

House File 2126
Amended for Senate, 2/12/88 (p. 1124)

FILED FEB 05 1988

SENATE FILE 2126
BY COMMITTEE ON NATURAL RESOURCES
(formerly SSB 2137)
approved (11-25-77)

Passed Senate, Date 2/15/88 (p. 1124) Passed House, Date 4/14/88 (p. 1908)
Vote: Ayes 47 Nays 0 Vote: Ayes 90 Nays 7
Approved May 9, 1988

Amended in Senate 4/14/88 (p. 1544)
15-0

A BILL FOR

1 An Act restricting the time period for the initiating of
2 administrative or judicial actions to remove or eliminate
3 certain structures, dams, obstructions, deposits, excavations,
4 or stream straightenings to a floodway.

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

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SF 2126

1 Section 1. Section 455B.275, Code 1987, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 9. The commission or the department shall
4 not initiate any administrative or judicial action to remove
5 or eliminate any structure, dam, obstruction, deposit, or
6 excavation in a floodway, or to remove or eliminate any stream
7 straightening, or to place other restrictions on the use of
8 land or water affected by the structure, dam, obstruction,
9 deposit, excavation, or stream straightening if not initiated
10 within five years of the completion of the erection or making
11 of the structure, dam, obstruction, deposit, excavation, or
12 stream straightening. The prohibition of this subsection
13 applies to, but is not limited to, any judicial abatement or
14 action in condemnation that the commission or department may
15 initiate under this section.

16 EXPLANATION

17 This bill prevents the department of natural resources or
18 the environmental protection commission from initiating any
19 administrative or judicial action to remove or eliminate any
20 changes made in a floodway if not initiated within five years
21 of the completion of the erection or making of any structure,
22 dam, obstruction, deposit, excavation, or stream straightening
23 affecting the floodway.

24 SUCCESSOR TO SENATE STUDY BILL 2137 (LSB 4706XS)

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SENATE FILE 2126

H-6429

1 Amend the Committee amendment, H-5868, to Senate
2 File 2126, as passed by the Senate, as follows:
3 1. Page 1, by striking lines 35 through 47 and
4 inserting the following:
5 " _____. Page 1, line 12, by striking the word "The"
6 and inserting the following: "After ten years from
7 the completion of the erection or making of the
8 structure, dam, obstruction, deposit, excavation, or
9 stream straightening, the".
10 _____. Page 1, line 13, by inserting after the word
11 "any" the following: "administrative or".
12 _____. Page 1, line 15, by inserting after the word
13 "section" the following: "unless action is required
14 to protect the public safety, in which case this
15 section is not intended to limit the department from
16 taking actions otherwise authorized by law".
17 _____. Page 1, by inserting after line 15 the
18 following:
19 "Sec. _____. In addition to prospective application,
20 this Act applies to all knowledge possessed by the
21 department of natural resources for at least five
22 years before the effective date of this Act and to all
23 projects completed earlier than ten years before the
24 effective date of this Act."
25 2. Page 1, by inserting after line 47 the
26 following:
27 " _____. Title page, line 4, by inserting after the
28 word "floodway" the following: "and providing for the
29 Act's applicability".

By JOHNSON of Winneshiek

H-6429 FILED APRIL 13, 1988

Adopted 4/14 (y. 1988)

SENATE FILE 2126

H-5868

1 Amend Senate File 2126, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 455B.275, subsection 4, Code
6 1987, is amended to read as follows:

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

32 2. Page 1, line 10, by striking the words "of the
33 completion" and inserting the following: "after the
34 department becomes aware".

35 3. Page 1, by striking lines 13 through 15 and
36 inserting the following: "does not apply if action is
37 required to protect property or the public safety and
38 is not intended to limit the department from taking
39 actions otherwise authorized by law. This subsection
40 does not apply to any structure, dam, obstruction,
41 deposit, or excavation in a floodway or a stream
42 straightening initiated without a permit after July 1,
43 1988. For the purposes of this subsection, the
44 department becomes aware of the erection or making of
45 a structure, dam, obstruction, deposit, excavation, or
46 stream straightening by notifying the landowner by
47 certified mail."

48 4. By renumbering sections.

By COMMITTEE ON NATURAL RESOURCES
AND OUTDOOR RECREATION
BLACK of Jasper, Chairperson

H-5868 FILED MARCH 24, 1988

Adopted as amended by 6429 4/14 (p. 1908)

HOUSE AMENDMENT TO
SENATE FILE 2126

6017

1 Amend Senate File 2126, as passed by the Senate, as
2 follows:

3 1. Page 1, by inserting before line 1 the
4 following:

5 "Section 1. Section 455B.275, subsection 4, Code
6 1987, is amended to read as follows:

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

32 2. Page 1, line 10, by striking the words "of the
33 completion" and inserting the following: "after the
34 department becomes aware".

35 3. Page 1, line 12, by striking the word "The"
36 and inserting the following: "After ten years from
37 the completion of the erection or making of the
38 structure, dam, obstruction, deposit, excavation, or
39 stream straightening, the".

40 4. Page 1, line 13, by inserting after the word
41 "any" the following: "administrative or".

42 5. Page 1, line 15, by inserting after the word
43 "section" the following: "unless action is required
44 to protect the public safety, in which case this
45 section is not intended to limit the department from
46 taking actions otherwise authorized by law".

47 6. Page 1, by inserting after line 15 the
48 following:

49 Sec. _____. In addition to prospective application,
50 this Act applies to all knowledge possessed by the

SENATE 38
APRIL 15, 1988

S-6017 Page 2

1 department of natural resources for at least five
2 years before the effective date of this Act and to all
3 projects completed earlier than ten years before the
4 effective date of this Act."

5 7. Title page, line 4, by inserting after the
6 word "floodway" the following: "and providing for the
7 Act's applicability".

8 8. By renumbering sections.

S-6017

Filed April 14, 1988

ADOPTED

(p. 1526)

RECEIVED FROM THE HOUSE

SCOTT, CH.

SSB 2137

SSB 2137

NATURAL RESOURCES

NATURAL RESOURCES: Scott, Chair; Priebe and Tieden

Novel

SENATE FILE 2136

BY (PROPOSED COMMITTEE ON
NATURAL RESOURCES BILL)

Passed Senate, Date _____ Passed House, Date _____

Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act restricting the time period for the initiating of
2 administrative or judicial actions to remove or eliminate
3 certain structures, dams, obstructions, deposits, excavations,
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1 Section 1. Section 455B.275, Code 1987, is amended by
2 adding the following new subsection:

3 NEW SUBSECTION. 9. The commission or the department shall
4 not initiate any administrative or judicial action to remove
5 or eliminate any structure, dam, obstruction, deposit, or
6 excavation in a floodway, or to remove or eliminate any stream
7 straightening, or to place other restrictions on the use of
8 land or water affected by the structure, dam, obstruction,
9 deposit, excavation, or stream straightening if not initiated
10 within five years of the completion of the erection or making
11 of the structure, dam, obstruction, deposit, excavation, or
12 stream straightening. The prohibition of this subsection
13 applies to, but is not limited to, any judicial abatement or
14 action in condemnation that the commission or department may
15 initiate under this section.

16 EXPLANATION

17 This bill prevents the department of natural resources or
18 the environmental protection commission from initiating any
19 administrative or judicial action to remove or eliminate any
20 changes made in a floodway if not initiated within five years
21 of the completion of the erection or making of any structure,
22 dam, obstruction, deposit, excavation, or stream straightening
23 affecting the floodway.

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SENATE FILE 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.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2126, Seventy-second General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved May 9, 1988

TERRY E. BRANSTAD
Governor