

FEB 25 1977

Place On Calendar

Reprinted 2/77
HOUSE FILE 277

By COMMITTEE ON NATURAL
RESOURCES

(Formerly Study Bills 63, 77,
and 124)

Passed House, Date 2-16-77 (854) Passed Senate, Date _____

Vote: Ayes 27 Nays 0 Vote: Ayes _____ Nays _____

Approved _____

*Returned to reconsider 2/16 (254)
House 2/17 (271)*

A BILL FOR

1 An Act relating to the authority of the Iowa natural
2 resources council.

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

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1 Section 1. Section four hundred fifty-five A point eight
2 (455A.8), Code 1977, is amended to read as follows:

3 455A.8 ORGANIZATION, MEETINGS AND RULES. The council
4 shall organize by the election of a chairman and shall meet
5 at the seat of government on the first Monday in the months
6 of January, April, July and October, and at such other times
7 and places as it may deem necessary. The chairman shall be
8 elected annually at the meeting of the council in July.
9 Meetings may be called by the chairman and shall be called
10 by the chairman on the request of four members of the council.
11 The majority of the council shall constitute a quorum and
12 the concurrence of a majority of the council in any matter
13 within their duties shall be required for its determination,
14 provided that the public hearing on any matter within council
15 duties may be conducted by less than a majority of the council
16 or by an employee so designated by the council. The council
17 shall adopt such rules pursuant to chapter seventeen A (17A)
18 of the Code as it may deem necessary to transact its business
19 and for the administration and exercise of its powers and
20 duties. The council may further establish, modify or repeal
21 rules specifying the conditions under which the water
22 commissioner may authorize specific nonrecurring minor uses
23 of water for periods not to exceed one year through
24 registration.

25 Sec. 2. Section four hundred fifty-five A point fourteen
26 (455A.14), Code 1977, is amended to read as follows:

27 455A.14 DEPARTMENTAL COOPERATION--INVESTIGATIONS.

28 1. The council may request and receive from any department,
29 division, board, bureau, commission, public body, or agency
30 of the state, or of any political subdivision thereof, or
31 from any organization, incorporated or unincorporated, which
32 has for its object the control or use of any of the water
33 resources of the state, such assistance and data as will
34 enable the council to properly carry out its activities and
35 effectuate its purposes hereunder. The council shall reimburse

1 such agencies for special expense resulting from expenditures
2 not normally a part of the operating expenses of any such
3 agency.

4 2. a. The With the consent of the owner or occupant, the
5 council, its agents and other employees may enter upon any
6 lands or waters in the state for the purpose of making any
7 investigation, examination, or survey contemplated by this
8 chapter.

9 Sec. 3. Section four hundred fifty-five A point fourteen
10 (455A.14), subsection two (2), Code 1977, is amended by adding
11 the following new paragraphs:

12 NEW PARAGRAPH. If the owner or occupant of any property
13 refuses admittance, or if prior to such refusal the director
14 demonstrates the necessity for a warrant, the director may
15 make application under oath to the district court of the
16 county in which the property is located for the issuance of
17 a search warrant.

18 NEW PARAGRAPH. In the application the director shall state
19 that an inspection or survey of the premises designated in
20 the application may result in evidence tending to reveal the
21 existence of violations of the provisions of this chapter,
22 any rule, order or permit issued by the council. The
23 application shall describe the area or premises to be inspected
24 or surveyed, give the date of the last inspection if known,
25 give the date and time of the proposed inspection or survey,
26 declare the need for such inspection or survey, recite that
27 notice of desire to make an inspection or survey has been
28 given to affected persons and that admission was refused if
29 that be the fact, and state that the inspection or survey
30 has no purpose other than to carry out the purpose of the
31 statute or rule pursuant to which inspection or survey is
32 to be made.

33 NEW PARAGRAPH. If the court is satisfied from the
34 examination of the applicant, and of other witnesses, if any,
35 and of the allegations of the application of the existence

1 of the grounds of the application, or that there is probable
2 cause to believe their existence, it may issue such search
3 warrant.

4 NEW PARAGRAPH. In making investigations, examinations
5 or surveys pursuant to the authority of this subsection, the
6 director must execute the warrant in a reasonable manner
7 within thirty days after its date of issuance.

8 Sec. 4. Section four hundred fifty-five A point twenty
9 (455A.20), unnumbered paragraph one (1), Code 1977, is amended
10 to read as follows:

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

34 Sec. 5. Section four hundred fifty-five A point thirty-
35 three (455A.33), Code 1977, is amended by adding the following

1 new paragraph:

2 NEW PARAGRAPH. The council may require, as a condition
3 of an approval order or permit granted pursuant to this chapter
4 or chapter four hundred sixty-nine (469) of the Code, the
5 furnishing of a performance bond with good and sufficient
6 surety, conditioned upon the full compliance with the
7 provisions of such order or permit and the rules of the
8 council. In determining the need for and amount of bond,
9 the council shall give consideration to the hazard posed by
10 the construction and maintenance of the approved works and
11 the protection of the health, safety and welfare of the people
12 of the state. This subsection shall not apply to orders or
13 permits granted to a governmental entity.

14 EXPLANATION

15 Section 1 of the bill authorizes the natural resources
16 council to allow the minor nonrecurring use of water by
17 registration rather than through the permit system.

18 Sections 2 and 3 of the bill authorize the natural resources
19 council to apply for a warrant to enter upon private property
20 when the owner or occupant refuses admittance.

21 Section 4 of the bill authorizes the natural resources
22 council to issue permits for the storage of water which would
23 run beyond the ten-year period presently provided.

24 Section 5 of the bill authorizes the natural resources
25 council to require a performance bond as a condition of a
26 permit or approval order.

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H-3145

- 1 Amend House File 277 as follows:
2 1. Page 3, by striking all of lines 34 and 35.
3 2. Page 4, by striking all of lines 1 through
4 13.

H-3145 FILED, LOST(630) BY SCHROEDER of Pottawattamie
MARCH 7, 1977

H-3147

- 1 Amend House File 277 as follows:
2 1. Page 3, by inserting after line 33 the
3 following new section:
4 "Sec. . Section four hundred fifty-five A
5 point twenty-one (455A.21), Code 1977, is amended
6 to read as follows:
7 455A.21 PRIORITY OF PERMITS. In the consider-
8 ation of applications for permits, priority will
9 be given to persons in the order applications are
10 received. However, persons who have made diversion
11 or withdrawal of water for a beneficial use prior
12 to May 16, 1957, will be accorded priority accord-
13 ing to the actual date of said diversion or with-
14 drawal. The water commissioner or the council on
15 appeal shall exercise their judgment on the duration
16 and frequency of withdrawal and the quantity of water
17 for which a permit may be granted. The use of water
18 for ordinary household purposes, for poultry, live-
19 stock and domestic animals shall have priority over
20 other uses. Any person with an existing irrigation
21 system in use prior to May 16, 1957, shall be issued
22 a permit to continue, unless by the use thereof some
23 other riparian user is damaged. In the consideration
24 of applications for permits by regulated users, the
25 declared policies and principles of beneficial use,
26 as set forth in this chapter, shall be the standard
27 for the determination of the disposition of the
28 applications for said permits. Nothing in this
29 chapter shall impair the vested right of any person.
30 Prior orders of the council shall not be invalidated
31 by the provisions of sections 455A.19 to 455A.32."

H-3147 FILED, ADOPTED BY PERKINS of Greene
MARCH 7, 1977 (631)

H-3153

- 1 Amend House File 277 as follows:
2 1. Page 2, by striking lines 33 through 35
3 and inserting in lieu thereof the following:
4 "NEW PARAGRAPH. The court may issue a search
5 warrant, after examination of the applicant and
6 any witnesses, if the court is satisfied that
7 there is probable cause to believe the existence
8 of the allegations contained in the application."
9 2. Page 3, by striking lines 1 through 3.

H-3153 FILED - Adopted 3/15 BY JUNKER Of Woodbury
MARCH 7, 1977 (827)

HOUSE FILE 277

H-3291

- 1 Amend amendment H-3281, to page 4 of House
- 2 File 277, as follows:
- 3 1. Page 1, line 8, by striking the word
- 4 "permits" and inserting in lieu thereof the words
- 5 "water permits issued for irrigation purposes".

H-3291 FILED, ADOPTED BY SCHNEKLOTH of Scott
MARCH 16, 1977 (852) HARVEY of Scott

HOUSE FILE 277

H-3283

- 1 Amend House amendment H-3235 amending page 4 of
- 2 House File 277 by striking on lines 8 and 9 the words
- 3 "Missouri, Mississippi, Big Sioux, and Des Moines
- 4 Rivers" and inserting in lieu thereof the words "flood
- 5 plains of that portion of streams bordering the state
- 6 of Iowa".

H-3283 FILED, ADOPTED BY EVANS of Grundy
MARCH 16, 1977 (848)

HOUSE FILE 277

H-3282

- 1 Amend amendment H-3270, to page 3 of House
- 2 File 277, as follows:
- 3 "Page 1, line 8, by striking the words "prior
- 4 regulated or".

H-3282 FILED, ADOPTED BY WYCKOFF of Benton
BY UNANIMOUS CONSENT (844)
MARCH 16, 1977

HOUSE FILE 277

H-3281

- 1 Amend House File 277 as follows:
- 2 1. Page 4, by inserting after line 13 the
- 3 following section:
- 4 "Sec. _____. Section four hundred fifty-five A
- 5 point twenty (455A.20), Code 1977, is amended by
- 6 adding the following new unnumbered paragraph:
- 7 Until the council adopts a state-wide water
- 8 plan, all new permits shall not exceed one year
- 9 and all renewals thereof shall also be limited to
- 10 one year. The preceding limitation shall not
- 11 apply to the renewal or extension of any valid
- 12 water permit granted prior to the effective date
- 13 of this Act. If it is determined, through mon-
- 14 itoring of the permitted withdrawal, that it will
- 15 endanger the present or future availability of
- 16 groundwater said permits may be modified or
- 17 canceled under the provisions of section four
- 18 hundred fifty-five A point twenty-eight (455A.28)
- 19 of the Code."

H-3281 FILED, ADOPTED BY HALVORSON of Clayton
MARCH 16, 1977 *as amended by* PERKINS of Greene
3294 3/16 (853) SCHEELHAASE of Woodbury
WELDEN of Hardin

HOUSE FILE 277

H-3280

- 1 Amend H-3214 to House File 277 as follows:
2 1. Page 1, line 14, by inserting after the
3 word "state." the following:
4 "For purposes of this section "watercourse"
5 as defined in section four hundred fifty-five A
6 point one (455A.1) of the Code, shall not include
7 any grassed waterway maintained as a permanent
8 soil and water conservation practice under chapter
9 four hundred sixty-seven (467) of the Code."

H-3280 FILED, ADOPTED BY BAKER of Buena Vista
MARCH 16, 1977 (846)

H-3270

- 1 Amend House File 277 as follows:
2 1. Page 3, by inserting after line 33 the
3 following:
4 "Sec. _____. Section four hundred fifty-five A point
5 twenty-eight (455A.28), Code 1977, is amended by
6 adding the following new subsection:
7 NEW SUBSECTION. Upon a satisfactory showing by
8 a prior regulated or nonregulated user of ground water
9 that the water level of the ground water source has
10 lowered since the withdrawals of an irrigation
11 permittee commenced and that the lowering has
12 materially and adversely affected the prior user's
13 water supply, the water commissioner shall order the
14 irrigation permittee as provided in subsection three
15 (3) of this section to suspend or reduce the
16 withdrawals. In any hearing on the order issued
17 pursuant to this subsection, the irrigation permittee
18 shall have the burden of demonstrating that the
19 permittee's operations are not causing a lowering
20 of the water level that materially and adversely
21 affects the prior user's ground water supply."
22 2. Renumber the sections to conform with this
23 amendment.

H-3270 FILED - *Last (p. 846)* BY WYCKOFF of Benton
MARCH 15, 1977 *motion to*
reconsider last 3/16 (854)

H-3251

- 1 Amend House Amendment H-3170 amending page 4 of
2 House File 277 as follows:
3 1. Page 1, line 8, by inserting after the word
4 "water" the words "for industrial use or for the
5 purpose of withdrawing water".
6 2. Page 1, line 20, by inserting after the word
7 "for" the words "industrial or".

H-3251 FILED - *Out of order* BY SCHEELHAASE of Woodbury
MARCH 11, 1977 *and 6:2 of*
3170 3/16 (847)

1 Amend House File 277 as follows:

2 1. Page 4, by inserting after line 13 the
3 following sections:

4 Sec. _____. The Natural Resources Council and
5 the Iowa Geological Survey may jointly determine
6 by resolution that special irrigation permits may
7 be issued for withdrawal of water from the alluvial
8 aquifers of the Missouri, Mississippi, Big Sioux,
9 and Des Moines Rivers. The council may determine
10 by rule special limitations and observation and
11 monitoring requirements for each special permit.

12 Sec. _____. APPLICATION FOR SPECIAL PERMITS.
13 Application and payment of the fee for special
14 permits shall be in accordance with the provisions
15 of sections 445A.19(1) and 445A.19(5), respectively.
16 Upon receipt of the application and fee, the
17 commissioner shall cause notice of the application
18 to be published in a newspaper of general circula-
19 tion in the county where the permit is sought. The
20 special permit shall be issued by the commissioner
21 two weeks from the date of publication, unless
22 written objection to the application is filed with
23 the commissioner before that date, in which case
24 the hearing procedures of 455A.19 shall be followed.
25 Special permits shall be issued for a period not to
26 exceed one year.

27 Sec. _____. This Act, being deemed of immediate
28 importance, shall take effect and be in force from
29 and after its publication in the Coon Rapids Enter-
30 prise, a newspaper published in Coon Rapids, Iowa,
31 and in the Evening Democrat, a newspaper published
32 in Fort Madison, Iowa."

H-3235 FILED BY PERKINS of Greene

MARCH 10, 1977 EVANS of Grundy

Adopted as amended SCHEELHAASE of Woodbury

by 3/28/77 2/16 (848) CRABB of Crawford

DANKER of Pottawattamie

MIDDLESWART of Warren

HALVORSON of Clayton

DEN HERDER of Sioux

DOYLE of Woodbury

STEPHENS of Plymouth

PAVICH of Pottawattamie

CONLON of Muscatine

HOFFMANN of Muscatine

H-3237

1 Amend House amendment H-3170 to House File 277
2 as follows:

3 1. Page 1, line 14, by inserting after the
4 word "survey" the words ", and systems supplying
5 water for irrigation of land devoted exclusively
to research and development of agricultural
products,"

H-3237 FILED - *Out of order* BY PERKINS of Greene

MARCH 10, 1977 *and* SCHEELHAASE of Woodbury
of 2/16 2/16 (847)

H-3170

Amend House File 277 as follows:

1 1. Page 4, by inserting after line 13 the
2 following section:
3 "Sec. 6. The natural resources council
4 or the water commissioner shall not issue a water
5 permit under chapter four hundred fifty-five A
6 (455A) of the Code for the purpose of withdrawing
7 water from irrigation wells or operating an irriga-
8 tion system utilizing wells, except systems using
9 water from alluvial wells on the flood plains of
10 that portion of streams bordering the state of
11 Iowa and a limited number of wells in other
12 aquifers for purposes of acquiring information
13 for the Iowa geological survey until the state-
14 wide plan for water resources has been approved
15 by the general assembly as provided in section
16 four hundred fifty-five A point seventeen (455A.17)
17 of the Code. This section shall not affect the
18 extension or renewal of a valid water permit
19 issued for irrigation purposes before the effective
20 date of this Act except as provided in sections
21 four hundred fifty-five A point twenty-eight
22 (455A.28) or four hundred fifty-five A point
23 twenty nine (455A.29) of the Code.

H-3170 FILED

BY HALVORSON of Clayton

MARCH 7, 1977

VARLEY of Adair

William 3/16 (347)

H-3170 SPONSORS CONT.

CRABB of Crawford
WYCKOFF of Benton
SCHROEDER of Pottawattamie
PELTON of Clinton
SHIMANEK of Jones
TOFTE of Winneshiek

H-3214

1 Amend House File 277 as follows:

2 1. Page 4, by inserting after line 13, the follow-
3 ing:

4 "Sec. _____. Section four hundred fifty-five A point
5 thirty-five (455A.35), Code 1977, is amended by adding
6 the following new paragraph:

7 NEW PARAGRAPH. It shall be unlawful for any person
8 to change any watercourse in this state without having
9 obtained a permit from the council. A permit may be
10 obtained from the council after application and a pub-
11 lic hearing as provided under section four hundred
12 fifty-five A point nineteen (455A.19) of the Code.
13 The council may approve, modify or disapprove any
14 application to change a watercourse in this state."

15 2. By renumbering sections to conform to this
16 amendment.

H-3214 FILED - *Lead 3/16*
MARCH 8, 1977 (847)

BY BAKER of Buena Vista
AVENSON of Fayette

HOUSE FILE 277

H-3294

- 1 Amend amendment H-3281, to House File 277, as
- 2 follows:
- 3 1. Page 1, line 6, by striking the word
- 4 "paragraph" and inserting in lieu thereof the word
- 5 "paragraphs".
- 6 2. Page 1, by inserting after line 19 the
- 7 following:
- 8 "When permits are modified or canceled, priority
- 9 for permits shall be given to applicants or
- 10 permit holders who utilize such water for
- 11 agriculture research. Nothing in this paragraph
- 12 shall give priority to such applicants or permit
- 13 holders in preference to those classes granted
- 14 priority under section four hundred fifty-five A
- 15 point twenty-one (455A.21) of the Code."

H-3294 FILED, ADOPTED BY PERKINS of Greene
MARCH 16, 1977 (853)

H-3152

- 1 Amend House File 277 as follows:
- 2 1. Page 2, line 4, by inserting after the first
- 3 word "the" the word "written".
- 4 2. Page 3, line 7, by striking the word "thirty"
- 5 and inserting in lieu thereof the word "ten".

H-3152 FILED - *Adopted 3/15* BY MILLER of Buchanan
MARCH 7, 1977 (837)

HOUSE FILE 277

Natural Resources
Slater, Chairperson
Bergman
Jenkins

HOUSE FILE 277

BY COMMITTEE ON NATURAL
RESOURCES

Passed House, Date 3-16-77 (854) Passed Senate, Date 4-14-77 (p. 1057)

Vote: Ayes 87 Nays 0 Vote: Ayes 45 Nays 2

Approved April 29, 1977

A BILL FOR

1 An Act relating to the authority of the Iowa natural
2 resources council.

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

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Certification of Publication 6/13 (p. 2702)

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House Amendments _____

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1 Section 1. Section four hundred fifty-five A point eight
2 (455A.8), Code 1977, is amended to read as follows:

3 455A.8 ORGANIZATION, MEETINGS AND RULES. The council
4 shall organize by the election of a chairman and shall meet
5 at the seat of government on the first Monday in the months
6 of January, April, July and October, and at such other times
7 and places as it may deem necessary. The chairman shall be
8 elected annually at the meeting of the council in July.
9 Meetings may be called by the chairman and shall be called
10 by the chairman on the request of four members of the council.
11 The majority of the council shall constitute a quorum and
12 the concurrence of a majority of the council in any matter
13 within their duties shall be required for its determination,
14 provided that the public hearing on any matter within council
15 duties may be conducted by less than a majority of the council
16 or by an employee so designated by the council. The council
17 shall adopt such rules pursuant to chapter seventeen A (17A)
18 of the Code as it may deem necessary to transact its business
19 and for the administration and exercise of its powers and
20 duties. The council may further establish, modify or repeal
21 rules specifying the conditions under which the water
22 commissioner may authorize specific nonrecurring minor uses
23 of water for periods not to exceed one year through
24 registration.

25 Sec. 2. Section four hundred fifty-five A point fourteen
26 (455A.14), Code 1977, is amended to read as follows:

27 455A.14 DEPARTMENTAL COOPERATION--INVESTIGATIONS.

28 1. The council may request and receive from any department,
29 division, board, bureau, commission, public body, or agency
30 of the state, or of any political subdivision thereof, or
31 from any organization, incorporated or unincorporated, which
32 has for its object the control or use of any of the water
33 resources of the state, such assistance and data as will
34 enable the council to properly carry out its activities and
35 effectuate its purposes hereunder. The council shall reimburse

1 such agencies for special expense resulting from expenditures
2 not normally a part of the operating expenses of any such
3 agency.

4 2. a. The with the written consent of the owner or
5 occupant, the council, its agents and other employees may
6 enter upon any lands or waters in the state for the purpose
7 of making any investigation, examination, or survey
8 contemplated by this chapter.

9 Sec. 3. Section four hundred fifty-five A point fourteen
10 (455A.14), subsection two (2), Code 1977, is amended by adding
11 the following new paragraphs:

12 NEW PARAGRAPH. If the owner or occupant of any property
13 refuses admittance, or if prior to such refusal the director
14 demonstrates the necessity for a warrant, the director may
15 make application under oath to the district court of the
16 county in which the property is located for the issuance of
17 a search warrant.

18 NEW PARAGRAPH. In the application the director shall state
19 that an inspection or survey of the premises designated in
20 the application may result in evidence tending to reveal the
21 existence of violations of the provisions of this chapter,
22 any rule, order or permit issued by the council. The
23 application shall describe the area or premises to be inspected
24 or surveyed, give the date of the last inspection if known,
25 give the date and time of the proposed inspection or survey,
26 declare the need for such inspection or survey, recite that
27 notice of desire to make an inspection or survey has been
28 given to affected persons and that admission was refused if
29 that be the fact, and state that the inspection or survey
30 has no purpose other than to carry out the purpose of the
31 statute or rule pursuant to which inspection or survey is
32 to be made.

33 NEW PARAGRAPH. The court may issue a search warrant, after
34 examination of the applicant and any witnesses, if the court
35 is satisfied that there is probable cause to believe the

1 existence of the allegations contained in the application.

2 NEW PARAGRAPH. In making investigations, examinations
3 or surveys pursuant to the authority of this subsection, the
4 director must execute the warrant in a reasonable manner
5 within ten days after its date of issuance.

6 Sec. 4. Section four hundred fifty-five A point twenty
7 (455A.20), unnumbered paragraph one (1), Code 1977, is amended
8 to read as follows:

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

32 Sec. 5. Section four hundred fifty-five A point twenty-
33 one (455A.21), Code 1977, is amended to read as follows:

34 455A.21 PRIORITY OF PERMITS. In the consideration of
35 applications for permits, priority will be given to persons

1 in the order applications are received. However, persons
 2 who have made diversion or withdrawal of water for a beneficial
 3 use prior to May 16, 1957, will be accorded priority accord-
 4 ing to the actual date of said diversion or withdrawal. The
 5 water commissioner or the council on appeal shall exercise
 6 their judgment on the duration and frequency of withdrawal
 7 and the quantity of water for which a permit may be granted.
 8 The use of water for ordinary household purposes, for poultry,
 9 livestock and domestic animals shall have priority over other
 10 uses. Any person with an existing irrigation system in use
 11 prior to May 16, 1957, shall be issued a permit to continue,
 12 unless by the use thereof some other riparian user is damaged.
 13 In the consideration of applications for permits by regulated
 14 users, the declared policies and principles of beneficial
 15 use, as set forth in this chapter, shall be the standard for
 16 the determination of the disposition of the applications for
 17 said permits. Nothing in this chapter shall impair the vested
 18 right of any person. Prior orders of the council shall not
 19 be invalidated by the provisions of sections four hundred
 20 fifty-five A point nineteen (455A.19) to four hundred fifty-
 21 five A point thirty-two (455A.32) of the Code.

22 Sec. 6. Section four hundred fifty-five A point thirty-
 23 three (455A.33), Code 1977, is amended by adding the following
 24 new paragraph:

25 NEW PARAGRAPH. The council may require, as a condition
 26 of an approval order or permit granted pursuant to this chapter
 27 or chapter four hundred sixty-nine (469) of the Code, the
 28 furnishing of a performance bond with good and sufficient
 29 surety, conditioned upon the full compliance with the
 30 provisions of such order or permit and the rules of the
 31 council. In determining the need for and amount of bond,
 32 the council shall give consideration to the hazard posed by
 33 the construction and maintenance of the approved works and
 34 the protection of the health, safety and welfare of the people
 35 of the state. This subsection shall not apply to orders or

1 permits granted to a governmental entity.

2 Sec. 7. The Natural Resources Council and the Iowa
3 Geological Survey may jointly determine by resolution that
4 special irrigation permits may be issued for withdrawal of
5 water from the alluvial aquifers of the flood plains of that
6 portion of streams bordering the state of Iowa. The council
7 may determine by rule special limitations and observation
8 and monitoring requirements for each special permit.

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

25 Sec. 9. Section four hundred fifty-five A point twenty
26 (455A.20), Code 1977, is amended by adding the following new
27 unnumbered paragraphs:

28 Until the council adopts a state-wide water plan, all new
29 water permits issued for irrigation purposes shall not exceed
30 one year and all renewals thereof shall also be limited to
31 one year. The preceding limitation shall not apply to the
32 renewal or extension of any valid water permit granted prior
33 to the effective date of this Act. If it is determined,
34 through monitoring of the permitted withdrawal, that it will
35 endanger the present or future availability of groundwater

1 said permits may be modified or canceled under the provisions
2 of section four hundred fifty-five A point twenty-eight
3 (455A.28) of the Code.

4 When permits are modified or canceled, priority for permits
5 shall be given to applicants or permit holders who utilize
6 such water for agriculture research. Nothing in this paragraph
7 shall give priority to such applicants or permit holders in
8 preference to those classes granted priority under section
9 four hundred fifty-five A point twenty-one (455A.21) of the
10 Code.

11 Sec. 10. This Act, being deemed of immediate importance,
12 shall take effect and be in force from and after its
13 publication in the Coon^{5/5}Rapids Enterprise, a newspaper
14 published in Coon Rapids, Iowa, and in the Evening Democrat,
15 a newspaper published in Fort Madison, Iowa.

16 EXPLANATION

17 Section 1 of the bill authorizes the natural resources
18 council to allow the minor nonrecurring use of water by
19 registration rather than through the permit system.

20 Sections 2 and 3 of the bill authorize the natural resources
21 council to apply for a warrant to enter upon private property
22 when the owner or occupant refuses admittance.

23 Section 4 of the bill authorizes the natural resources
24 council to issue permits for the storage of water which would
25 run beyond the ten-year period presently provided.

26 Section 5 of the bill authorizes the natural resources
27 council to require a performance bond as a condition of a
28 permit or approval order.

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HOUSE FILE 277

AN ACT

RELATING TO THE AUTHORITY OF THE IOWA NATURAL RESOURCES
COUNCIL.

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

Section 1. Section four hundred fifty-five A point eight (455A.8), Code 1977, is amended to read as follows:

455A.8 ORGANIZATION, MEETINGS AND RULES. The council shall organize by the election of a chairman and shall meet at the seat of government on the first Monday in the months of January, April, July and October, and at such other times and places as it may deem necessary. The chairman shall be elected annually at the meeting of the council in July. Meetings may be called by the chairman and shall be called by the chairman on the request of four members of the council. The majority of the council shall constitute a quorum and the concurrence of a majority of the council in any matter within their duties shall be required for its determination, provided that the public hearing on any matter within council duties may be conducted by less than a majority of the council or by an employee so designated by the council. The council shall adopt such rules pursuant to chapter seventeen A (17A) of the Code as it may deem necessary to transact its business and for the administration and exercise of its powers and duties. The council may further establish, modify or repeal rules specifying the conditions under which the water commissioner may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

Sec. 2. Section four hundred fifty-five A point fourteen (455A.14), Code 1977, is amended to read as follows:

455A.14 DEPARTMENTAL COOPERATION--INVESTIGATIONS.

1. The council may request and receive from any department, division, board, bureau, commission, public body, or agency of the state, or of any political subdivision thereof, or from any organization, incorporated or unincorporated, which has for its object the control or use of any of the water resources of the state, such assistance and data as will enable the council to properly carry out its activities and effectuate its purposes hereunder. The council shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

2. a. The With the written consent of the owner or occupant, the council, its agents and other employees may enter upon any lands or waters in the state for the purpose of making any investigation, examination, or survey contemplated by this chapter.

Sec. 3. Section four hundred fifty-five A point fourteen (455A.14), subsection two (2), Code 1977, is amended by adding the following new paragraphs:

NEW PARAGRAPH. If the owner or occupant of any property refuses admittance, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath to the district court of the county in which the property is located for the issuance of a search warrant.

NEW PARAGRAPH. In the application the director shall state that an inspection or survey of the premises designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this chapter, any rule, order or permit issued by the council. The

application shall describe the area or premises to be inspected or surveyed, give the date of the last inspection if known, give the date and time of the proposed inspection or survey, declare the need for such inspection or survey, recite that notice of desire to make an inspection or survey has been given to affected persons and that admission was refused if that be the fact, and state that the inspection or survey has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection or survey is to be made.

NEW PARAGRAPH. The court may issue a search warrant, after examination of the applicant and any witnesses, if the court is satisfied that there is probable cause to believe the existence of the allegations contained in the application.

NEW PARAGRAPH. In making investigations, examinations or surveys pursuant to the authority of this subsection, the director must execute the warrant in a reasonable manner within ten days after its date of issuance.

Sec. 4. Section four hundred fifty-five A point twenty (455A.20), unnumbered paragraph one (1), Code 1977, 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. 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. 5. Section four hundred fifty-five A point twenty-one (455A.21), Code 1977, is amended to read as follows:

455A.21 PRIORITY OF PERMITS. In the consideration of applications for permits, priority will be given to persons in the order applications are received. However, persons who have made diversion or withdrawal of water for a beneficial use prior to May 16, 1957, will be accorded priority according to the actual date of said diversion or withdrawal. The water commissioner or the council on appeal shall exercise their judgment on the duration and frequency of withdrawal and the quantity of water for which a permit may be granted. The use of water for ordinary household purposes, for poultry, livestock and domestic animals shall have priority over other uses. Any person with an existing irrigation system in use prior to May 16, 1957, shall be issued a permit to continue, unless by the use thereof some other riparian user is damaged. In the consideration of applications for permits by regulated users, the declared policies and principles of beneficial use, as set forth in this chapter, shall be the standard for the determination of the disposition of the applications for said permits. Nothing in this chapter shall impair the vested right of any person. Prior orders of the council shall not

be invalidated by the provisions of sections 455A.19 to 455A.32.

Sec. 6. Section four hundred fifty-five A point thirty-three (455A.33), Code 1977, is amended by adding the following new paragraph:

NEW PARAGRAPH. The council may require, as a condition of an approval order or permit granted pursuant to this chapter or chapter four hundred sixty-nine (469) of the Code, the furnishing of a performance bond with good and sufficient surety, conditioned upon the full compliance with the provisions of such order or permit and the rules of the council. In determining the need for and amount of bond, the council shall give consideration to the hazard posed by the construction and maintenance of the approved works and the protection of the health, safety and welfare of the people of the state. This subsection shall not apply to orders or permits granted to a governmental entity.

Sec. 7. The natural resources council and the Iowa geological survey may jointly determine by resolution that special irrigation permits may be issued for withdrawal of water from the alluvial aquifers of the flood plains of that portion of streams bordering the state of Iowa. The council may determine by rule special limitations and observation and monitoring requirements for each special permit.

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 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.

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 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 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. 10. This Act, being deemed of immediate importance, shall take effect and be in force from and after its publication in the Coon Rapids Enterprise, a newspaper

published in Coon Rapids, Iowa, and in the Evening Democrat,
a newspaper published in Fort Madison, Iowa.

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 277, Sixty-seventh General Assembly.

DAVID L. WRAY
Chief Clerk of the House

Approved April 29, 1977

ROBERT D. RAY
Governor