



IOWA CHAPTER

Protected Wetlands Law

Iowa's State Auditor Mary Mosiman issued a report stating that the Iowa Department of Natural Resources (DNR) has failed to implement the Protected Wetlands law, Chapter 456B of the Iowa Code.

History of the protected wetlands law

In order to make Iowa's land farmable, agricultural drainage wells were designed to move excess water off farm fields, by funneling the water via a pipe directed directly into the aquifer lying under the farmland. Unfortunately that solution resulted in pollution (manure, silt, farm chemicals) being funneled into a clean water source, potentially affecting drinking water wells. So to remedy the problems caused by the agriculture drainage wells, the state embarked on a program to cap the drainage wells. Capping the drainage wells would result in the re-creation of wetlands.

All of the efforts in capping the agricultural drainage wells led to the effort to protect Iowa's wetlands with a new law - Chapter 456B. The intent was to have DNR purchase wetlands and conservation easements around the agriculture drainage wells. Another feature of the law required the DNR to conduct an inventory of the wetlands and marshes in each county and identify the wetlands that were designated as protected. According to the Iowa Code, a protected wetland "includes type 3, type 4, and type 5 wetlands as described in circular 39, 'Wetlands of the United States', 1971 Edition." Further, if a landowner wanted to drain wetlands, a permit was to be required. If the landowner failed to obtain a permit, a fine could be levied. Unfortunately, the DNR has never implemented the law.

The Iowa DNR attempted to change the protected wetlands law

During the 2018 legislative session, the Iowa Department of Natural Resources attempted to significantly alter the Protected Wetlands law with bill HSB566. The DNR believes the code is outdated and does not align with federal law. Furthermore, the DNR attempted to remove the penalties and replace them with voluntary incentives.

Wetlands are an asset in reducing the nutrients flowing off Iowa's farmland. The DNR claims that they have not been given the financial resources to acquire land and easements. That needs to be remedied. As part of the nutrient reduction strategy, financial resources should be given to the DNR to implement 456B. Currently the DNR

has relied on federal funds to restore wetlands; that needs to be continued, but those funds need to be supplemented with state money.

Iowans need to get serious about implementing the nutrient reduction strategy. One way of doing this is restoring wetlands to the landscape. That is why the protected wetlands law should be implemented.

Analysis of the changes proposed by DNR in HSB566

The changes that were proposed by HSB566 will be discussed below.

HSB566 proposed a change in the definition of a protected wetland. The Iowa Chapter of the Sierra Club supports that change in 456B.1(4). The text of the proposed change follows. Note that the underlined text is an addition to the current law; crossed through text is a deletion of the current law.

4. *“~~Protected~~ “State protected wetlands” means type 3, type 4, and type 5 wetlands as described in circular 39, “Wetlands of the United States”, 1971 Edition, published by the United States department of the interior, or a palustrine emergent wetland with a water regime of seasonally flooded, semipermanently flooded, or permanently flooded as described in “Classification of Wetlands and Deepwater Habitats of the United States”, published in 1979 by the United States fish and wildlife service. However, a state protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.*

The Iowa Chapter respectfully objects to the DNR’s effort to remove the requirement that a permit must be obtained in order to drain a protected wetland and to replace the protected wetland with an area of the same or greater value, in Iowa Code Chapter 456B.13. The text of that section is:

456B.13 Protection of wetlands.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.
2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:
 - a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.
 - b. The protected wetland does not meet the criteria for continued designation as a protected wetland.
3. This section does not prohibit any of the following:
 - a. A landowner utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.
 - b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve

the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

HSB566 proposed to replace Iowa Code Chapter 456B.13 with a program that allows the DNR to acquire easements for protected wetlands. The Iowa Chapter of the Sierra Club suggests that this language be added to the bill as a new section.

The department may develop and implement an easement program for state protected wetlands and may obtain an easement on a state protected wetland under the following conditions:

1. The grantor is a willing participant in the easement program.
2. The value of the easement is based upon an appraisal prepared by an independent certified appraiser.
3. The general assembly appropriates funding for the easement program or the department receives funding from other sources and such funding is eligible for use in the easement program. This subsection expressly authorizes the department to receive funds from public or private organizations or persons for the purpose of developing and implementing the easement program.

The Iowa Chapter respectfully objects to the DNR's effort to remove the penalties set forth in Iowa Code Chapter 456B.14. The text of that section is:

456B.14 Civil penalty.

A person who violates the permit requirement of section 456B.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

Sources

Mary Mosiman, Office of Auditor of State, "Report of Recommendations to the Iowa Department of Natural Resources", June 30, 2017

Iowa Code Chapter 456B

Legislative Bill HSB566, Proposed by the Iowa Department of Natural Resources, 2018

Iowa Department of Agriculture and Land Stewardship,
www.iowaagriculture.gov/waterResources/agDrainageWellClosure.asp