

January 10, 1949.
Passed on File.

By FAUL, WATSON and MERCER
(Hicklin, Lynes and Hansen).

Referred to
Passed Senate, Date.....
Vote: Ayes..... Nays.....
Passed House, Date
Vote: Ayes..... Nays.....
Approved

Senate File 11

A BILL FOR

An Act relating to flood control and water resources, creating the Iowa Water Control and 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 flood control and water resources, mill dams and races and the powers, duties and functions of the council.

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

- 1 Section 1. Definitions. As used in this act, council
- 2 means "Iowa Water Control and Resources Council";
- 3 "Flood plains" means the area adjoining the river or

4 stream, which has been or may be hereafter covered by flood
5 water ;

6 “Floodway” means the channel of a river or stream and
7 those portions of the flood plains adjoining the channel,
8 which are reasonably required to carry and discharge the
9 flood water or flood flow of any river or stream ;

10 “Council floodway” means a floodway designated and
11 established by order of the council, fixing its length and
12 landside limits ;

13 “Person” means any natural person, firm, partnership,
14 association, corporation, State of Iowa, any agency of the
15 state, municipal corporation, political subdivision of the
16 State of Iowa, legal entity, drainage district, levee district,
17 public body, or other district or units maintained or to be
18 constructed by assessments, or the petitioners of a proceeding,
19 pending in any court of the state affecting flood control ;

20 “Due notice” means a notice of not less than thirty days
21 by one publication in an official newspaper published in
22 each county in which the property affected is located.

1 Sec. 2. Declaration of Policy. It is hereby recognized
2 that the protection of life and property from floods, the
3 prevention of damage to lands therefrom and the conservation
4 of the water resources of the state by the considered and
5 proper use thereof, is of paramount importance to the welfare
6 and prosperity of the people of the state, and, to realize
7 these objectives it is hereby declared to be the policy of
8 the state to correlate and vest the powers of the state in

9 a single agency with the duty and authority to establish and
10 enforce an appropriate comprehensive state-wide plan for the
11 control of water and the protection of the surface and under-
12 ground water resources of the state. In the formulation of
13 this plan the resultant effect thereof on other resources of
14 the state shall be recognized and included in such plan.

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

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

1 Sec. 5. Vacancies. Vacancies occurring while the general
2 assembly is in session shall be filled for the unexpired

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

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

1 Sec. 7. Compensation and Expenses. Each member of the
2 council not otherwise in the full-time employment of any
3 public body, shall receive the sum of twenty-five dollars
4 (\$25.00) for each day actually and necessarily employed in
5 the discharge of official duties provided such compensation
6 shall not exceed one thousand dollars (\$1,000.00) for any
7 fiscal year. In addition to the compensation hereinbefore
8 described, each member of the council shall be entitled to
9 receive the amount of his travelling and other necessary
10 expenses actually incurred while engaged in the performance
11 of any official duties, when so authorized by the council.
12 No member of the council shall have any direct financial
13 interest in, or profit by any of the operations of the
14 council.

1 Sec. 8. Organization, Meetings and Rules. The council

2 shall organize by the election of a chairman and shall meet
3 at the seat of government on the first Monday in the months
4 of January, April, July and October, and at such other times
5 and places as it may deem necessary. The chairman shall be
6 elected annually at the meeting of the council in July.
7 Meetings may be called by the chairman and shall be called by
8 the chairman on the request of four members of the council.
9 The majority of the council shall constitute a quorum and the
10 concurrence of a majority of the council in any matter within
11 their duties shall be required for its determination. The
12 council shall adopt such rules and regulations as it may deem
13 necessary to transact its business and for the administration
14 and exercise of its powers and duties.

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

1 Sec. 10. Employees. The director, with the approval of
2 the council is empowered to employ, discharge, and fix the
3 salaries of such technical, clerical, stenographic and such
4 other employees and assistants as may be required. All of

5 such employees shall be paid from funds appropriated to the
6 council.

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

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

1 Sec. 13. Reports, Accounting and Recommendations. The
2 council shall make a report to the governor of its activities
3 for the preceding biennial period, including therein an
4 itemized statement of all receipts and disbursements and such
5 other information pertaining to its work as may be of value.

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

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

1 Sec. 14. Departmental Cooperation. The council may
2 request and receive from any department, division, board,
3 bureau, commission, public body, or agency of the state,
4 or of any political subdivision thereof, or from any

5 organization, incorporated or unincorporated, which has for
6 its object the control or use of any of the water resources
7 of the state, such assistance and data as will enable the
8 council to properly carry out its activities and effectuate
9 its purposes hereunder. The council shall reimburse such
10 agencies for special expense resulting from expenditures
11 not normally a part of the operating expenses of any such
12 agency.

13 The council, its agents and other employees may enter
14 upon any lands or waters in the state for the purpose of making
15 any investigation, examination, or survey contemplated by
16 this act.

1 Sec. 15. Eminent Domain. The council shall have the
2 right to exercise the power of eminent domain. All the
3 provisions of law relating to condemnation of lands for public
4 state purposes shall apply to the provisions hereof in and so
5 far as applicable. The executive council shall institute
6 and maintain such proceedings.

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

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

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

1 Sec. 18. Jurisdiction. The council shall have
2 jurisdiction over the public and private waters in the state
3 and the lands adjacent thereto necessary for the purposes of
4 carrying out the provisions of this act. The council shall
5 make a comprehensive study and investigation of all pertinent
6 conditions of the areas in the state affected by floods;
7 determine the best method and manner of establishing flood
8 control; adopt and establish a comprehensive plan for flood
9 control for all the areas of the state subject to floods;
10 and determine the best and most practical method and manner
11 of establishing and constructing the necessary flood control
12 works. The council may construct flood control works or any
13 part thereof. The council is authorized to perform such
14 duties in cooperation with other states or any agency thereof
15 or with the United States or any agency of the United States,
16 or with any person as defined in this act.
17 The council shall procure and obtain flood control works
18 from and through or by cooperation with the United States, or
19 any agency of the United States, by cooperation with and action
20 of the cities, towns and other subdivisions of the state, under
21 the laws of the state relating to flood control and water use,
22 and by cooperation with and action of landowners in areas

23 affected thereby.

24 The council shall make surveys and investigations of the
25 water resources of the state and of the problems of agriculture,
26 industry, conservation, health, stream pollution and allied
27 matters as they relate to flood control and water resources,
28 and shall make and formulate plans and recommendations for
29 the further development, protection and preservation of the
30 water resources of the state.

1 Sec. 20. Unlawful Acts—Powers of Council. Notwith-
2 standing any provision of law to the contrary, it shall be
3 unlawful to erect, use or maintain any structure in or on
4 any floodway as a permanent abode or place of residence, or to
5 erect, make, use or maintain any structure, dam, obstruction,
6 deposit, or excavation in or on any floodway; or to suffer
7 or permit any structure, dam, obstruction, deposit or
8 excavation to be erected, used, or maintained in or on any
9 floodway, which will adversely affect the efficiency of or
10 unduly restrict the capacity of the floodway, and the same
11 are declared to be and to constitute public nuisances,
12 provided, however, that this provision shall not apply to
13 dams constructed and operated under the authority of chapter
14 four hundred sixty-nine (469), Code 1946, as amended.

15 The council shall have the power to commence, maintain and
16 prosecute any appropriate action to enjoin or abate a nuisance,
17 including any of the foregoing nuisances and any other nuisance
18 which adversely affects flood control.

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

31 The council shall have the power to remove or eliminate
32 any structure, dam, obstruction, deposit or excavation in
33 any floodway which adversely affects the efficiency of or
34 unduly restricts the capacity of the floodway, by an action
35 in condemnation, and in assessing the damages in such
36 proceeding, the appraisers and the court shall take into
37 consideration whether the structure, dam, obstruction,
38 deposit or excavation is lawfully in or on the floodway.

1 Sec. 21. Additional Powers—Licensing of Dams. After
2 the effective date of this act the term “council”, as used
3 in chapter four hundred sixty-nine (469), Code 1946, shall
4 be construed as to refer to the “Iowa Water Control and
5 Resources Council” unless specifically otherwise provided.

1 Sec. 22. Additional Powers, Section four hundred sixty-

2 nine point one (469.1), Code 1946, is amended by striking
3 from lines eight (8) and nine (9) thereof the words “executive
4 council” and by inserting in lieu thereof the words “Iowa
5 Water Control and Resources Council”.

1 Sec. 23. Additional Powers. Subsection six (6) of
2 section four hundred sixty-nine point two (469.2), Code 1946,
3 is amended by striking from line two (2) thereof the words
4 “executive council” and by inserting in lieu thereof the
5 words “Iowa Water Control and Resources Council”.

1 Sec. 24. Additional Powers. Section four hundred sixty-
2 nine point three (469.3), Code 1946, is amended by striking
3 from lines four (4) and five (5) thereof the words “executive
4 council” and by inserting in lieu thereof the words “Iowa
5 Water Control and Resources Council”.

1 Sec. 25. Additional Powers. Section four hundred sixty-
2 nine point nine (469.9), Code 1946, is amended by striking
3 from line seven (7) thereof the words “executive council”
4 and by inserting in lieu thereof the words “Iowa Water Control
5 and Resources Council”; section four hundred sixty-nine point
6 nine (469.9), Code 1946, is further amended by striking from
7 line ten (10) thereof the words “executive council” and by
8 inserting in lieu thereof the words “Iowa Water Control and
9 Resources Council”.

1 Sec. 26. Additional Powers. Section four hundred sixty-
2 nine point ten (469.10), Code 1946, is amended by striking from
3 line two (2) thereof the words “executive council” and by

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

1 Sec. 27. Additional Powers. Section four hundred sixty-
2 nine point twenty-six (469.26), Code 1946, is amended by
3 striking from line six (6) thereof the words "executive council"
4 and by inserting in lieu thereof the words "Iowa Water Control
5 and Resources Council".

1 Sec. 28. Receivership. Section four hundred sixty-nine
2 point fifteen (469.15), Code 1946, is amended by inserting
3 before the word "council" in line eleven (11), the words
4 "state executive".

1 Sec. 29. Mill Dams and Races. Section four hundred sixty-
2 nine point twenty-eight (469.28), Code 1946, is repealed.

1 Sec. 30. Mill Dams and Races. Section four hundred
2 sixty-nine point twenty-nine (469.29), Code 1946, is repealed
3 and the following is enacted in lieu thereof: "All licenses
4 and permits issued by the state executive council prior to
5 the effective date of this act are hereby declared to be
6 in full force and effect and all of the powers of adminis-

7 tration relating to licenses or permits heretofore issued
8 are hereby vested in the Iowa Water Control and Resources
9 Council.”

1 Sec. 31. Council Floodway. The council may by order
2 establish a floodway as a council floodway and alter, change,
3 or revoke and terminate the same. In the order establishing
4 the council floodway, the council shall fix the length thereof
5 at any practical distance, and fix the width or the landside
6 limits thereof, so as to include portions of the flood plains
7 adjoining the channel, which with the channel, are reasonably
8 required to efficiently carry and discharge the flood waters
9 or flood flow of such river or stream. An order establishing
10 a council floodway shall not be in force until due notice
11 thereof has been given. All of the area within a council
12 floodway shall be the floodway for all purposes of this act.

1 Sec. 32. Flood Control Works Co-ordinated. All works
2 of any nature for flood control in the state, which are
3 hereafter established and constructed, shall be co-ordinated
4 in design, construction and operation, according to sound
5 and accepted engineering practice so as to effect the best
6 flood control obtainable throughout the state. No person shall
7 construct or install any works of any nature for flood control
8 unless and until the proposed works and the plans and
9 specifications therefor are approved by the council. The
10 interested persons shall file a verified written application
11 with the council therefor, and the council on hearing shall

12 consider all the pertinent facts relating to the proposed
13 works which will affect flood control in the state and shall
14 determine whether the proposed works in the plans and
15 specifications will be in aid of and acceptable as part of,
16 or will adversely affect and interfere with flood control
17 in the state, and shall enter an order approving or disapproving
18 the application, plans and specifications. In the event of
19 disapproval, the order shall set forth the objectionable
20 features so that the proposed works and the plans and
21 specifications therefor may be corrected or adjusted to
22 obtain the approval of the council.

23 The provisions of this section shall apply to all drainage
24 districts, soil conservation districts, projects undertaken
25 by the state conservation commission, all public agencies
26 including counties, cities, towns and all political sub-
27 divisions of the State of Iowa and to all privately undertaken
28 projects relating to or affecting flood control.

1 Sec. 33. Appeal. Any person aggrieved by any of the
2 acts or orders of the council shall have the right to appeal
3 therefrom to the district court at the seat of government
4 or the district court of any county in which the property
5 affected is located, by filing with the council a notice of
6 such appeal within thirty days from the date of such action
7 or order. The notice of appeal shall state the grounds of
8 appeal. When an appeal is taken, the council shall forthwith
9 cause to be made a certified transcript of all proceedings had

10 and all orders made and shall file the same with the clerk of
11 the district court where the appeal is pending.

12 Upon such appeal being perfected, it shall be brought on
13 for trial at any time by either party upon ten days' notice
14 to the other and shall be tried by the court de novo and
15 determined upon the record. At such trial the findings by
16 the council shall be prima facie evidence of the matters
17 therein contained. If the court shall determine that the
18 order appealed from is lawful and reasonable, it shall be
19 affirmed. If the court finds that the order appealed from
20 is unjust, unreasonable or not supported by the evidence, it
21 shall make such order to take the place of the order appealed
22 from as is justified by the record before it.

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

26 The pendency of any such appeal shall not stay the
27 operation of the order of the council but the district court
28 or the supreme court in their discretion may suspend the
29 operation of the council order pending determination of the
30 appeal, provided, the appellant shall file an appropriate
31 bond approved by the court, conditioned that he shall answer
32 for all damages caused by the delay in the enforcement of
33 the council's order.

1 Sec. 34. Executive Prerogatives. The council shall have
2 no executive prerogatives outside of its own duties and

3 functions as set out by this act and shall not disturb the
4 work, functions or authority of any of the several state or
5 local agencies and institutions, provided the powers conferred
6 upon the council by this act shall not be exercised by any
7 other of the agencies or institutions.

1 Sec. 35. Approval Required. Section one hundred eight
2 point seven (108.7), Code 1946, is amended by adding thereto
3 the following: "Any action taken by the commission under
4 the provisions of this section shall be subject to the
5 approval of the Iowa Water Control and Resources Council."

1 Sec. 36. Approval Required. Section one hundred sixty
2 point seven (160.7), Code 1946, is amended by adding to
3 subsection three (3) of said section the following: "The
4 approval of the Iowa Water Control and Resources Council
5 shall be required on any project which relates to or in any
6 manner affects flood control."; section one hundred sixty
7 point seven (160.7), Code 1946, is further amended by adding
8 to subsection seven (7) of said section the following:
9 "The approval of the Iowa Water Control and Resources Council
10 shall be required on any project which relates to or in any
11 manner affects flood control."

1 Sec. 37. Injury to Dams. Section one hundred nine point
2 fifteen (109.15), Code 1946, is amended by striking from lines
3 five (5) and six (6) thereof the words "state conservation
4 director" and by inserting in lieu thereof the words "Iowa
5 Water Control and Resources Council".

1 Sec. 38. Approval Required. Section one hundred eleven
2 point four (111.4), Code 1946, is amended by inserting after
3 the period in line eight (8) thereof the following: “No
4 such permit shall be issued without approval of the Iowa
5 Water Control and Resources Council.”

1 Sec. 39. Approval Required. Section one hundred eleven
2 point eighteen (111.18), Code 1946, is amended by inserting
3 after the period in line five (5) thereof the following:
4 “The exercise of this jurisdiction shall be subject to the
5 approval of the Iowa Water Control and Resources Council in
6 matters relating to or in any manner affecting flood control.”

1 Sec. 40. Approval Required. Section one hundred twelve
2 point three (112.3), Code 1946, is amended by striking from
3 line four (4) thereof the words “executive council” and by
4 inserting in lieu thereof the words “Iowa Water Control and
5 Resources Council.”

1 Sec. 41. Dams and Spillways. Section one hundred twelve
2 point seven (112.7), Code 1946, is amended by striking from
3 lines five (5) and six (6) thereof the words “, with the
4 consent of the executive council,”.

1 Sec. 42. Appropriation. There is hereby appropriated
2 annually from the general fund of the state for the period
3 beginning with the passage of this act the sum of one hundred
4 thousand dollars (\$100,000.00) which shall be used solely to
5 effectuate the provisions of this act.

1 Sec. 43. Severability. The provisions of this act shall

2 be deemed severable as far as practical, and should any part
3 be declared invalid or unconstitutional, the remaining parts
4 of the act shall not be affected thereby.

PROPOSED ALTERNATIVE SECTION

1 Sec. 4. Appointment. The council shall be composed
2 of twelve (12) members, six (6) of whom shall be representa-
3 tive citizens of the State of Iowa who shall be selected at
4 large and solely with regard to their qualifications and
5 fitness to discharge the obligations of office in this
6 council; together with one ex-officio member for representa-
7 tion from each of the following state agencies which have
8 certain related legal responsibilities in and shall
9 participate for the proper coordination of the affairs of
10 this council; state conservation commission, state department
11 of agriculture, state soil conservation committee, the sani-
12 tary engineering division of the state department of health,
13 Iowa geological survey and state highway commission.

14 The six (6) members at large shall be appointed by the
15 governor with appropriate geographical considerations and
16 with the advice and consent of two-thirds of the members
17 of the senate in executive session for overlapping terms of
18 six (6) years. The terms of two such appointive members of
19 the council shall expire on July 1, 1951; the terms of two
20 other appointive members shall expire on July 1, 1953; and
21 the terms of two members shall expire on July 1, 1955. During
22 each regular session of the legislature preceding the

23 expiration of such terms and thereafter two members of the
24 council shall be appointed for terms of six (6) years in the
25 manner described herein. No such member having served six
26 (6) years is eligible for reappointment.

27 Each of the indicated state agencies shall and are hereby
28 directed to maintain representation and assist with the work
29 of this council at all times by designating an official in the
30 agency, such as the administrative official in charge or any
31 other duly qualified official of the agency, to act as a
32 member of this council.

33 The authorized functions of the representative agencies
34 are hereby expanded to provide such service and for the full
35 cooperation of each agency in the coordinated affairs of
36 this council.

37 The council shall be non-partisan and the members shall
38 be elected and appointed without reference to their
39 political affiliations. No member of the council shall have
40 any direct financial interest in or profit by any of the
41 operations of this council.