

CHAPTER 203

NATURAL RESOURCES COUNCIL

H. F. 2

AN ACT relating to flood control and water resources, creating the Iowa natural resources council, providing for the membership and personnel of said council, prescribing the powers, duties and functions of the council and making an appropriation therefor; amending sections four hundred sixty-nine point one (469.1), four hundred sixty-nine point two (469.2), four hundred sixty-nine point three (469.3), four hundred sixty-nine point nine (469.9), four hundred sixty-nine point ten (469.10), four hundred sixty-nine point fifteen (469.15), four hundred sixty-nine point twenty-six (469.26), one hundred eight point seven (108.7), one hundred sixty point seven (160.7), one hundred nine point fifteen (109.15), one hundred eleven point four (111.4), one hundred eleven point eighteen (111.18), one hundred twelve point three (112.3), one hundred twelve point seven (112.7), Code 1946, and by repealing sections four hundred sixty-nine point twenty-eight (469.28) and four hundred sixty-nine point twenty-nine (469.29) enacting a substitute for said section four hundred sixty-nine point twenty-nine (469.29), Code 1946, all relating to natural resources, flood control and water resources, mill dams and races and the powers, duties and functions of the council, and to provide certain penalties for violations of this Act.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. **Definitions.** As used in this act, council means "Iowa
2 Natural Resources Council";

3 "Flood plains" means the area adjoining the river or stream, which
4 has been or may be hereafter covered by flood water;

5 "Floodway" means the channel of a river or stream and those por-
6 tions of the flood plains adjoining the channel, which are reasonably
7 required to carry and discharge the flood water or flood flow of any
8 river or stream;

9 "Council floodway" means a floodway designated and established
10 by order of the council, fixing its length and landside limits;

11 "Person" means any natural person, firm, partnership, association,
12 corporation, State of Iowa, any agency of the state, municipal cor-
13 poration, political subdivision of the State of Iowa, legal entity, drain-
14 age district, levee district, public body, or other district or units
15 maintained or to be constructed by assessments, or the petitioners of
16 a proceeding, pending in any court of the state affecting flood control;

17 "Due notice" means a notice of not less than thirty days by one
18 publication in an official newspaper published in each county in which
19 the property affected is located.

1 SEC. 2. **Declaration of policy.** It is hereby recognized that the
2 protection of life and property from floods, the prevention of damage
3 to lands therefrom and the conservation of the water resources of the
4 state by the considered and proper use thereof, is of paramount im-
5 portance to the welfare and prosperity of the people of the state, and,
6 to realize these objectives it is hereby declared to be the policy of
7 the state to correlate and vest the powers of the state in a single
8 agency with the duty and authority to establish and enforce an ap-
9 propriate comprehensive state-wide plan for the control of water and
10 the protection of the surface and underground water resources of the
11 state. In the formulation of this plan the resultant effect thereof on
12 other resources of the state shall be recognized and included in such
13 plan.

1 **SEC. 3. Creation.** There is hereby created and established an
2 Iowa Natural Resources Council. The council is established as an
3 agency of the state government to promote the policies set forth in
4 this act and shall represent the State of Iowa in all matters within
5 the scope of this act.

1 **SEC. 4. Appointment.** The council shall consist of seven members
2 who shall be electors of the State of Iowa and shall be selected from
3 the State of Iowa at large solely with regard to their qualifications
4 and fitness to discharge the duties of office and without regard to their
5 political affiliation. The members of the council shall be appointed
6 by the governor with the approval of two-thirds of the members of
7 the senate in executive session and shall be appointed for overlapping
8 terms of six years. The terms of two members of the council shall
9 expire on the first day of July, 1951; the terms of two members shall
10 expire on July 1, 1953; and the terms of three members shall expire
11 on July 1, 1955. At the expiration of such terms all appointments
12 shall be for terms of six years.

1 **SEC. 5. Vacancies.** Vacancies occurring while the general assem-
2 bly is in session shall be filled for the unexpired portion of the term
3 as full-term appointments are filled. Vacancies occurring while the
4 general assembly is not in session shall be filled by the governor, but
5 such appointments shall terminate at the end of thirty days after the
6 convening of the next general assembly.

1 **SEC. 6. Removal.** The governor may, with the approval of the
2 senate, during a session of the general assembly, remove any member
3 of the council for malfeasance in office or for any cause that renders
4 him ineligible for membership or incapable or unfit to discharge the
5 duties of his office and his removal when so made shall be final.

1 **SEC. 7. Compensation and expenses.** Each member of the council
2 not otherwise in the full-time employment of any public body, shall
3 receive the sum of twenty-five dollars (\$25.00) for each day actually
4 and necessarily employed in the discharge of official duties provided
5 such compensation shall not exceed one thousand dollars (\$1000.00)
6 for any fiscal year. In addition to the compensation hereinbefore
7 described, each member of the council shall be entitled to receive the
8 amount of his travelling and other necessary expenses actually in-
9 curred while engaged in the performance of any official duties, when
10 so authorized by the council. No member of the council shall have
11 any direct financial interest in, or profit by any of the operations of
12 the council.

1 **SEC. 8. Organization, meetings and rules.** The council shall or-
2 ganize by the election of a chairman and shall meet at the seat of
3 government on the first Monday in the months of January, April,
4 July and October, and at such other times and places as it may deem
5 necessary. The chairman shall be elected annually at the meeting of
6 the council in July. Meetings may be called by the chairman and
7 shall be called by the chairman on the request of four members of the
8 council. The majority of the council shall constitute a quorum and
9 the concurrence of a majority of the council in any matter within
10 their duties shall be required for its determination. The council shall

11 adopt such rules and regulations as it may deem necessary to transact
12 its business and for the administration and exercise of its powers and
13 duties.

1 **SEC. 9. Director.** The council shall choose a director who shall not
2 be a member of the council and shall fix the compensation of such
3 director, which shall be payable out of the funds appropriated to the
4 council. The director shall be qualified by training and experience.
5 The term of office of the director shall be during the pleasure of the
6 council. The director shall serve as the executive officer of the council
7 and shall have charge of the work of the council subject to its orders
8 and directions.

1 **SEC. 10. Employees.** The director, with the approval of the coun-
2 cil is empowered to employ, discharge, and fix the salaries of such
3 technical, clerical, stenographic and such other employees and as-
4 sistants as may be required. All of such employees shall be paid from
5 funds appropriated to the council.

1 **SEC. 11. Bonds.** The council shall provide for the execution of
2 surety bonds for all members and employees who shall be entrusted
3 with funds and property and the premiums on all such surety bonds
4 shall be paid from the funds appropriated to the council.

1 **SEC. 12. Warrants.** The comptroller is directed to draw warrants
2 on the treasurer of the state for all disbursements authorized by this
3 act upon duly itemized and verified vouchers bearing the approval of
4 the director of the council.

1 **SEC. 13. Reports, accounting and recommendations.** The council
2 shall make a report to the governor of its activities for the preceding
3 biennial period, including therein an itemized statement of all re-
4 cepts and disbursements and such other information pertaining to
5 its work as may be of value.

6 The council in its biennial report shall make such recommendations
7 for amendments to this act, or for other legislation as it deems ap-
8 propriate.

9 The council shall report to the governor at any time required, the
10 results accomplished since its last report, pending plans and the
11 status of any work or plans in progress.

1 **SEC. 14. Departmental cooperation.** The council may request and
2 receive from any department, division, board, bureau, commission,
3 public body, or agency of the state, or of any political subdivision
4 thereof, or from any organization, incorporated or unincorporated,
5 which has for its object the control or use of any of the water re-
6 sources of the state, such assistance and data as will enable the council
7 to properly carry out its activities and effectuate its purposes here-
8 under. The council shall reimburse such agencies for special expense
9 resulting from expenditures not normally a part of the operating ex-
10 penses of any such agency.

11 The council, its agents and other employees may enter upon any
12 lands or waters in the state for the purpose of making any investiga-
13 tion, examination, or survey contemplated by this act.

1 **SEC. 15. Eminent domain.** The council shall have the right to ex-
2 ercise the power of eminent domain. All the provisions of law relat-
3 ing to condemnation of lands for public state purposes shall apply to
4 the provisions hereof in and so far as applicable. The executive
5 council shall institute and maintain such proceedings.

6 The council may accept gifts, contributions, donations and grants,
7 and use the same for any purpose within the scope of this act.

1 **SEC. 16. Title to lands and other property.** The title to all lands,
2 easements, or other interest therein, or other property or rights
3 acquired by the council shall be approved by the attorney general and
4 taken in the name of the State of Iowa.

1 **SEC. 17. Functions and duties.** The council shall establish a com-
2 prehensive state-wide program of flood control; and a comprehensive
3 state-wide program for the conservation, development and use of the
4 water resources of the state.

1 **SEC. 18. Jurisdiction.** The council shall have jurisdiction over
2 the public and private waters in the state and the lands adjacent
3 thereto necessary for the purposes of carrying out the provisions of
4 this act. The council shall make a comprehensive study and investi-
5 gation of all pertinent conditions of the areas in the state affected by
6 floods; determine the best method and manner of establishing flood
7 control; adopt and establish a comprehensive plan for flood control
8 for all the areas of the state subject to floods; and determine the best
9 and most practical method and manner of establishing and con-
10 structing the necessary flood control works. The council may con-
11 struct flood control works or any part thereof. The council is author-
12 ized to perform such duties in cooperation with other states or any
13 agency thereof or with the United States or any agency of the United
14 States, or with any person as defined in this act.

15 The council shall procure and obtain flood control works from and
16 through or by cooperation with the United States, or any agency of
17 the United States, by cooperation with and action of the cities, towns
18 and other subdivisions of the state, under the laws of the state relat-
19 ing to flood control and water use, and by cooperation with and action
20 of landowners in areas affected thereby.

21 The council shall make surveys and investigations of the water re-
22 sources of the state and of the problems of agriculture, industry,
23 conservation, health, stream pollution and allied matters as they
24 relate to flood control and water resources, and shall make and formu-
25 late plans and recommendations for the further development, pro-
26 tection and preservation of the water resources of the state.

1 **SEC. 19. Unlawful acts—powers of council.** It shall be unlawful
2 to suffer or permit any structure, dam, obstruction, deposit or exca-
3 vation to be erected in or on any floodway, which will adversely affect
4 the efficiency of or unduly restrict the capacity of the floodway, and
5 the same are declared to be and to constitute public nuisances, pro-
6 vided, however, that this provision shall not apply to dams con-
7 structed and operated under the authority of chapter four hundred
8 sixty-nine (469), Code 1946, as amended.

9 The council shall have the power to commence, maintain and prose-
10 cute any appropriate action to enjoin or abate a nuisance, including

11 any of the foregoing nuisances and any other nuisance which ad-
12 versely affects flood control.

13 In the event any person desires to erect, make, use or maintain, or
14 to suffer or permit, a structure, dam, obstruction, deposit or excava-
15 tion, other than a dam, constructed and operated under the authority
16 of chapter four hundred sixty-nine (469), Code 1946, as amended, to
17 be erected, made, used or maintained in or on any floodway, and it is
18 uncertain as to whether it will adversely affect the efficiency of or
19 unduly restrict the capacity of the floodway, such person may file a
20 verified written application with the council, setting forth the
21 material facts, and the council on hearing, shall enter an order, deter-
22 mining the fact and permitting or prohibiting the same.

23 The council shall have the power to remove or eliminate any struc-
24 ture, dam, obstruction, deposit or excavation in any floodway which
25 adversely affects the efficiency of or unduly restricts the capacity of
26 the floodway, by an action in condemnation, and in assessing the
27 damages in such proceeding, the appraisers and the court shall take
28 into consideration whether the structure, dam, obstruction, deposit
29 or excavation is lawfully in or on the floodway.

1 **SEC. 20. Additional powers—licensing of dams.** After the effec-
2 tive date of this act the term "council", as used in chapter four hun-
3 dred sixty-nine (469), Code 1946, shall be construed to refer to the
4 "Iowa Natural Resources Council" unless specifically otherwise pro-
5 vided.

1 **SEC. 21. Additional powers.** Section four hundred sixty-nine point
2 one (469.1), Code 1946, is amended by striking from lines eight (8)
3 and nine (9) thereof the words "executive council" and by inserting
4 in lieu thereof the words "Iowa Natural Resources Council".

1 **SEC. 22. Additional powers.** Subsection six (6) of section four
2 hundred sixty-nine point two (469.2), Code 1946, is amended by
3 striking from line two (2) thereof the words "executive council" and
4 by inserting in lieu thereof the words "Iowa Natural Resources
5 Council"; section four hundred sixty-nine point two (469.2), Code
6 1946, is further amended by striking from lines eight (8) and nine (9)
7 the words "executive council" and by inserting in lieu thereof the
8 words "Iowa Natural Resources Council".

1 **SEC. 23. Additional powers.** Section four hundred sixty-nine point
2 three (469.3), Code 1946, is amended by striking from lines four (4)
3 and five (5) thereof the words "executive council" and by inserting in
4 lieu thereof the words "Iowa Natural Resources Council".

1 **SEC. 24. Additional powers.** Section four hundred sixty-nine
2 point nine (469.9), Code 1946, is amended by striking from line seven
3 (7) thereof the words "executive council" and by inserting in lieu
4 thereof the words "Iowa Natural Resources Council"; section four
5 hundred sixty-nine point nine (469.9), Code 1946, is further amended
6 by striking from line ten (10) thereof the words "executive council"
7 and by inserting in lieu thereof the words "Iowa Natural Resources
8 Council".

1 **SEC. 25. Additional powers.** Section four hundred sixty-nine point
2 ten (469.10), Code 1946, is amended by striking from line two (2)

3 thereof the words "executive council" and by inserting in lieu thereof
4 the words "Iowa Natural Resources Council"; section four hundred
5 sixty-nine point ten (469.10), Code 1946, is further amended by in-
6 serting after the word "dams" in line eleven (11) thereof the words
7 "of any character or for any purpose"; section four hundred sixty-
8 nine point ten (469.10), Code 1946, is further amended by striking
9 from lines twelve (12) and thirteen (13) thereof the words "execu-
10 tive council" and by inserting in lieu thereof the words "Iowa Natural
11 Resources Council".

1 **SEC. 26. Additional powers.** Section four hundred sixty-nine point
2 twenty-six (469.26), Code 1946, is amended by striking from line
3 six (6) thereof the words "executive council" and by inserting in lieu
4 thereof the words "Iowa Natural Resources Council".

1 **SEC. 27. Receivership.** Section four hundred sixty-nine point
2 fifteen (469.15), Code 1946, is amended by inserting before the word
3 "council" in line eleven (11), the words "state executive".

1 **SEC. 28. Mill dams and races.** Section four hundred sixty-nine
2 point twenty-eight (469.28), Code 1946, is repealed.

1 **SEC. 29. Mill dams and races.** Section four hundred sixty-nine
2 point twenty-nine (469.29), Code 1946, is repealed and the following
3 is enacted in lieu thereof: "All licenses and permits issued by the
4 state executive council prior to the effective date of this act are
5 hereby declared to be in full force and effect and all of the powers of
6 administration relating to licenses or permits heretofore issued are
7 hereby vested in the Iowa Natural Resources Council."

1 **SEC. 30. Council floodway.** The council may by order establish
2 a floodway as a council floodway and alter, change, or revoke and
3 terminate the same. In the order establishing the council floodway,
4 the council shall fix the length thereof at any practical distance, and
5 fix the width or the landside limits thereof, so as to include portions
6 of the flood plains adjoining the channel, which with the channel, are
7 reasonably required to efficiently carry and discharge the flood waters
8 or flood flow of such river or stream. No order establishing a council
9 floodway shall be issued until due notice of the proposed establish-
10 ment of such floodway shall have been given and public hearings
11 afforded, and opportunity given for the presentation of all protests
12 against the establishment of such floodway. In establishing any
13 council floodway, the council shall avoid to the greatest possible
14 degree the evacuation of persons residing in the area of any floodway
15 and the removal of any residential structures occupied by such persons
16 in the area of any floodway. All of the area within a council flood-
17 way shall be the floodway for all purposes of this act.

1 **SEC. 31. Flood control works co-ordinated.** All works of any na-
2 ture for flood control in the state, which are hereafter established and
3 constructed, shall be co-ordinated in design, construction and opera-
4 tion, according to sound and accepted engineering practice so as to
5 effect the best flood control obtainable throughout the state. No per-
6 son shall construct or install any works of any nature for flood control
7 unless and until the proposed works and the plans and specifications

8 therefor are approved by the council. The interested persons shall
9 file a verified written application with the council therefor, and the
10 council on hearing shall consider all the pertinent facts relating to the
11 proposed works which will affect flood control in the state and shall
12 determine whether the proposed works in the plans and specifications
13 will be in aid of and acceptable as part of, or will adversely affect and
14 interfere with flood control in the state, and shall enter an order
15 approving or disapproving the application, plans and specifications.
16 In the event of disapproval, the order shall set forth the objectionable
17 features so that the proposed works and the plans and specifications
18 therefor may be corrected or adjusted to obtain the approval of the
19 council.

20 The provisions of this section shall apply to all drainage districts,
21 soil conservation districts, projects undertaken by the state conserva-
22 tion commission, all public agencies including counties, cities, towns
23 and all political subdivisions of the State of Iowa and to all privately
24 undertaken projects relating to or affecting flood control.

1 **SEC. 32. Appeal.** Any person aggrieved by any of the acts or
2 orders of the council shall have the right to appeal therefrom to the
3 district court at the seat of government or the district court of any
4 county in which the property affected is located, by filing with the
5 council a notice of such appeal within thirty days from the date of
6 such action or order. The notice of appeal shall state the grounds of
7 appeal. When an appeal is taken, the council shall forthwith cause to
8 be made a certified transcript of all proceedings had and all orders
9 made and shall file the same with the clerk of the district court where
10 the appeal is pending.

11 Upon such appeal being perfected, it shall be brought on for trial
12 at any time by either party upon ten days notice to the other, and
13 shall be tried by the court de novo. At such trial the burden of proof
14 that any acts and orders of the council from which appeal is taken are
15 reasonable and necessary shall be upon the council. If the court shall
16 determine that the order appealed from is reasonable and necessary,
17 it shall be affirmed. If the court finds that the order appealed from is
18 unjust, unreasonable or not supported by the evidence it shall make
19 such order to take the place of the order appealed from as is justified
20 by the record before it.

21 Any person aggrieved may appeal to the supreme court from the
22 judgment of the district court made therein as in a civil action.

23 The pendency of any such appeal shall not stay the operation of
24 the order of the council but the district court or the supreme court in
25 their discretion may suspend the operation of the council order pend-
26 ing determination of the appeal, provided, the appellant shall file an
27 appropriate bond approved by the court.

1 **SEC. 33. Executive prerogatives.** The council shall have no ex-
2 ecutive prerogatives outside of its own duties and functions as set
3 out by this act and shall not disturb the work, functions or authority
4 of any of the several state or local agencies and institutions, provided
5 the powers conferred upon the council by this act shall not be exer-
6 cised by any other of the agencies or institutions.

1 **SEC. 34. Approval required.** Section one hundred eight point
2 seven (108.7), Code 1946, is amended by adding thereto the following:
3 "Any action taken by the commission under the provisions of this
4 section shall be subject to the approval of the Iowa Natural Resources
5 Council."

1 **SEC. 35. Approval required.** Section one hundred sixty point seven
2 (160.7), Code 1946, is amended by adding to subsection three (3) of
3 said section the following: "The approval of the Iowa Natural Re-
4 sources Council shall be required on any project which relates to or in
5 any manner affects flood control."; section one hundred sixty point
6 seven (160.7), Code 1946, is further amended by adding to subsection
7 seven (7) of said section the following: "The approval of the Iowa
8 Natural Resources Council shall be required on any project which
9 relates to or in any manner affects flood control."

1 **SEC. 36. Injury to dams.** Section one hundred nine point fifteen
2 (109.15), Code 1946, is amended by striking from lines five (5) and
3 six (6) thereof the words "state conservation director" and by insert-
4 ing in lieu thereof the words "Iowa Natural Resources Council".

1 **SEC. 37. Approval required.** Section one hundred eleven point
2 four (111.4), Code 1946, is amended by inserting after the period
3 in line eight (8) thereof the following: "No such permit shall be
4 issued without approval of the Iowa Natural Resources Council."

1 **SEC. 38. Approval required.** Section one hundred eleven point
2 eighteen (111.18), Code 1946, is amended by inserting after the period
3 in line five (5) thereof the following: "The exercise of this juris-
4 diction shall be subject to the approval of the Iowa Natural Resources
5 Council in matters relating to or in any manner affecting flood control."

1 **SEC. 39. Approval required.** Section one hundred twelve point
2 three (112.3), Code 1946, is amended by striking from line four (4)
3 thereof the words "executive council" and by inserting in lieu thereof
4 the words "Iowa Natural Resources Council."

1 **SEC. 40. Dams and spillways.** Section one hundred twelve point
2 seven (112.7), Code 1946, is amended by striking from lines five (5)
3 and six (6) thereof the words ", with the consent of the executive
4 council,".

1 **SEC. 41. Appropriation.** There is hereby appropriated annually
2 from the general fund of the state for the period beginning with the
3 passage of this act the sum of fifty thousand dollars (\$50,000.00),
4 which shall be used solely to effectuate the provisions of this act.

1 **SEC. 42.** Whoever is convicted of erecting, causing or continuing
2 a common or public nuisance, as provided in this Act, shall be fined
3 not exceeding one hundred dollars (\$100.00) or be imprisoned in the
4 county jail not exceeding thirty (30) days.

1 **SEC. 43. Severability.** The provisions of this act shall be deemed
2 severable as far as practical, and should any part be declared invalid
3 or unconstitutional, the remaining parts of this act shall not be
4 affected thereby.

1 SEC. 44. This act being deemed of immediate importance shall be
 2 in full force and effect from and after its passage and publication in
 3 the Eddyville Tribune, a newspaper published at Eddyville, Iowa, and
 4 in The Daily Tribune, a newspaper published at Missouri Valley,
 5 Iowa.

Approved March 31, 1949.

I hereby certify that the foregoing act was published in the Ames Daily Tribune, April 16, 1949, and in the Boone News-Republican, April 16, 1949.

MELVIN D. SYNHORST, *Secretary of State.*

Pursuant to authority vested in the undersigned, Secretary of State, The Daily Tribune, Missouri Valley, Iowa, being non-existent and the Eddyville Tribune, Eddyville, Iowa, having refused to publish; the following two papers, Ames Daily Tribune, Ames, Iowa, and Boone News-Republican, Boone, Iowa, are designated to publish the foregoing act.

MELVIN D. SYNHORST, *Secretary of State.*

CHAPTER 204

SOIL CONSERVATION AND FLOOD CONTROL

H. F. 9

AN ACT providing for the establishment of districts having for their purpose the protection of land from damage by soil erosion or floods; for the inclusion in such districts of drainage districts heretofore or hereafter organized when the inclusion of such districts is deemed advisable and for the purpose of generally benefiting the public by a more efficient control of the water resources of the state; amending sections four hundred fifty-five point nine (455.9), four hundred fifty-five point eighteen (455.18), four hundred fifty-five point forty-seven (455.47), four hundred fifty-five point fifty-one (455.51), four hundred fifty-five point fifty-six (455.56), Code 1946, all relating to levee and drainage districts.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. The conservation of the soil resources of the State of
 2 Iowa, the proper control of water resources of the state and the pre-
 3 vention of damage to property and lands through the control of floods,
 4 the drainage of surface waters or the protection of lands from over-
 5 flow shall be presumed to be a public benefit and conducive to the
 6 public health, convenience and welfare and essential to the economic
 7 wellbeing of the state.

1 SEC. 2. The board of supervisors of any county shall have juris-
 2 diction, power and authority at any regular, special or adjourned
 3 session to establish, subject to the provisions of this act, districts
 4 having for their purpose soil conservation and the control of flood
 5 waters and to cause to be constructed as hereinafter provided, such
 6 improvements and facilities as shall be deemed essential for the ac-
 7 complishment of the purpose of soil conservation and flood control.
 8 Such board shall also have jurisdiction, power and authority at any
 9 regular, special or adjourned session to establish, in the same manner
 10 that the districts hereinabove referred to are established, districts
 11 having for their purpose soil conservation in mining areas within
 12 the county, and provide that anyone engaged in removing the surface
 13 soil over any bed or strata of coal in such district for the purpose of