

House File 643 - Reprinted

HOUSE FILE 643
BY COMMITTEE ON ENVIRONMENTAL
PROTECTION

(SUCCESSOR TO HSB 148)

(COMPANION TO LSB 2483SV BY
COMMITTEE ON AGRICULTURE)

(As Amended and Passed by the House March 23, 2011)

A BILL FOR

1 An Act relating to environmental protection, by transferring
2 certain powers and duties to the department of agriculture
3 and land stewardship, and including effective date
4 provisions.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

WATER RESOURCES COORDINATING COUNCIL

1
2
3 Section 1. Section 466B.2, subsection 2, Code 2011, is
4 amended by striking the subsection.

5 Sec. 2. Section 466B.3, subsection 1, Code 2011, is amended
6 to read as follows:

7 1. *Council established.* A water resources coordinating
8 council is established within the ~~office of the governor~~
9 department of agriculture and land stewardship.

10 Sec. 3. Section 466B.3, subsection 4, paragraph c, Code
11 2011, is amended by striking the paragraph.

12 Sec. 4. Section 466B.3, subsection 4, paragraph 1,
13 unnumbered paragraph 1, Code 2011, is amended to read as
14 follows:

15 The ~~governor~~ secretary, who shall be the chairperson, or
16 the ~~governor's~~ secretary's designee. As the chairperson,
17 and in order to further the coordination efforts of the
18 council, the ~~governor~~ secretary may invite representatives
19 from any other public agency, private organization, business,
20 citizen group, or nonprofit entity to give public input at
21 council meetings, provided the entity has an interest in the
22 coordinated management of land resources, soil conservation,
23 flood mitigation, or water quality. The ~~governor~~ secretary
24 shall also invite and solicit advice from the following:

25 Sec. 5. Section 466B.3, subsection 5, paragraph a, Code
26 2011, is amended to read as follows:

27 a. The council shall be convened by the ~~office of the~~
28 ~~governor~~ secretary of agriculture at least quarterly.

29 Sec. 6. Section 466B.3, subsection 6, paragraph b, Code
30 2011, is amended by adding the following new subparagraph:

31 NEW SUBPARAGRAPH. (07) Review and assess the water
32 monitoring plan of the department of natural resources and
33 develop a protocol to prioritize the use of the state's water
34 quality monitoring resources.

35 Sec. 7. Section 466B.3, subsection 6, paragraph c, Code

1 2011, is amended to read as follows:

2 **c.** The council shall develop recommendations for policies
3 and funding promoting a watershed management approach to
4 reduce the adverse impact of future flooding on this state's
5 residents, businesses, communities, and soil and water quality.
6 ~~Policy and funding recommendations shall be submitted to the~~
7 ~~governor and the general assembly not later than November~~
8 ~~15, 2009.~~ The council shall consider policies and funding
9 options for various strategies to reduce the impact of
10 flooding including but not limited to additional floodplain
11 regulation; wetland protection, restoration, and construction;
12 the promulgation and implementation of statewide storm water
13 management standards; conservation easements and other land
14 management; perennial ground cover and other agricultural
15 conservation practices; pervious pavement, bioswales, and
16 other urban conservation practices; and permanent or temporary
17 water retention structures. In developing recommendations,
18 the council shall consult with hydrological and land use
19 experts, representatives of cities, counties, drainage and
20 levee districts, agricultural interests, and soil and water
21 conservation districts, and other urban and regional planning
22 experts.

23 **Sec. 8.** Section 466B.5, Code 2011, is amended to read as
24 follows:

25 **466B.5 Regional watershed assessment, planning, and**
26 **prioritization.**

27 **1. *Regional watershed assessment program.*** The department of
28 natural resources shall create a regional watershed assessment
29 program. The program shall assess all the regional watersheds
30 in the state.

31 **a.** The statewide assessment shall be conducted at the rate
32 of approximately one-fifth of the watersheds per year, and an
33 initial full assessment shall be completed within five years.
34 Thereafter, the department of natural resources shall review
35 and update the assessments on a regular basis.

1 *b.* Each regional watershed assessment shall provide a
2 summary of the overall condition of the watershed. The
3 information provided in the summary may include land use
4 patterns, soil types, slopes, management practices, stream
5 conditions, and both point and nonpoint source impairments.

6 *c.* In conducting a regional watershed assessment, the
7 department of natural resources may provide opportunities for
8 local data collection and input into the assessment process.

9 2. *Planning and prioritization.* In conducting the regional
10 watershed assessment program, the department of natural
11 resources shall provide hydrological and geological information
12 sufficient for the water resources coordinating council to
13 prioritize watersheds statewide and for the various communities
14 in those watersheds to plan remedial efforts in their local
15 communities and subwatersheds.

16 3. *Report to council.* Upon completion of the statewide
17 assessment, and upon updating the assessments, the department
18 of natural resources shall report the results of the assessment
19 to the council and the general assembly, and shall make the
20 report publicly available.

21 Sec. 9. Section 466B.6, subsection 1, Code 2011, is amended
22 to read as follows:

23 1. *Facilitation of community-based subwatershed plans.* After
24 the ~~department's~~ department of natural resources' completion
25 of the initial regional watershed assessment, and after the
26 council's prioritization of the regional watersheds, the
27 council shall designate one or more of the agencies represented
28 on the council to facilitate the development and implementation
29 of local, community-based subwatershed improvement plans.

30 Sec. 10. Section 466B.7, Code 2011, is amended to read as
31 follows:

32 **466B.7 Community-based subwatershed monitoring.**

33 1. *Monitoring assistance.* After completion of the
34 statewide regional watershed assessment and prioritization,
35 and throughout the implementation of local community-based

1 subwatershed improvement plans, the department of natural
2 resources shall assist communities with the monitoring and
3 measurement of local subwatersheds. The monitoring and
4 measurement shall be designed for the particular needs of
5 individual communities.

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

13 Sec. 11. Section 466B.8, Code 2011, is amended to read as
14 follows:

15 **466B.8 Wastewater and storm water infrastructure assessment.**

16 The department of natural resources shall assess and
17 prioritize communities within a watershed presenting the
18 greatest level of risk to water quality and the health of
19 residents. This prioritization shall include both sewered and
20 unsewered communities.

21 Sec. 12. Section 466B.9, Code 2011, is amended to read as
22 follows:

23 **466B.9 Rulemaking authority.**

24 The department of natural resources and the department
25 of agriculture and land stewardship shall have the power and
26 authority reasonably necessary to carry out the duties imposed
27 by this chapter. As to the department of natural resources,
28 this includes rulemaking authority to carry out the regional
29 watershed assessment program described in section 466B.5. As
30 to the department of agriculture and land stewardship, this
31 includes rulemaking authority to assist in the implementation
32 of community-based subwatershed improvement plans.

33 DIVISION II

34 WATER QUALITY PROTECTION

35 Sec. 13. Section 161A.4, subsection 2, Code 2011, is amended

1 by adding the following new paragraph:

2 NEW PARAGRAPH. *j.* To provide state administration of
3 section 319 of the federal Clean Water Act as defined in
4 section 455B.291. The department of natural resources shall
5 provide assistance in the preparation of the report required
6 pursuant to 33 U.S.C. § 1329.

7 Sec. 14. Section 161C.4, subsection 2, Code 2011, is amended
8 to read as follows:

9 2. The fund shall be divided into ~~two~~ three accounts,
10 the water quality protection projects account, ~~and~~ the water
11 protection practices account, and the clean water account.

12 a. The ~~first~~ water quality protection projects account
13 shall be used to carry out water quality protection projects
14 to protect the state's surface and groundwater from point and
15 nonpoint sources of contamination.

16 b. The ~~second~~ water protection practices account shall be
17 used to establish water protection practices with individual
18 landowners including but not limited to woodland establishment
19 and protection, establishment of native grasses and forbs,
20 sinkhole management, agricultural drainage well management,
21 streambank stabilization, grass waterway establishment, stream
22 buffer strip establishment, and erosion control structure
23 construction. Twenty-five percent of funds appropriated to
24 the water protection practices account shall be used for
25 woodland establishment and protection, and establishment of
26 native grasses and forbs. Soil and water conservation district
27 commissioners shall give priority to applications for practices
28 that implement their soil and water resource conservation plan.

29 c. The clean water account shall be used for purposes of
30 implementing and administering section 319 of the federal
31 Clean Water Act as defined in section 455B.291. Any moneys
32 appropriated by the general assembly for purposes of providing
33 state administration of section 319 of the federal Clean
34 Water Act as defined in section 455B.291 and any other moneys
35 available to and obtained or accepted by the division for such

1 purposes shall be credited to the clean water account.

2 Sec. 15. Section 455B.171, subsection 4, Code 2011, is
3 amended to read as follows:

4 4. "*Credible data*" means scientifically valid chemical,
5 physical, or biological monitoring data collected under a
6 scientifically accepted sampling and analysis plan, including
7 quality control and quality assurance procedures. Data dated
8 more than five years before the ~~department's~~ date of listing
9 or other determination under section 455B.194, subsection 1,
10 by the department of natural resources or the department of
11 agriculture and land stewardship, shall be presumed not to be
12 credible data unless ~~the~~ that department identifies compelling
13 reasons as to why the data is credible.

14 Sec. 16. Section 455B.193, Code 2011, is amended to read as
15 follows:

16 **455B.193 Qualifications for collection of credible data.**

17 For purposes of this part, all of the following shall apply:

18 1. Data is not credible data unless the data originates
19 from studies and samples collected by the department of
20 natural resources or the department of agriculture and land
21 stewardship, a professional designee of ~~the department~~ one of
22 the departments, or a qualified volunteer. For purposes of
23 this subsection, "*professional designee*" includes governmental
24 agencies other than one of the department departments, and a
25 person hired by, or under contract for compensation with one
26 of the department departments to collect or study data.

27 2. All information submitted by a qualified volunteer shall
28 be reviewed and approved or disapproved by the department of
29 natural resources or the department of agriculture and land
30 stewardship. The qualified volunteer shall submit a site
31 specific plan with data which includes information used to
32 obtain the data, the sampling and analysis plan, and quality
33 control and quality assurance procedures used in the monitoring
34 process. The qualified volunteer must provide proof to the
35 applicable department that the water monitoring plan was

1 followed. The applicable department shall review all data
2 collected by a qualified volunteer, verify the accuracy of the
3 data collected by a qualified volunteer, and determine that all
4 components of the water monitoring plan were followed.

5 3. The department of natural resources and the department of
6 agriculture and land stewardship shall retain all information
7 submitted by a qualified volunteer submitting the information
8 for a period of not less than ten years from the date of receipt
9 by the department. All information submitted shall be a public
10 record.

11 4. The department of natural resources and the department of
12 agriculture and land stewardship shall adopt rules establishing
13 requirements for a person to become a qualified volunteer.

14 5. The department of ~~natural resources~~ agriculture and
15 land stewardship shall develop a methodology for water quality
16 assessments as used in the section 303(d) lists and assess the
17 validity of the data.

18 Sec. 17. Section 455B.194, subsection 1, unnumbered
19 paragraph 1, Code 2011, is amended to read as follows:

20 The department of natural resources and the department of
21 agriculture and land stewardship shall use credible data when
22 doing any of the following:

23 Sec. 18. Section 455B.195, subsection 1, paragraphs e
24 through i, Code 2011, are amended to read as follows:

25 e. If a pollutant causing an impairment is unknown, the
26 water of the state may be placed on a section 303(d) list.
27 However, the department of natural resources or the department
28 of agriculture and land stewardship, as applicable, shall
29 continue to monitor the water of the state to determine the
30 cause of impairment before a total maximum daily load is
31 established for the water of the state and a water of the state
32 listed with an unknown status shall retain a low priority for
33 a total maximum daily load development until the cause of the
34 impairment is determined unless the department of agriculture
35 and land stewardship, after taking into consideration the use

1 of the water of the state and the severity of the pollutant,
2 identifies compelling reasons as to why the water of the state
3 should not have a low priority.

4 *f.* When evaluating the waters of the state, the department
5 of agriculture and land stewardship shall develop and maintain
6 three separate listings including a section 303(d) list,
7 a section 305(b) report, and a listing for which further
8 investigative monitoring is necessary. The section 305(b)
9 report shall be a summary of all potential impairments for
10 which credible data is not required. If credible data is
11 not required for a section 305(b) report, the placement of a
12 water of the state on any section 305(b) report alone is not
13 sufficient evidence for the water of the state's placement on
14 any section 303(d) list. When developing a section 303(d)
15 list, the department of agriculture and land stewardship is
16 not required to use all data, but ~~the department~~ it shall
17 assemble and evaluate all existing and readily available water
18 quality-related data and information. The department of
19 agriculture and land stewardship shall provide documentation
20 to the regional administrator of the federal environmental
21 protection agency to support the state's determination to list
22 or not to list its waters.

23 *g.* The department of agriculture and land stewardship shall
24 take into consideration any naturally occurring condition when
25 placing or removing any water of the state on any section
26 303(d) list, and establishing or allocating responsibility for
27 a total maximum daily load.

28 *h.* Numerical standards shall have a preference over
29 narrative standards when determining whether a water of the
30 state is supporting its designated use or other classification.
31 A narrative standard shall not constitute the basis for
32 determining an impairment unless the department of agriculture
33 and land stewardship identifies specific factors as to why a
34 numeric standard is not sufficient to assure adequate water
35 quality.

1 *i.* If the department of natural resources and the department
2 of agriculture and land stewardship, as applicable, has
3 obtained credible data for a water of the state, the department
4 may also use historical data for that particular water of the
5 state for the purpose of determining whether any trends exist
6 for that water of the state.

7 Sec. 19. Section 455B.195, subsection 2, Code 2011, is
8 amended to read as follows:

9 2. This section shall not be construed to require or
10 authorize the department of natural resources or the department
11 of agriculture and land stewardship to perform any act listed
12 in section 455B.194, subsection 1, not otherwise required or
13 authorized by applicable law.

14 Sec. 20. Section 455B.195, Code 2011, is amended by adding
15 the following new subsections:

16 NEW SUBSECTION. 3. The division of soil conservation
17 of the department of agriculture and land stewardship shall
18 administer, coordinate, and promote voluntary programs to
19 address the total maximum daily loads assigned to nonpoint
20 sources and agricultural sources. The department of natural
21 resources shall implement the waste load allocations assigned
22 to point sources in the total maximum daily load through
23 effluent limits if such sources are required to obtain a
24 national pollutant discharge elimination system permit by
25 section 402 of the federal Clean Water Act as defined in
26 section 455B.291.

27 NEW SUBSECTION. 4. The division of soil conservation of the
28 department of agriculture and land stewardship shall prepare
29 the water quality management plan required by 33 U.S.C. § 1329,
30 and provide the plan, after notice and comment, to the governor
31 for submission to the regional administrator of the United
32 States environmental protection agency.

33 Sec. 21. TRANSITIONAL PROVISIONS.

34 1. The department of natural resources shall cooperate
35 with the department of agriculture and land stewardship to

1 assist in the transfer of powers and duties to the department
2 of agriculture and land stewardship, as provided in sections
3 455B.193 through 455B.195, as amended by this Act.

4 2. By August 1, 2011, the department of natural resources
5 shall provide the department of agriculture and land
6 stewardship with copies of any outstanding contracts relating
7 to the administration of any duties addressed in this Act.

8 3. The department of natural resources shall assign and the
9 department of agriculture and land stewardship shall assume all
10 outstanding contracts entered into by the department of natural
11 resources and the United States environmental protection agency
12 related to the use of moneys for purposes of section 319 of the
13 federal Clean Water Act, total maximum daily load development
14 and nonpoint source management plans. Contracts related to
15 enforcement or enforcement investigation are not included under
16 this subsection.

17 Sec. 22. ASSURANCE. The department of natural resources and
18 the department of agriculture and land stewardship shall assure
19 that during the transition period no break shall occur in data
20 collection or monitoring or contracts related to programs
21 transferred by this Act.

22 Sec. 23. EFFECTIVE DATE. This division of this Act takes
23 effect July 1, 2012.