

Sec. 12. This Act takes effect July 1, 1989, except the study committee established under section 3 of this Act shall be established on July 1, 1988.

Approved May 9, 1988

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## CHAPTER 1196

### FLOODWAY STRUCTURES AND STREAM STRAIGHTENING

*S.F. 2126*

**AN ACT** restricting the time period for the initiating of administrative or judicial actions to remove or eliminate certain structures, dams, obstructions, deposits, excavations, or stream straightenings to a floodway and providing for the Act's applicability.

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

Section 1. Section 455B.275, subsection 4, Code 1987, is amended to read as follows:

4. The department may maintain an action in equity to enjoin a person from erecting or making or permitting to be made a structure, dam, obstruction, deposit, or excavation other than a dam constructed and operated under the authority of chapter 469, for which a permit has not been granted. The department may also seek judicial abatement of any structure, dam, obstruction, deposit, or excavation erected or made without a permit required under this part. The abatement proceeding may be commenced to enforce an administrative determination of the department in a contested case proceeding that a public nuisance exists and should be abated. The costs of abatement shall be borne by the violator. Notwithstanding section 176B.11, a structure, dam, obstruction, deposit, or excavation on a floodway or flood plain in an agricultural area established under chapter 176B is not exempt from the sections of this part which relate to regulation of flood plains and floodways. As used in this subsection, violator includes a person contracted to erect or make a structure, dam, obstruction, deposit, or excavation in a floodway including stream straightening unless the project is authorized by a permit required under this part or the project is a dam authorized pursuant to chapter 469.

Sec. 2. Section 455B.275, Code 1987, is amended by adding the following new subsection:

**NEW SUBSECTION.** 9. The commission or the department shall not initiate any administrative or judicial action to remove or eliminate any structure, dam, obstruction, deposit, or excavation in a floodway, or to remove or eliminate any stream straightening, or to place other restrictions on the use of land or water affected by the structure, dam, obstruction, deposit, excavation, or stream straightening if not initiated within five years after the department becomes aware of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening. After ten years from the completion of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening, the prohibition of this subsection applies to, but is not limited to, any administrative or judicial abatement or action in condemnation that the commission or department may initiate under this section unless action is required to protect the public safety, in which case this section is not intended to limit the department from taking actions otherwise authorized by law.

Sec. 3. In addition to prospective application, this Act applies to all knowledge possessed by the department of natural resources for at least five years before the effective date of this Act and to all projects completed earlier than ten years before the effective date of this Act.

Approved May 9, 1988