **466B.55 Riparian protection measures.**

22 1. A landowner shall establish and maintain riparian
23 protection measures as provided in this section.

24 2. a. A landowner of property adjacent to a public water
25 source identified as part of a riparian protection inventory
26 and map shall maintain a continuous riparian protection buffer
27 as follows:

28 (1) The riparian protection buffer must consist of
29 perennial vegetation, excluding invasive plants and weeds
30 declared noxious pursuant to section 317.1A, if the area is
31 adjacent to a public water source.

32 (2) (a) Except as provided in subparagraph division (b),
33 the riparian protection buffer shall have a fifty-foot average
34 width and a thirty-foot minimum width.

35 (b) A landowner shall comply with subparagraph division

1 (a) twelve months after the land is identified in a riparian
2 protection inventory and map published under section 466B.54.
3 The commissioners of a district may grant a landowner a
4 one-time waiver of this requirement for not more than one year.

5 (3) (a) For a ditch, tile drain, watercourse, or settling
6 basin established as part of a drainage or levee district
7 governed under chapter 468, the buffer shall have a sixteen and
8 one-half foot minimum width.

9 (b) A landowner shall comply with subparagraph division (a)
10 twenty-four months after the land is identified as part of a
11 riparian protection inventory and map published under section
12 466B.54. The commissioners of a district may grant a landowner
13 a one-time waiver of this requirement for not more than one
14 year.

15 b. The width of a riparian protection buffer shall be
16 measured from the crown of the bank. Where there is no defined
17 bank, the measurement shall be from the edge of the normal
18 water level. The division may provide a different measurement
19 method for a ditch, tile drain, watercourse, or settling basin
20 established as part of a drainage or levee district governed
21 under chapter 468.

22 3. a. A landowner of property adjacent to a public water
23 source identified as part of a riparian protection inventory
24 and map may meet the requirements described in subsection 1
25 by adopting an alternative riparian protection practice alone
26 or in combination with a modified riparian protection buffer.
27 The alternative riparian protection practice as established
28 alone or in combination with a riparian protection buffer shall
29 provide water quality protection comparable to the riparian
30 protection described in subsection 2.

31 b. A landowner shall comply with paragraph "a" twelve
32 months after the land is identified as part of a riparian
33 protection inventory and map published under section 466B.54.
34 The commissioners of a district may grant a one-time waiver of
35 this requirement for not more than one year.

1 4. The terms and conditions of a riparian protection measure
2 shall be set forth in a parcel-specific riparian protection
3 compliance plan approved by the commissioners of the district
4 where the land is located and filed by the commissioners
5 with the division which shall be published on the division's
6 internet site. The riparian protection plan may be part of
7 a financing agreement entered into by the landowner and the
8 division or commissioners of a district as provided in chapter
9 161A.

10 5. The establishment and maintenance of a riparian
11 protection measure shall at least comply with all requirements
12 of soil and water conservation practices or erosion control
13 practices as described in chapter 161A, unless otherwise
14 provided by the division and agreed to by the commissioners.
15 A riparian protection measure qualifies for water quality
16 agriculture infrastructure programs created in section 466B.43
17 and the water quality urban infrastructure program as provided
18 in section 466B.44. A riparian protection measure shall be
19 inspected and certified by the commissioners of the district
20 where the land is located as required by the division.

21 6. This section does not prevent a landowner from using land
22 established for riparian protection in any manner that does not
23 interfere with the requirements of this subchapter, including a
24 riparian protection compliance plan. The division shall upon
25 request of a landowner issue a declaratory order regarding the
26 use as provided in section 17A.9.

27 Sec. 17. NEW SECTION. **466B.56 Exemptions.**

28 1. A landowner is not required to comply with the
29 requirements in section 466B.55 if any of the following apply:

30 a. The public water source is located adjacent to land where
31 only one landowner is riparian.

32 b. A person's contribution of a pollutant to a public
33 water source is regulated by the department under chapter 455B
34 or pursuant to a permit related to the administration of the
35 national pollutant discharge elimination system permit program

1 pursuant to the federal Water Pollution Control Act, 33 U.S.C.
2 ch. 26, as amended, and 40 C.F.R. pt. 124. However, this
3 paragraph does not apply to the discharge or application of
4 manure or other nutrients under chapter 459, 459A, or 459B.

5 c. The land where riparian protection measures are otherwise
6 required pursuant to section 466B.55 is any of the following:

7 (1) Enrolled in the federal conservation reserve program as
8 described in 7 C.F.R. pt. 1410.

9 (2) A wetland that could qualify under the conservation
10 reserve enhancement program as provided in section 466.5.

11 (3) Subject to a conservation easement as provided in
12 chapter 457A.

13 (4) Covered by a road, trail, building, or other structure.

14 (5) Subject to a crop approved by the division, including
15 alfalfa or other perennial crop or part of a water-inundation
16 cropping system.

17 (6) Part of a prairie, forest area, other biologically
18 significant area, or that contains significant archaeological,
19 historical, or cultural value.

20 (7) Contains geological characteristics which are
21 unsuitable for vegetation.

22 (8) In a temporary nonvegetated condition due to drainage
23 tile installation and maintenance, plant seeding, or the
24 construction of a conservation project authorized by the
25 federal government, the state, or a political subdivision
26 thereof.

27 2. The division may excuse a landowner from complying with
28 the requirements of section 466B.55 if the division determines
29 that compliance would not significantly further the purposes
30 and goals of this chapter as described in section 466B.52. The
31 exemption may be based on but is not limited to any of the
32 following:

33 a. The normal water level, which may exclude periods of
34 drought or flooding.

35 b. The average water flow, which may exclude periods of

1 drought or flooding.

2 c. The total drainage area, which may exclude periods of
3 drought or flooding.

4 Sec. 18. NEW SECTION. **466B.57 Corrective action —**
5 **compliance order.**

6 1. The division shall take enforcement action against
7 a landowner who violates a term or condition of a riparian
8 protection compliance plan as provided in section 466B.55. The
9 division, in cooperation with the department and commissioners
10 of a district where the land is located, shall issue a
11 compliance order that includes a list of corrective actions
12 that the landowner must correct. The compliance order shall
13 include a practical period for the landowner to complete the
14 corrective actions and for the commissioners to inspect the
15 land and approve the corrective actions. A corrective action
16 must be approved by the commissioners within one year after the
17 division issues the compliance order, unless the commissioners
18 grant an extension.

19 2. If the landowner is in violation of a protection
20 compliance plan as provided in section 466B.55 and an
21 administrative order is issued by the commissioners under
22 chapter 161A, subchapter V, part 1, to the landowner, the
23 division may waive its right to take an enforcement action
24 under this chapter.

25 Sec. 19. NEW SECTION. **466B.58 Removal or degradation.**

26 1. A landowner shall not engage in any work to remove
27 or degrade a riparian protection measure, in whole or in
28 part, unless the person has obtained a signed statement from
29 the commissioners of the district where the land is located
30 granting authorization to engage in the work as required by the
31 division.

32 2. A person other than a landowner shall not engage in
33 any work to remove or degrade a riparian protection measure,
34 in whole or in part, unless the person has obtained a signed
35 statement from the landowner granting authorization to engage

1 in the work subject to the requirements in subsection 1.

2 Sec. 20. NEW SECTION. **466B.59 Civil penalty.**

3 1. Except as provided in subsection 2, a landowner who does
4 not complete a corrective action within the period stated in
5 the compliance order under section 466B.57 is subject to a
6 civil penalty as follows:

7 a. One hundred dollars per parcel as described in
8 the riparian protection compliance plan which shall be
9 assessed, imposed, and collected on a thirty-day basis for a
10 one-hundred-eighty-day period.

11 b. After the period described in paragraph "a", five hundred
12 dollars per parcel as described in the riparian protection
13 compliance plan which shall be assessed, imposed, and collected
14 on a thirty-day basis.

15 2. A person who is in violation of section 466B.56 is
16 subject to a civil penalty of five hundred dollars per parcel
17 as described in the riparian protection compliance plan which
18 shall be assessed, imposed, and collected by the division on a
19 thirty-day basis.

20 3. Civil penalties collected pursuant to this section shall
21 be credited to the general fund of the state.

22 EXPLANATION

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

25 GENERAL. This bill amends Code chapter 466B, which provides
26 for a number of programs to protect surface water and provide
27 for flood mitigation and watershed management. The bill
28 creates a new Code subchapter which requires a landowner having
29 an interest in property adjoining a public water source (e.g.,
30 a watercourse such as a river, stream, or drainage ditch; or
31 body of water such as a pond, lake, or reservoir) to establish
32 and maintain a riparian protection measure (measure) in
33 compliance with a riparian protection compliance plan (plan).
34 The plan is derived from a riparian protection inventory and
35 map developed by the department of natural resources (DNR).

1 ADMINISTRATION. The plan must be prepared by the landowner
2 and approved by the division of soil conservation and water
3 quality (division) created within the department of agriculture
4 and land stewardship. The division must act in partnership
5 with commissioners of soil and water conservation districts
6 (commissioners), and in cooperation with a number of other
7 government entities, including the state soil conservation
8 and water quality committee, the water resources coordinating
9 council, and DNR.

10 REQUIREMENTS. Under an approved plan, a landowner must
11 establish and maintain a measure which is either a riparian
12 protection buffer consisting of perennial vegetation, or an
13 alternative riparian protection practice (e.g., erosion control
14 practice or soil and water conservation practice) alone or in
15 combination with a modified riparian protection buffer. The
16 landowner must establish and maintain the measure after the
17 division completes a riparian protection inventory and map
18 which identifies the land subject to riparian protection. A
19 landowner may apply for financial assistance to establish a
20 measure under a number of programs, including cost-share moneys
21 awarded under the authority of the division.

22 EXCEPTIONS. The bill creates a number of exceptions that
23 excuse compliance, including if (1) there is only one riparian
24 landowner; (2) other regulations apply, including storm water
25 outlets regulated by DNR, or a conservation program regulated
26 by the federal or state government; (3) the land is covered by
27 another object or structure; (4) the land is used to produce
28 a designated crop; (5) the land is part of an environmentally
29 designated area (e.g., a forest); (6) the land contains unique
30 geological characteristics; or (7) the land is subject to
31 construction. The division may also create other exceptions
32 if it determines that the exception would not interfere with
33 the bill's purposes.

34 ENFORCEMENT. The division is to take enforcement action
35 against a landowner who violates a term or condition of a

1 plan, unless the division allows the commissioners to take an
2 enforcement action in court for the landowner's violation of
3 the terms of an administrative order (e.g., for violating the
4 terms of a cost-share agreement). If the division enforces the
5 plan, it must first issue a compliance order listing items that
6 the landowner must complete within a specified time but not
7 more than one year after the compliance order has been issued.
8 The bill also prohibits a landowner or another person from
9 engaging in any work to remove or degrade a riparian protection
10 measure, unless the person has obtained authorization. The
11 bill provides a range of civil penalties based on the number of
12 parcels included in the plan and the period that the violation
13 continues after the compliance order was delivered. The
14 amounts of the civil penalties range from \$100 to \$500 per
15 parcel.