

FEB 6 1990

NATURAL RESOURCES AND
OUTDOOR RECREATION
(p. 662)

HOUSE FILE 2296
BY STUELAND

Passed House, Date 2/27/90 (p. 663) Passed Senate, Date 3/16/90 (p. 1132)
Vote: Ayes 95 Nays 0 Vote: Ayes 46 Nays 0
Approved March 29, 1990

A BILL FOR

1 An Act relating to the regulation and operation of dams.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HOUSE FILE 2296

H-5173

- 1 Amend House File 2296 as follows:
- 2 1. Page 4, line 11, by striking the figure "6."
- 3 and inserting the following: "7."

By STUELAND of Clinton

H-5173 FILED FEBRUARY 16, 1990

Adopted 2/27 (p. 662)

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HF 2296

1 Section 1. Section 111.4, unnumbered paragraph 1, Code
2 1989, is amended to read as follows:

3 A person, association, or corporation shall not build or
4 erect any pier, wharf, sluice, piling, wall, fence,
5 obstruction, building, or erection of any kind upon or over
6 any state-owned land or water under the jurisdiction of the
7 commission, without first obtaining from the commission a
8 written permit. ~~However, this provision does not apply to~~
9 ~~dams constructed and operated under chapter 469.~~ A permit, in
10 matters relating to or in any manner affecting flood control,
11 shall not be issued without approval of the environmental
12 protection commission of the department. A person shall not
13 maintain or erect any structure beyond the line of private
14 ownership along or upon the shores of state-owned waters in a
15 manner to obstruct the passage of pedestrians along the shore
16 between the ordinary high-water mark and the water's edge,
17 except by permission of the commission.

18 Sec. 2. Section 455A.4, subsection 1, paragraph b, Code
19 1989, is amended to read as follows:

20 b. Provide overall supervision, direction, and
21 coordination of functions to be administered by the
22 administrators under chapters 84, 93, 106, 107, 108, 108A,
23 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, 305, 321G,
24 455B, and 455C ~~and 469.~~

25 Sec. 3. Section 455A.6, subsection 6, paragraph a, Code
26 Supplement 1989, is amended to read as follows:

27 a. Establish policy for the department and adopt rules,
28 pursuant to chapter 17A, necessary to provide for the
29 effective administration of chapter 455B ~~455E~~ or 469 455C.

30 Sec. 4. Section 455B.275, subsection 1, 3, 4, and 6, Code
31 1989, are amended to read as follows:

32 1. A person shall not permit, erect, use, or maintain a
33 structure, dam, obstruction, deposit, or excavation in or on a
34 floodway or flood plains, which will adversely affect the
35 efficiency of or unduly restrict the capacity of the floodway,

1 or adversely affect the control, development, protection,
2 allocation, or utilization of the water resources of the
3 state, and the same are declared to be public nuisances.
4 ~~However, this subsection does not apply to dams constructed~~
5 ~~and operated under the authority of chapter 469.~~

6 3. A person shall file a written application with the
7 department if the person desires to do any of the following:

8 a. If a person desires to erect or make or to permit
9 Erect, construct, use, or maintain a structure, dam,
10 obstruction, deposit, or excavation ~~other than a dam~~
11 ~~constructed and operated under chapter 469, to be erected,~~
12 ~~made, used, or maintained~~ in or on any floodway or flood
13 plains ~~the person shall file a written application with the~~
14 ~~department, setting.~~

15 b. Erect, construct, maintain, or operate a dam on a
16 navigable or meandered stream.

17 c. Erect, construct, maintain, or operate a dam on a
18 stream for manufacturing or industrial purposes.

19 The application shall set forth information as required by
20 rule of the commission. The department, after an
21 investigation, shall approve or deny the application imposing
22 conditions and terms as prescribed by the department.

23 4. The department may maintain an action in equity to
24 enjoin a person from erecting or making or permitting to be
25 made a structure, dam, obstruction, deposit, or excavation
26 ~~other than a dam constructed and operated under the authority~~
27 ~~of chapter 469,~~ for which a permit has not been granted. The
28 department may also seek judicial abatement of any structure,
29 dam, obstruction, deposit, or excavation erected or made
30 without a permit required under this part. The abatement
31 proceeding may be commenced to enforce an administrative
32 determination of the department in a contested case proceeding
33 that a public nuisance exists and should be abated. The costs
34 of abatement shall be borne by the violator. Notwithstanding
35 section 176B.11, a structure, dam, obstruction, deposit, or

1 excavation on a floodway or flood plain in an agricultural
2 area established under chapter 176B is not exempt from the
3 sections of this part which relate to regulation of flood
4 plains and floodways. As used in this subsection, "violation"
5 includes a person contracted to erect or make a structure,
6 dam, obstruction, deposit, or excavation in a floodway
7 including stream straightening unless the project is
8 authorized by a permit required under this part ~~or the project~~
9 ~~is a dam authorized pursuant to chapter 469.~~

10 6. The department may require, as a condition of an
11 approval order or permit granted pursuant to this part ~~or~~
12 ~~chapter 469~~, the furnishing of a performance bond with good
13 and sufficient surety, conditioned upon full compliance with
14 the order or permit and the rules of the commission. In
15 determining the need for and amount of bond, the department
16 shall give consideration to the hazard posed by the
17 construction and maintenance of the approved works and the
18 protection of the health, safety, and welfare of the people of
19 the state. This subsection does not apply to orders or
20 permits granted to a governmental entity.

21 Sec. 5. NEW SECTION. 469A.8 UNLAWFUL COMBINATION --
22 RECEIVERSHIP.

23 The state may take possession of a dam for which a permit
24 has been issued under section 455B.275 through receivership
25 proceedings, if the dam becomes owned, leased, trustee'd,
26 possessed, or controlled by a person in a manner constituting
27 an unlawful combination or trust, or if the dam is the subject
28 or part of the subject of an agreement to limit the output of
29 hydraulic or hydroelectric power derived from the dam for the
30 purpose of price fixing. The receivership proceedings must
31 be instituted by the executive council, and shall be conducted
32 for the purpose of disposing of the dam for a lawful use. The
33 proceeds from the disposition shall be used to reimburse the
34 state for expenses incurred in the receivership. The
35 remaining proceeds shall be awarded to persons found by the

1 court to be entitled to the proceeds.

2 Sec. 6.

3 A permit or license issued pursuant to chapter 469 before
4 July 1, 1990, shall be deemed to be a permit issued pursuant
5 to section 455B.275, and shall be valid to the same extent
6 that it had been valid under chapter 469. However, a person
7 holding a permit or license under chapter 469 shall have the
8 same rights and be subject to the same obligations and
9 restrictions as a person holding a permit under section
10 455B.275.

11 Sec. 6. Sections 469.1 through 469.17, 469.26, 469.27,
12 469.29, and 469.30, Code 1989, are repealed.

13 EXPLANATION

14 This bill relates to the regulation and operation of dams
15 under chapter 469. The bill repeals a number of sections in
16 the chapter relating to permits required to construct,
17 maintain, or operate a dam in the state. Under the bill, the
18 permits will be issued pursuant to section 455B.275. The bill
19 repeals section 469.15 providing that the state may take
20 possession of a dam by receivership proceedings if the dam is
21 acquired or controlled in violation of anticompetition or
22 price fixing laws. A similar provision is added in chapter
23 469A regulating hydroelectric generating plants.

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HOUSE FILE 2296

AN ACT

RELATING TO THE REGULATION AND OPERATION OF DAMS.

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

Section 1. Section 111.4, unnumbered paragraph 1, Code 1989, is amended to read as follows:

A person, association, or corporation shall not build or erect any pier, wharf, sluice, piling, wall, fence, obstruction, building, or erection of any kind upon or over any state-owned land or water under the jurisdiction of the commission, without first obtaining from the commission a written permit. ~~However, this provision does not apply to dams constructed and operated under chapter 469.~~ A permit, in matters relating to or in any manner affecting flood control, shall not be issued without approval of the environmental protection commission of the department. A person shall not maintain or erect any structure beyond the line of private ownership along or upon the shores of state-owned waters in a manner to obstruct the passage of pedestrians along the shore between the ordinary high-water mark and the water's edge, except by permission of the commission.

Sec. 2. Section 455A.4, subsection 1, paragraph b, Code 1989, is amended to read as follows:

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 84, 93, 106, 107, 108, 108A, 109, 109A, 110, 110A, 110B, 111, 111B, 111D, 112, 305, 321G, 455B, and 455C, ~~and 469.~~

Sec. 3. Section 455A.6, subsection 6, paragraph a, Code Supplement 1989, is amended to read as follows:

a. Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B, ~~455E,~~ or 469 455C.

Sec. 4. Section 455B.275, subsection 1, 3, 4, and 6, Code 1989, are amended to read as follows:

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or flood plains, which will adversely affect the efficiency of or unduly restrict the capacity of the floodway, or adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, and the same are declared to be public nuisances. ~~However, this subsection does not apply to dams constructed and operated under the authority of chapter 469.~~

3. A person shall file a written application with the department if the person desires to do any of the following:

a. If a person desires to erect or make or to permit Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation, other than a dam constructed and operated under chapter 469, to be erected, made, used, or maintained in or on any floodway or flood plains, the person shall file a written application with the department, setting,

b. Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

c. Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

The application shall set forth information as required by rule of the commission. The department, after an investigation, shall approve or deny the application imposing conditions and terms as prescribed by the department.

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.~~

6. The department may require, as a condition of an approval order or permit granted pursuant to this part ~~or chapter 469~~, the furnishing of a performance bond with good and sufficient surety, conditioned upon full compliance with the order or permit and the rules of the commission. In determining the need for and amount of bond, the department 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 does not apply to orders or permits granted to a governmental entity.

Sec. 5. NEW SECTION. 469A.8 UNLAWFUL COMBINATION -- RECEIVERSHIP.

The state may take possession of a dam for which a permit has been issued under section 455B.275 through receivership proceedings, if the dam becomes owned, leased, trusteeed, possessed, or controlled by a person in a manner constituting an unlawful combination or trust, or if the dam is the subject or part of the subject of an agreement to limit the output of hydraulic or hydroelectric power derived from the dam for the purpose of price fixing. The receivership proceedings must be instituted by the executive council, and shall be conducted for the purpose of disposing of the dam for a lawful use. The proceeds from the disposition shall be used to reimburse the state for expenses incurred in the receivership. The remaining proceeds shall be awarded to persons found by the court to be entitled to the proceeds.

Sec. 6.

A permit or license issued pursuant to chapter 469 before July 1, 1990, shall be deemed to be a permit issued pursuant to section 455B.275, and shall be valid to the same extent that it had been valid under chapter 469. However, a person holding a permit or license under chapter 469 shall have the same rights and be subject to the same obligations and restrictions as a person holding a permit under section 455B.275.

Sec. 7. Sections 469.1 through 469.17, 469.26, 469.27, 469.29, and 469.30, Code 1989, are repealed.

DONALD D. AVENSON
Speaker of the House

JO ANN ZIMMERMAN
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2296, Seventy-third General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved March 29, 1990

TERRY E. BRANSTAD
Governor