

Reprinted 4/78

FEB 22 1978
Place On Calendar

HOUSE FILE 2212

By COMMITTEE ON NATURAL
RESOURCES

(Formerly Study Bill 316)

Passed House, Date 3-23-78 (p. 1168) Passed Senate, Date 5-12-78 (A 1503)

Vote: Ayes 89 Nays 1 Vote: Ayes 43 Nays 0

Approved June 12

Motion to reconsider 3/28 (1223) prevailed 3/31 (1279)

Repassed House 3-31-78 (p. 1281)
86-3

A BILL FOR

1 An Act relating to the authority of the Iowa natural resources
2 council in regulating flood plains and providing a penalty.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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5760 >
1 Section 1. Section four hundred fifty-five A point thirty-
2 three (455A.33), Code 1977, as amended by Acts of the Sixty-
3 seventh General Assembly, 1977 Session, chapter one hundred
4 twenty-three (123), section six (6), is amended by adding
5 the following new unnumbered paragraphs:

6 NEW UNNUMBERED PARAGRAPH. When approving a request to
-725- 7 straighten a stream, the director or council shall establish
8 as a condition of approval a permanent prohibition against
9 tillage of land owned by the person receiving the approval
10 and lying within some minimum distance from the stream
11 sufficient in the judgment of the director or council to hold
12 soil erosion to reasonable limits. The director shall record
13 the prohibition in the office of the county recorder of the
14 appropriate county and the prohibition shall attach to the
15 land. A person who violates a prohibition against tillage
16 shall be guilty of a simple misdemeanor. Each day upon which
17 a violation occurs constitutes a separate violation.

18 NEW UNNUMBERED PARAGRAPH. The council shall by rule
19 establish thresholds for dimensions and effects, and any
20 structure, dam, obstruction, deposit, or excavation having
21 smaller dimensions and effects than those established by the
22 council shall be lawful and not subject to regulation under
23 this section. The thresholds shall be such that only those
24 structures, dams, obstructions, deposits, or excavations
25 posing a significant threat to the well-being of the public
26 and the environment shall be subject to regulation.

27 Sec. 2. Section four hundred fifty-five A point thirty-
5727- 28 three (455A.33), unnumbered paragraphs three (3) and four
29 (4), Code 1977, as amended by Acts of the Sixty-seventh General
30 Assembly, 1977 Session, chapter one hundred twenty-three
31 (123), section six (6), are amended to read as follows:

5727 >
32 In the event any person desires to erect or make, or to
33 suffer or permit, a structure, dam, obstruction, deposit or
34 excavation, other than a dam, constructed and operated under
35 the authority of chapter 469 as amended, to be erected, made,

1 used or maintained in or on any floodway or flood plains,
 2 such person shall file a verified written application with
 3 the ~~council~~ director, setting forth the material facts, ~~and~~
 4 ~~the council after an investigation or hearing, shall enter~~
 5 ~~an order, determining the fact and permitting or prohibiting~~
 6 ~~the same, upon such terms and conditions as it may prescribe.~~
 7 The director shall provide the council with copies of the
 8 application and an opportunity for the council to call up
 9 the application for its determination. The director, or the
 10 council, after an investigation or a public hearing if there
 11 is an objection to the proposed project shall determine the
 12 fact and approve or deny the application imposing such
 13 conditions and terms as the director or council may prescribe.
 14 A determination of the director may be appealed to the council
 15 by any aggrieved party.

16 The council shall have the authority to maintain an action
 17 in equity to enjoin any such person from erecting or making
 18 or suffering or permitting to be made any structure, dam,
 19 obstruction, deposit, or excavation other than a dam
 20 constructed and operated under the authority of chapter 469,
 21 for which a permit has not been granted. The council is also
 22 authorized to abate as a public nuisance any structure, dam,
 23 obstruction, deposit, or excavation erected or made without
 24 a permit required by this chapter within one year of cessation
 25 of construction. The costs of the abatement shall be borne
 26 by the violator.

27 Sec. 3. This Act is effective January 1, 1979.

28 EXPLANATION

29 The bill directs the Iowa natural resources council to
 30 establish nontillable borders as a condition for a permit
 31 to straighten a stream. The order would be recorded and
 32 attach to the land. The bill also permits the council to
 33 establish threshold standards for structures on flood plains.
 34 Structures smaller than the threshold standard would not be
 35 subject to regulation.

1 The bill allows the director of the Iowa natural resources
2 council to approve permits for structures on flood plains.
3 The council would be provided with an opportunity to call
4 up the application for its determination. The decision of
5 the director may be appealed to the council.

6 The bill also allows the council to abate structures
7 constructed on a flood plain without a required permit.
8 Structures which have been completed for more than a year
9 would not be subject to abatement.

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1 Amend House File 2212 as follows:

- 2 1. Page 1, line 28, by inserting after the word
3 "paragraphs" the word and figure "one (1),".
4 2. Page 1, by inserting after line 31 the follow-
5 ing:

6 "It shall be unlawful to suffer or permit for any
7 person including a landowner, tenant, agent, contractor
8 or builder to erect, make, suffer, or permit any struc-
9 ture, dam, obstruction, deposit or excavation to be
10 erected, used, or maintained in or on any floodway or
11 flood plains, which will adversely affect the efficiency
12 of or unduly restrict the capacity of the floodway,
13 adversely affect the control, development, protection,
14 allocation, or utilization of the water resources of
15 the state, or adversely affect or interfere with the
16 state comprehensive plan for water resources, or an ap-
17 proved local water resources plan, and the same are de-
18 clared to be and to constitute public nuisances, provided,
19 however, that this provision shall not apply to dams
20 constructed and operated under the authority of chapter
21 469 as amended."

H-5727 FILED *Adopted* BY EVANS of Grundy
MARCH 21, 1978 *3/23 (p. 1165)*

HOUSE FILE 2212

H-5728

1 Amend House File 2212 as follows:

- 2 1. Page 1, line 7, by striking the word "shall"
3 and inserting in lieu thereof the word "may".

H-5728 FILED *Adopted* BY EVANS of Grundy
MARCH 21, 1978 *3/23 (p. 1165)*
HOUSE FILE 2212

H-5748

1 Amend amendment H-5726 to House File 2212 as
2 follows:

- 3 1. Page 1, line 16, by inserting after the word
4 "who" the following:

5 "is required by law to have a permit and who".

- 6 2. Page 1, line 26, by inserting after the word

7 "who" the following:

8 "is required to obtain prior council approval".

H-5748 FILED *Adopted* BY MIDDLESWART of Warren
MARCH 22, 1978 *as amended* WELDEN of Hardin
by 5764
3/23 (p. 1167)

HOUSE FILE 2212

H-5698

1 Amend House File 2212 as follows:

- 2 1. Page 2, line 24, by striking the word
3 "permit" and inserting in lieu thereof the word
4 "permit".

H-5698 FILED *Adopted* BY WYCKOFF of Benton
MARCH 20, 1978 *3/23 (p. 1165)*

H-5726

Amend House File 2212 as follows:

1. Page 2, by inserting after line 26 the following:

"Sec. ____ . Section four hundred fifty-five A point thirty-nine (455A.39), Code 1977 Supplement, is amended to read as follows:

455A.39 PENALTIES--CRIMINAL AND CIVIL.

1. Whoever is convicted of erecting, causing or continuing a common or public nuisance, as provided in this chapter, or whoever diverts or withdraws water in violation of the provisions of this chapter, upon conviction, shall be guilty of a simple misdemeanor and each day that such violation continues after conviction notice that a violation is being committed shall be considered a separate offense.

2. a. Any person who withdraws water without permit or in violation of a permit condition and who does not take corrective measures as required by the council or its designee after written notice delivered by personal service or restricted mail that violation is being committed, shall be subject to a civil penalty of not more than one thousand dollars for the violation and an additional penalty of not more than one hundred dollars for each day that such violation continues after notice of the offense is received.

b. Any person who constructs a levee or dam or alters a stream channel without prior council approval or in violation of a condition of a council approval order and who fails to take corrective measures as required by the council or its designee within the time specified following a written notice to such person by personal service or restricted mail of such violation and needed corrective measures, shall be subject to a civil penalty of not more than one thousand dollars for the violation and an additional penalty of not more than one hundred dollars for each day that such violation continues after the expiration of the time fixed by the council or its designee for the completion of the corrective measures.

3. a. The attorney general shall bring an action to recover criminal or civil penalties at the request of the council or its designee. The action may be settled by the attorney general with the approval of the council or its designee after proceedings are brought to recover the penalty and prior to entry of judgment.

b. The civil penalties provided for in this section shall be an alternative to any criminal penalty for this section."

2. By renumbering the sections to conform with

H-5726

Page 2

1 this amendment.

2 3. Amend the title, line 2, by striking the words
3 "in regulating flood plains".

H-5726 FILED *Adopted as* BY MIDDLESWART of Warren
MARCH 21, 1978 *amended by* WELDEN of Hardin

5748 & 5726.3 3/23 (p. 1128)

H-5760

1 Amend House File 2212 as follows:

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

4 "Section 1. Section four hundred fifty-five A point
5 twenty (455A.20), Code 1977, as amended by Acts of the
6 Sixty-seventh General Assembly, 1977 Session, chapter
7 one hundred twenty-three (123), section four (4) is
8 amended to read as follows:

9 If the water commissioner at the first hearing or
10 the council at the hearing on appeal shall determine
11 after due investigation that such diversion, storage or
12 withdrawal will not be detrimental to the public
13 interests, including drainage and levee districts, or
14 to the interests of property owners with prior or
15 superior rights who might be affected, the water
16 commissioner following the first hearing, or the council
17 following the hearing on appeal shall grant a permit for
18 such diversion, storage or withdrawal. Judicial review
19 of such action is available in accordance with the terms
20 of the Iowa administrative procedure Act and section
21 455A.37. Permits may be granted for any period of time
22 but not to exceed ten years except for the storage of
23 water which may be granted for the life of the structure
24 unless withdrawn for good cause. All existing storage
25 permits are hereby extended for the life of the structure
26 unless withdrawn for good cause. Permits may be granted
27 which provide for less diversion, storage, or withdrawal
28 of waters than set forth in the application. Permits
29 may be extended by the water commissioner for a period
30 of not more than ninety days during the pendency of an
31 application for renewal. Any permit granted shall remain
32 as an appurtenance of the land described therein through
33 the date specified in such permit and any extension there-
34 of or such earlier date as the permit or any extension
35 thereof is revoked or canceled under the provisions of
36 section 455A.28."

H-5760 FILED, ADOPTED BY BAKER of Buena Vista
MARCH 23, 1978 (p. 1164) PERKINS of Greene

HOUSE FILE 2212

H-5763

1 Amend amendment H-5726 to House File 2212 as
2 follows:

3 1. Page 1, line 41, by striking the word
4 "recover" and inserting in lieu thereof the word
5 "impose".

6 2. Page 1, line 45, by striking the word
7 "recover" and inserting in lieu thereof the word
8 "impose".

H-5763 FILED, ADOPTED BY SCHROEDER of Pottawattamie
MARCH 23, 1978 (p. 1167)

HOUSE FILE 2212

H-5764

1 Amend amendment H-5748, to amendment H-5726, to
2 House File 2212, as follows:

3 1. Page 1, line 8, by inserting after the word
4 "approval" the words "and who".

H-5764 FILED, ADOPTED BY MIDDLESWART of Warren
MARCH 23, 1978 (p. 1167)

1 Amend House File 2212 as follows:

2 1. Page 2, by inserting after line 26 the
3 following sections:

4 "Sec. . . . Acts of the Sixty-seventh General
5 Assembly, 1977 Session, chapter one hundred twenty-
6 three (123), section eight (8), is amended to read as
7 follows:

8 Sec. 8. APPLICATION FOR SPECIAL PERMITS. Applica-
9 tion and payment of the fee for special permits shall
10 be in accordance with the provisions of sections four
11 hundred fifty-five A point nineteen (455A.19), subsection
12 one (1), and four hundred fifty-five A point nineteen
13 (455A.19), subsection five (5) of the Code, respectively.
14 Upon receipt of the application and fee, the commissioner
15 shall cause notice of the application to be published
16 in a newspaper of general circulation in the county
17 where the permit is sought. The special permit shall
18 be issued by the commissioner two weeks from the date
19 of publication, unless written objection to the appli-
20 cation is filed with the commissioner before that
21 date, in which case the hearing procedures of section
22 four hundred fifty-five A point nineteen (455A.19) of
23 the Code, shall be followed. ~~Special permits shall~~
24 ~~be issued for a period not to exceed one year.~~
25 Special permits issued after the effective date of
26 this Act shall terminate on July 1, 1980. The
27 termination date of all existing special permits is
28 hereby extended to July 1, 1980.

29 Sec. . . . Acts of the Sixty-seventh General
30 Assembly, 1977 Session, chapter one hundred twenty-
31 three (123), section nine (9), is amended to read as
32 follows:

33 Sec. 9. Section four hundred fifty-five A point
34 twenty (455A.20), Code 1977, is amended by adding the
35 following new unnumbered paragraphs:

36 NEW UNNUMBERED PARAGRAPH. Until the council
37 adopts a statewide water plan, all new water permits
38 issued for irrigation purposes, except special permits,
39 shall not exceed one year and all renewals thereof
40 shall also be limited to one year. The preceding
41 limitation shall not apply to the renewal or extension
42 of any valid water permit granted prior to the effective
43 date of this Act. If it is determined, through
44 monitoring of the permitted withdrawal, that it will
45 endanger the present or future availability of ground-
46 water said permits may be modified or canceled under
47 the provisions of section four hundred fifty-five A
48 point twenty-eight (455A.28) of the Code.

49 NEW UNNUMBERED PARAGRAPH. When permits are
50 modified or canceled, priority for permits shall be

H-5833
Page 2

1 given to applicants or permit holders who utilize
2 such water for agriculture research. Nothing in this
3 paragraph shall give priority to such applicants or
4 permit holders in preference to those classes granted
5 priority under section four hundred fifty-five A
6 point twenty-one (455A.21) of the Code."

HOUSE FILE 2212

By COMMITTEE ON NATURAL
RESOURCES

(Corrected Reprint)

per 6701
Passed House, Date 5-12-78 (p. 2639) Passed Senate, Date 5-12-78 (p. 1502)

Vote: Ayes 88 Nays 2 Vote: Ayes 43 Nays 0

Approved June 12, 1978

A BILL FOR

1 An Act relating to the authority of the Iowa natural resources
2 council and providing a penalty.

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

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House Amendments _____

1 Section 1. Section four hundred fifty-five A point twenty
2 (455A.20), Code 1977, as amended by Acts of the Sixty-seventh
3 General Assembly, 1977 Session, chapter one hundred twenty-
4 three (123), section four (4) is amended to read as follows:

5 If the water commissioner at the first hearing or the
6 council at the hearing on appeal shall determine after due
7 investigation that such diversion, storage or withdrawal will
8 not be detrimental to the public interests, including drainage
9 and levee districts, or to the interests of property owners
10 with prior or superior rights who might be affected, the water
11 commissioner following the first hearing, or the council
12 following the hearing on appeal shall grant a permit for such
13 diversion, storage or withdrawal. Judicial review of such
14 action is available in accordance with the terms of the Iowa
15 administrative procedure Act and section 455A.37. Permits
16 may be granted for any period of time but not to exceed ten
17 years except for the storage of water which may be granted
18 for the life of the structure unless withdrawn for good cause.
19 All existing storage permits are hereby extended for the life
20 of the structure unless withdrawn for good cause. Permits
21 may be granted which provide for less diversion, storage,
22 or withdrawal of waters than set forth in the application.
23 Permits may be extended by the water commissioner for a period
24 of not more than ninety days during the pendency of an
25 application for renewal. Any permit granted shall remain
26 as an appurtenance of the land described therein through the
27 date specified in such permit and any extension thereof or
28 such earlier date as the permit or any extension thereof is
29 revoked or canceled under the provisions of section 455A.28.

30 Sec. 2. Section four hundred fifty-five A point thirty-
31 three (455A.33), Code 1977, as amended by Acts of the Sixty-
32 seventh General Assembly, 1977 Session, chapter one hundred
33 twenty-three (123), section six (6), is amended by adding
34 the following new unnumbered paragraphs:

35 NEW UNNUMBERED PARAGRAPH. When approving a request to

1 straighten a stream, the director or council may establish
2 as a condition of approval a permanent prohibition against
3 tillage of land owned by the person receiving the approval
4 and lying within some minimum distance from the stream
5 sufficient in the judgment of the director or council to hold
6 soil erosion to reasonable limits. The director shall record
7 the prohibition in the office of the county recorder of the
8 appropriate county and the prohibition shall attach to the
9 land. A person who violates a prohibition against tillage
10 shall be guilty of a simple misdemeanor. Each day upon which
11 a violation occurs constitutes a separate violation.

12 NEW UNNUMBERED PARAGRAPH. The council shall by rule
13 establish thresholds for dimensions and effects, and any
14 structure, dam, obstruction, deposit, or excavation having
15 smaller dimensions and effects than those established by the
16 council shall be lawful and not subject to regulation under
17 this section. The thresholds shall be such that only those
18 structures, dams, obstructions, deposits, or excavations
19 posing a significant threat to the well-being of the public
20 and the environment shall be subject to regulation.

21 Sec. 3. Section four hundred fifty-five A point thirty-
597-22 three (455A.33), unnumbered paragraphs one (1), three (3)
23 and four (4), Code 1977, as amended by Acts of the Sixty-
24 seventh General Assembly, 1977 Session, chapter one hundred
25 twenty-three (123), section six (6), are amended to read as
26 follows:

27 It shall be unlawful to-suffer-or-permit for any person
28 including a landowner, tenant, agent, contractor or builder
29 to erect, make, suffer, or permit any structure, dam,
30 obstruction, deposit or excavation to be erected, used, or
598-31 maintained in or on any floodway or flood plains, which will
32 adversely affect the efficiency of or unduly restrict the
33 capacity of the floodway, adversely affect the control,
34 development, protection, allocation, or utilization of the
35 water resources of the state, or adversely affect or interfere

1 with the state comprehensive plan for water resources, or
2 an approved local water resources plan, and the same are
3 declared to be and to constitute public nuisances, provided,
4 however, that this provision shall not apply to dams
5 constructed and operated under the authority of chapter 469
6 as amended.

7 In the event any person desires to erect or make, or to
8 suffer or permit, a structure, dam, obstruction, deposit or
9 excavation, other than a dam, constructed and operated under
10 the authority of chapter 469 as amended, to be erected, made,
11 used or maintained in or on any floodway or flood plains,
12 such person shall file a verified written application with
13 ~~the council~~ director, setting forth the material facts, ~~and~~
14 ~~the council after an investigation or hearing, shall enter~~
15 ~~an order, determining the fact and permitting or prohibiting~~
16 ~~the same, upon such terms and conditions as it may prescribe.~~
17 The director shall provide the council with copies of the
18 application and an opportunity for the council to call up
19 the application for its determination. The director, or the
20 council, after an investigation or a public hearing if there
21 is an objection to the proposed project shall determine the
22 fact and approve or deny the application imposing such
23 conditions and terms as the director or council may prescribe.
24 A determination of the director may be appealed to the council
25 by any aggrieved party.

26 The council shall have the authority to maintain an action
27 in equity to enjoin any such person from erecting or making
28 or suffering or permitting to be made any structure, dam,
29 obstruction, deposit, or excavation other than a dam
30 constructed and operated under the authority of chapter 469,
31 for which a permit has not been granted. The council is also
32 authorized to abate as a public nuisance any structure, dam,
33 obstruction, deposit, or excavation erected or made without
34 a permit required by this chapter within one year of cessation
35 of construction. The costs of the abatement shall be borne

1 by the violator.

2 5911 Bag. Sec. 4. Section four hundred fifty-five A point thirty-
3 nine (455A.39), Code 1977 Supplement, is amended to read as
4 follows:

5 455A.39 PENALTIES--CRIMINAL AND CIVIL.

6 1. Whoever is convicted of erecting, causing or continuing
7 a common or public nuisance, as provided in this chapter,
8 or whoever diverts or withdraws water in violation of the
9 provisions of this chapter, upon conviction, shall be guilty
10 of a simple misdemeanor and each day that such violation
11 continues after conviction notice that a violation is being
12 committed shall be considered a separate offense.

13 2. a. Any person who is required by law to have a permit
14 and who withdraws water without permit or in violation of
15 a permit condition and who does not take corrective measures
16 as required by the council or its designee after written
17 notice delivered by personal service or restricted mail that
18 violation is being committed, shall be subject to a civil
19 penalty of not more than one thousand dollars for the violation
20 and an additional penalty of not more than one hundred dollars
21 for each day that such violation continues after notice of
22 the offense is received.

23 b. Any person who is required to obtain prior council
24 approval and who constructs a levee or dam or alters a stream
25 channel without prior council approval or in violation of
26 a condition of a council approval order and who fails to take
27 corrective measures as required by the council or its designee
28 within the time specified following a written notice to such
29 person by personal service or restricted mail of such violation
30 and needed corrective measures, shall be subject to a civil
31 penalty of not more than one thousand dollars for the violation
32 and an additional penalty of not more than one hundred dollars
33 for each day that such violation continues after the expiration
34 of the time fixed by the council or its designee for the
35 completion of the corrective measures.

1 3. a. The attorney general shall bring an action to
 2 impose criminal or civil penalties at the request of the
 3 council or its designee. The action may be settled by the
 4 attorney general with the approval of the council or its
 5 designee after proceedings are brought to impose the penalty
 6 and prior to entry of judgment.

7 b. The civil penalties provided for in this section shall
 8 be an alternative to any criminal penalty for this section.

9 Sec. 5. Acts of the Sixty-seventh General Assembly, 1977
 10 Session, chapter one hundred twenty-three (123), section eight
 11 (8), is amended to read as follows:

12 Sec. 8. APPLICATION FOR SPECIAL PERMITS. Application
 13 and payment of the fee for special permits shall be in
 14 accordance with the provisions of sections four hundred fifty-
 15 five A point nineteen (455A.19), subsection one (1), and four
 16 hundred fifty-five A point nineteen (455A.19), subsection
 17 five (5) of the Code, respectively. Upon receipt of the
 18 application and fee, the commissioner shall cause notice of
 19 the application to be published in a newspaper of general
 20 circulation in the county where the permit is sought. The
 21 special permit shall be issued by the commissioner two weeks
 22 from the date of publication, unless written objection to
 23 the application is filed with the commissioner before that
 24 date, in which case the hearing procedures of section four
 25 hundred fifty-five A point nineteen (455A.19) of the Code,
 26 shall be followed. ~~Special permits shall be issued for a~~
 27 ~~period not to exceed one year.~~ Special permits issued after
 28 the effective date of this Act shall terminate on July 1,
 29 1980. The termination date of all existing special permits
 30 is hereby extended to July 1, 1980.

31 Sec. 6. Acts of the Sixty-seventh General Assembly, 1977,
 32 Session, chapter one hundred twenty-three (123), section nine
 33 (9), is amended to read as follows:

34 Sec. 9. Section four hundred fifty-five A point twenty
 35 (455A.20), Code 1977, is amended by adding the following new

1 unnumbered paragraphs:

2 NEW UNNUMBERED PARAGRAPH. Until the council adopts a
3 statewide water plan, all new water permits issued for
4 irrigation purposes, except special permits, shall not exceed
5 one year and all renewals thereof shall also be limited to
6 one year. The preceding limitation shall not apply to the
7 renewal or extension of any valid water permit granted prior
8 to the effective date of this Act. If it is determined,
9 through monitoring of the permitted withdrawal, that it will
10 endanger the present or future availability of groundwater
11 said permits may be modified or canceled under the provisions
12 of section four hundred fifty-five A point twenty-eight
13 (455A.28) of the Code.

14 NEW UNNUMBERED PARAGRAPH. When permits are modified or
15 canceled, priority for permits shall be given to applicants
16 or permit holders who utilize such water for agriculture
17 research. Nothing in this paragraph shall give priority to
18 such applicants or permit holders in preference to those
19 classes granted priority under section four hundred fifty-
20 five A point twenty-one (455A.21) of the Code.

21 Sec. 7. This Act is effective January 1, 1979.

SENATE AMENDMENT TO
HOUSE FILE 2212

H-6701

- 1 Amend House File 2212 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, line 22, by striking the word and
- 4 figure "one (1),".
- 5 2. By striking page 2, line 27 through page 3,
- 6 line 6.
- 7 3. By striking page 4, line 2 through page 5,
- 8 line 8.
- 9 4. By renumbering the sections to conform with
- 10 this amendment.

H-6701 FILED
RECEIVED FROM SENATE
MAY 12, 1978

Have concurred 5/12 (p. 2639)

HOUSE FILE 2212

S-5911

- 1 Amend House File 2212 as amended, passed and
- 2 reprinted by the House as follows:
- 3 1. Page 2, line 22, by striking the word and
- 4 figure "one (1),".
- 5 2. By striking page 2, line 27 through page 3,
- 6 line 6.
- 7 3. By striking page 4, line 2 through page 5,
- 8 line 8.
- 9 4. By renumbering the sections to conform with
- 10 this amendment.

S-5911 FILED & ADOPTED (p. 1503) BY DALE L. TIEDEN
MAY 12, 1978

HOUSE FILE 2212

AN ACT

RELATING TO THE AUTHORITY OF THE IOWA NATURAL RESOURCES
COUNCIL AND PROVIDING A PENALTY.

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

Section 1. Section four hundred fifty-five A point twenty (455A.20), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-three (123), section four (4), is amended to read as follows:

If the water commissioner at the first hearing or the council at the hearing on appeal shall determine after due investigation that such diversion, storage or withdrawal will not be detrimental to the public interests, including drainage and levee districts, or to the interests of property owners with prior or superior rights who might be affected, the water commissioner following the first hearing, or the council following the hearing on appeal shall grant a permit for such diversion, storage or withdrawal. Judicial review of such action is available in accordance with the terms of the Iowa administrative procedure Act and section 455A.37. Permits may be granted for any period of time but not to exceed ten years except for the storage of water which may be granted for the life of the structure unless withdrawn for good cause. All existing storage permits are hereby extended for the life of the structure unless withdrawn for good cause. Permits may be granted which provide for less diversion, storage, or withdrawal of waters than set forth in the application. Permits may be extended by the water commissioner for a period of not more than ninety days during the pendency of an application for renewal. Any permit granted shall remain as an appurtenance of the land described therein through the date specified in such permit and any extension thereof or

such earlier date as the permit or any extension thereof is revoked or canceled under the provisions of section 455A.28.

Sec. 2. Section four hundred fifty-five A point thirty-three (455A.33), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-three (123), section six (6), is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. When approving a request to straighten a stream, the director or council may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within some minimum distance from the stream sufficient in the judgment of the director or council to hold soil erosion to reasonable limits. The director shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land. A person who violates a prohibition against tillage shall be guilty of a simple misdemeanor. Each day upon which a violation occurs constitutes a separate violation.

NEW UNNUMBERED PARAGRAPH. The council shall by rule establish thresholds for dimensions and effects, and any structure, dam, obstruction, deposit, or excavation having smaller dimensions and effects than those established by the council shall be lawful and not subject to regulation under this section. The thresholds shall be such that only those structures, dams, obstructions, deposits, or excavations posing a significant threat to the well-being of the public and the environment shall be subject to regulation.

Sec. 3. Section four hundred fifty-five A point thirty-three (455A.33), unnumbered paragraphs three (3) and four (4), Code 1977, as amended by Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-three (123), section six (6), are amended to read as follows:

In the event any person desires to erect or make, or to suffer or permit, a structure, dam, obstruction, deposit or

hundred fifty-five A point nineteen (455A.19), subsection five (5) of the Code, respectively. Upon receipt of the application and fee, the commissioner shall cause notice of the application to be published in a newspaper of general circulation in the county where the permit is sought. The special permit shall be issued by the commissioner two weeks from the date of publication, unless written objection to the application is filed with the commissioner before that date, in which case the hearing procedures of section four hundred fifty-five A point nineteen (455A.19) of the Code, shall be followed. ~~Special permits shall be issued for a period not to exceed one year.~~ Special permits issued after the effective date of this Act shall terminate on July 1, 1980. The termination date of all existing special permits is hereby extended to July 1, 1980.

Sec. 5. Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-three (123), section nine (9), is amended to read as follows:

SEC. 9. Section four hundred fifty-five A point twenty (455A.20), Code 1977, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. Until the council adopts a statewide water plan, all new water permits issued for irrigation purposes, except special permits, shall not exceed one year and all renewals thereof shall also be limited to one year. The preceding limitation shall not apply to the renewal or extension of any valid water permit granted prior to the effective date of this Act. If it is determined, through monitoring of the permitted withdrawal, that it will endanger the present or future availability of groundwater said permits may be modified or canceled under the provisions of section four hundred fifty-five A point twenty-eight (455A.28) of the Code.

NEW UNNUMBERED PARAGRAPH. When permits are modified or canceled, priority for permits shall be given to applicants

excavation, other than a dam, constructed and operated under the authority of chapter 469 as amended, to be erected, made, used or maintained in or on any floodway or flood plains, such person shall file a verified written application with the council director, setting forth the material facts, ~~and the council after an investigation or hearing, shall enter an order, determining the fact and permitting or prohibiting the same, upon such terms and conditions as it may prescribe.~~ The director shall provide the council with copies of the application and an opportunity for the council to call up the application for its determination. The director, or the council, after an investigation or a public hearing if there is an objection to the proposed project shall determine the fact and approve or deny the application imposing such conditions and terms as the director or council may prescribe. A determination of the director may be appealed to the council by any aggrieved party.

The council shall have the authority to maintain an action in equity to enjoin any such person from erecting or making or suffering or permitting to be made any 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 council is also authorized to abate as a public nuisance any structure, dam, obstruction, deposit, or excavation erected or made without a permit required by this chapter within one year of cessation of construction. The costs of the abatement shall be borne by the violator.

Sec. 4. Acts of the Sixty-seventh General Assembly, 1977 Session, chapter one hundred twenty-three (123), section eight (8), is amended to read as follows:

SEC. 8. APPLICATION FOR SPECIAL PERMITS. Application and payment of the fee for special permits shall be in accordance with the provisions of sections four hundred fifty-five A point nineteen (455A.19), subsection one (1), and four

or permit holders who utilize such water for agriculture research. Nothing in this paragraph shall give priority to such applicants or permit holders in preference to those classes granted priority under section four hundred fifty-five A point twenty-one (455A.21) of the Code.

Sec. 6. This Act is effective January 1, 1979.

DALE M. COCHRAN
Speaker of the House

ARTHUR A. NEU
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2212, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved June 12, 1978

ROBERT D. RAY
Governor