

REGULATION AND FUNDING NATURAL RESOURCES DEPARTMENT

Footnotes

This chapter not enacted as a part of this title; transferred from chapter 107 in Code 1993

456A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. "*Commission*" means the natural resource commission.
2. "*Department*" means the department of natural resources created under section 455A.2.
3. "*Director*" means the director of the department.

[S13, § 1400-p; C24, 27, § 1795, 2604; C31, § 1703-d2, -d3, 1795, 2604; C35, § 1703-g1; C39, § **1703.28**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.1; 82 Acts, ch 1199, § 92, 96]

86 Acts, ch 1245, § 1827

C93, § 456A.1

456A.2 through 456A.5 Reserved.

456A.6 Expenses generally.

The members and employees of the commission, the director and officers shall be reimbursed for all actual and necessary expenses incurred by them in the discharge of their official duties when absent from their usual place of abode, unless said appointees or employees are serving under a contract which requires them to defray their own expenses.

[C31, § 1703-d6; C35, § 1703-g6; C39, § **1703.33**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.6]

C93, § 456A.6

456A.7 through 456A.11 Reserved.

456A.12 Lighting by law enforcement vehicles of conservation officer.

The required usage of lighting devices set out in sections 321.384 through 321.409 and section 321.415 does not apply to official law enforcement vehicles operated by conservation officers appointed under section 456A.13, while these vehicles are being used in criminal investigations or while attempting to apprehend suspected criminals.

88 Acts, ch 1216, §43

C89, § 107.12

C93, § 456A.12

456A.13 Officers and employees peace officer status.

The director shall employ the number of assistants, including a professionally trained state forester, that are necessary to carry out the duties imposed on the commission; and, under the same conditions, the director shall appoint the number of full-time officers and supervisory personnel that are necessary to enforce all laws of the state and rules and regulations of the commission. The full-time officers and supervisory personnel have the same powers that are conferred by law on peace officers in the enforcement of all laws of the state of Iowa and the apprehension of violators. A person appointed as a full-time officer shall be at least twenty-one years of age on the date of appointment and shall not be employed as a full-time officer after attaining the age of sixty-five. "*Full-time officer*" means any person appointed by the director to enforce the laws of this state.

[C73, § 4052; C97, § 2540; SS15, § 2539, 2540; C24, 27, § 1715; C31, § 1703-d20, -d22, 1715; C35, § 1703-g13, -g15; C39, § **1703.40, 1703.42**; C46, 50, 54, 58, 62, 66, 71, § 107.13, 107.15; C73, 75, 77, 79, 81, § 107.13]

86 Acts, ch 1245, § 1828, 1854

C93, § 456A.13

98 Acts, ch 1183, §114

456A.14 Temporary appointments peace officer status.

The director may appoint temporary officers for a period not to exceed six months and may adopt minimum physical, educational, mental, and moral requirements for the temporary officers. Chapter 80B does not apply to the temporary officers. Temporary officers have all the powers of peace officers in the enforcement of this chapter and chapters 321G, 321I, 456B, 461A, 461B, 462A, 462B, 463B, 465C, 481A, 481B, 482, 483A, 484A, and 484B, and the trespass laws.

[C35, § 1703-g14; C39, § **1703.41**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.14]

86 Acts, ch 1245, § 1829; 92 Acts, ch 1160, § 15

C93, § 456A.14

2004 Acts, ch 1132, §91

456A.15 Removal.

The appointees and employees aforesaid may be removed by the said director at any time subject to the approval of the commission.

[C31, § 1703-d20; C35, § 1703-g16; C39, § **1703.43**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.16]

C83, § 107.15

C93, § 456A.15

456A.16 Income tax refund checkoff for fish and game fund.

A person who files an individual or a joint income tax return with the department of revenue under section

422.13 may designate any amount to be paid to the state fish and game protection fund. If the refund due on the return or the payment remitted with the return is insufficient to pay the additional amount designated by the taxpayer to the state fish and game protection fund, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return.

The revenues received shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund. The revenue may be used for the matching of federal funds. The revenues and matched federal funds may be used for acquisition of land, leasing of land or obtaining of easements from willing sellers for use of land as wildlife habitats for game and nongame species. Not less than fifty percent of the funds derived from the checkoff shall be used for the purposes of preserving, protecting, perpetuating and enhancing nongame wildlife in this state. Nongame wildlife includes those animal species which are endangered, threatened or not commonly pursued or killed either for sport or profit. Notwithstanding the exemption in section 427.1, the land acquired with the revenues and matched federal funds is subject to the full consolidated levy of property taxes which shall be paid from those revenues. In addition the revenues may be used for the development and enhancement of wildlife lands and habitat areas and for research and management necessary to qualify for federal funds.

The director of revenue shall draft the income tax form to allow the designation of contributions to the state fish and game protection fund on the tax return.

The department of revenue on or before January 31 of the year following the preceding calendar year shall certify the total amount designated on the tax return forms due in the preceding calendar year and shall report the amount to the state treasurer. The state treasurer shall credit the amount to the state fish and game protection fund.

The general assembly shall appropriate annually from the state fish and game protection fund the amount credited to the fund from the checkoff to the department for the purposes specified in this section.

The action taken by a person for the checkoff is irrevocable.

The department shall adopt rules to implement this section. However, before a checkoff pursuant to this section shall be permitted, all liabilities on the books of the department of administrative services and accounts identified as owing under section 8A.504 and the political contribution allowed under section 68A.601 shall be satisfied.

[82 Acts, ch 1015, § 1, 2, ch 1196, § 1]

C83, § 107.16

84 Acts, ch 1263, § 2; 85 Acts, ch 230, § 2; 86 Acts, ch 1244, § 22

C93, § 456A.16

2002 Acts, ch 1162, §63; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §66

Footnotes

Limitation on number of income tax return checkoffs;
automatic repeal of certain checkoffs; see § 422.12E

456A.17 Funds restrictions.

The following four funds are created in the state treasury:

1. A state fish and game protection fund.
2. A state conservation fund.
3. An administration fund.
4. A county conservation board fund.

The state fish and game protection fund, except as otherwise provided, consists of all moneys accruing from license fees and all other sources of revenue arising under the fish and wildlife programs. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the state fish and game protection fund shall be credited to that fund.

The county conservation board fund consists of all moneys credited to it by law or appropriated to it by the general assembly.

The conservation fund, except as otherwise provided, consists of all other funds accruing to the department for the purposes embraced by this chapter.

The administration fund shall consist of an equitable portion of the gross amount of the state fish and game protection fund and the state conservation fund, to be determined by the commission, sufficient to pay the expense of administration entailed by this chapter.

All receipts and refunds and reimbursements related to activities funded by the administration fund are appropriated to the administration fund. All refunds and reimbursements relating to activities of the state fish and game protection fund shall be credited to the state fish and game protection fund.

Notwithstanding section 8.33, revenues deposited in the state conservation fund, and remaining in the state conservation fund on June 30 of any fiscal year shall not revert to the general fund of the state but shall remain available for expenditure for one year after the close of the fiscal year during which such revenues were deposited. Any such revenues remaining unexpended at the end of the one-year period during which the revenues are available for expenditure shall revert to the general fund of the state.

The department may apply for a loan for the construction of facilities for the collection and treatment of waste water under the state water pollution control works and drinking water facilities financing program as established in sections 455B.291 through 455B.299. In order to provide for the repayment of a loan granted under the financing program, the commission may impose a lien on not more than ten percent of the annual revenues from user fees and related revenue derived from park and recreation areas under chapter 461A which are deposited in the state conservation fund. If a lien is established as provided in this paragraph, repayment of the loan is the first priority on the revenues received and dedicated for the loan repayment each year.

[C31, § 1703-d23, 1820; C35, § 1703-g17; C39, § **1703.44**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.17; 82 Acts, ch 1084, § 1]

84 Acts, ch 1262, § 3; 86 Acts, ch 1244, § 23; 86 Acts, ch 1245, § 1830, 1831

C93, § 456A.17

94 Acts, ch 1107, §72; 95 Acts, ch 98, §2; 2002 Acts, ch 1162, §64; 2002 Acts, 2nd Ex, ch 1003, § 242, 262; 2003 Acts, ch 17, §1, 2

456A.18 Report of funds.

The director shall, at least monthly, make return and pay to the treasurer of state all moneys then in the director's hands belonging to the five funds.

[C31, § 1703-d23, 1820; C35, § 1703-g18; C39, § **1703.45**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.18]

86 Acts, ch 1245, § 1832

C93, § 456A.18

456A.19 Expenditures.

All funds accruing to the fish and game protection fund, except an equitable portion of the administration fund, shall be expended solely in carrying on fish and wildlife activities. Expenditures incurred by the department in carrying on the activities shall be only on authorization by the general assembly.

The department shall by October 1 of each year submit to the department of management for transmission to the general assembly a detailed estimate of the amount required by the department during the succeeding year for carrying on fish and wildlife activities. The estimate shall be in the same general form and detail as required by law in estimates submitted by other state departments.

Any unexpended balance at the end of the biennium shall revert to the fish and game protection fund.

All administrative expense shall be paid from the administration fund.

All other expenditures shall be paid from the conservation fund.

All expenditures under this chapter are subject to approval by the director of management and the director of the department of administrative services.

All moneys credited to the county conservation board fund shall be used to provide grants to county conservation boards to provide funding for the purposes of chapter 350. These grants are in addition to moneys appropriated to the conservation boards from the county boards of supervisors. The grants shall be made to the conservation boards based upon the needs of the boards. Applications shall be made by the boards to the commission.

[C35, § 1703-g19; C39, § **1703.46**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.19]

84 Acts, ch 1262, § 4; 86 Acts, ch 1245, § 1833, 1834; 88 Acts, ch 1134, § 25; 88 Acts, ch 1158, § 18

C93, § 456A.19

94 Acts, ch 1107, §73; 95 Acts, ch 214, §22; 2002 Acts, ch 1162, §65; 2003 Acts, ch 108, §79; 2003 Acts, ch 145, §286

456A.20 Limitation on nursery stock exception.

1. Moneys appropriated to the department which are used in growing or handling nursery stock shall be used for growing or handling of the nursery stock for distribution only on state-owned lands. However, the department may do any of the following:

a. Produce and sell game cover packets and trees for erosion control at private sale.

b. Produce trees for a demonstration windbreak in each township in the state.

c. Dispose of growing trees under a departmental plan of distribution.

2. The department shall deposit a portion of the moneys that it receives from selling trees and shrubs as provided in this section to the forestry management and enhancement fund as created in section 456A.21. The amount deposited in the fund shall equal five cents for each coniferous tree and ten cents for each hardwood tree and shrub sold.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.20]

86 Acts, ch 1245, § 1835, 1845

C93, § 456A.20

99 Acts, ch 206, §25; 2000 Acts, ch 1154, §32

456A.21 Forestry management and enhancement fund.

1. A forestry management and enhancement fund is created in the state treasury under the department's control. The fund is composed of moneys deposited into the fund pursuant to section 456A.20, moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund.

2. Moneys in the fund are subject to an annual audit by the auditor of state. The fund is subject to warrants written by the director of the department of administrative services, drawn upon the written requisition of the department.

3. The fund shall be used exclusively to support the management and enhancement of forests, including woodlands or timber stands in this state, on private lands in cooperation with the owners of those lands. The department shall use moneys in the fund to support the following full-time equivalent positions in addition to those supported from the general fund of the state:

a. Four forestry technicians who shall serve regions of the state as designated by the department.

b. One professional forester who shall serve the southwest region of the state.

4. The commission may adopt rules pursuant to chapter 17A to administer this section.

5. Section 8.33 shall not apply to moneys in the fund. Notwithstanding section 12C.7, moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this section.

99 Acts, ch 206, §26; 2000 Acts, ch 1160, §2; 2002 Acts, ch 1162, §66; 2003 Acts, ch 108, §80, 81; 2003 Acts, ch 145, §286

Legislative findings; 99 Acts, ch 206, §24

456A.22 Political activity. Repealed by 96 Acts, ch 1022, § 1.

456A.23 General duties.

The department shall protect, propagate, increase, and preserve the wild mammals, fish, birds, reptiles, and

amphibians of the state and enforce by proper actions and proceedings the laws, rules, and regulations relating to them. The department shall collect, classify, and preserve all statistics, data, and information as in its opinion tend to promote the objects of this chapter, conduct research in improved conservation methods, and disseminate information to residents and nonresidents of Iowa in conservation matters.

[C31, 35, § 1703-d11; C39, § 1703.49; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.23]

83 Acts, ch 168, § 1; 91 Acts, ch 268, §224

C93, § 456A.23

456A.24 Specific powers.

The department is hereby authorized and empowered to:

1. Expend, as authorized by the general assembly under section 456A.19, any and all moneys accruing to the fish and game protection fund from any and all sources in carrying out the purposes of this chapter; any Act, or Acts, not consistent with this provision are hereby repealed so far as they may apply to the fish and game protection fund.
2. Acquire by purchase, condemnation, lease, agreement, gift, and devise lands or waters suitable for the purposes hereinafter enumerated, and rights of way thereto, and to maintain the same for the following purposes, to wit:
 - a. Public hunting, fishing, and trapping grounds and waters to provide areas in which any person may hunt, fish, or trap in accordance with the law and the rules of the department;
 - b. Fish hatcheries, fish nurseries, game farms, and wild mammal, fish, bird, reptile, and amphibian refuges.
3. Extend and consolidate lands or waters suitable for the above purposes by exchange for other lands or waters and to purchase, erect, and maintain buildings necessary to the work of the department.
4. Capture, propagate, buy, sell, or exchange any species of wild mammal, fish, bird, reptile, and amphibian needed for stocking the lands or waters of the state, and to feed, provide for, and care for them.
5. The department is hereby authorized to adopt and enforce such departmental rules governing procedure as may be necessary to carry out the provisions of this chapter; also to carry out any other laws the enforcement of which is vested in the department.
6. The department is hereby further authorized to adopt, publish, and enforce such administrative orders as are authorized in section 481A.38.
7. Pay the salaries, wages, compensation, traveling, and other necessary expenses of the commissioners, director, officers, and other employees of the department, and to expend money for necessary supplies and equipment, and to make such other expenditures as may be necessary for the carrying into effect the purposes of this chapter.
8. Control by shooting or trapping any wild mammal, fish, bird, reptile, and amphibian for the purpose of preventing the destruction of or damage to private or public property, but shall not go upon private property for that purpose without the consent of the owner or occupant.
9. Provide for the protection against fire and other destructive agencies on state and privately owned forests, parks, wildlife areas, and other property under its jurisdiction, and cooperate with federal and other state

agencies in protection programs approved by the department, and with the consent of the owner, on privately owned areas.

10. Provide conservation employees, when on duty, suitable uniforms, equipment, arms, and supplies.

11. Establish a program governing the harvesting and sale of American ginseng subject to the convention on international trade in endangered species of wild fauna and flora and adopt rules providing for the time and conditions for harvesting the ginseng, the registration of dealers and exporters, the records kept by dealers and exporters, and the certification of legal taking. The time for harvesting of wild ginseng shall not begin before September 1 or extend beyond November 1. A person violating this subsection or rules adopted by the department pursuant to this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 4.

12. Adopt rules authorizing officers and employees of the department who are peace officers to issue warning citations for violations of this chapter and chapters 321G, 321I, 350, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481A, 481B, 482, 483A, 484A, and 484B.

13. Apply to any appropriate agency or officer of the United States government to participate in or receive aid from any federal program relating to forests or forestry management. The department may enter into contracts and agreements with the United States government or an appropriate agency of the United States government as necessary to secure funding for the acquisition, development, improvement, and management of forests and forestry resources and to provide funds or assistance to local governments or private citizens involved in forestry management. In connection with obtaining the benefits of a forestry program, the director shall coordinate the department's activities with and represent the interests of all state agencies and the political subdivisions of the state having interests in forests or forestry management.

14. Enter into an interstate wildlife violators compact with one or more states to enforce state laws and rules relating to the protection and conservation of wildlife subject to the requirements of section 28E.9. The commission may adopt rules as necessary for the implementation of the compact.

[C31, 35, § 1703-d12; C39, § **1703.50**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.24]

83 Acts, ch 33, § 1; 83 Acts, ch 168, § 24; 86 Acts, ch 1245, § 1836, 1837, 1845; 91 Acts, ch 78, § 1; 92 Acts, ch 1160, § 16

C93, § 456A.24

93 Acts, ch 13, §1; 93 Acts, ch 38, §1; 2001 Acts, ch 14, §1; 2001 Acts, ch 137, §5; 2004 Acts, ch 1132, §92

456A.25 Orders.

Administrative orders shall be made only after an investigation of the matter concerned.

[C31, § 1703-d13; C35, § 1703-e12; C39, § **1703.51**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.25]

C93, § 456A.25

456A.26 Interpretation and limitations.

The foregoing sections shall not be construed as authorizing the commission to change any penalty for violating any game law or regulation, or change the amount of any license established by the legislature, or to promulgate any open season on any fish, animal or bird contrary to the laws of the state of Iowa, or to extend except as provided in this chapter any open season or bag limit on any kind of fish, game, fur-bearing animals

or of any birds prescribed by the laws of the state of Iowa or by federal laws or regulations, or to contract any indebtedness or obligation beyond the funds to which they are lawfully entitled.

[C31, 35, § 1703-d15; C39, § **1703.52**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.26]

C93, § 456A.26

456A.27 Federal wildlife Act assent.

The state of Iowa assents to the provisions of the Act of Congress entitled "*An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes*", approved September 2, 1937, 50 Stat. L. 917, and the department may perform acts as necessary to the conduct and establishment of co-operative wildlife restoration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of agriculture under the Act. No funds accruing to the state of Iowa from license fees paid by hunters shall be diverted for any other purpose than as set out in sections 456A.17 and 456A.19.

[C39, § **1703.53**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.27]

86 Acts, ch 1245, § 1838, 1845

C93, § 456A.27

456A.28 Fish restoration projects.

The state of Iowa assents to the provisions of the Act of Congress entitled "*An Act to provide that the United States shall aid the states in fish restoration projects, and for other purposes*", approved August 9, 1950, Pub. L. No. 681, and the department may perform acts as necessary to the conduct and establishment of co-operative fish restoration projects, as defined in the Act of Congress, in compliance with the Act and with regulations promulgated by the secretary of the interior under the Act. No funds accruing to the state of Iowa from fishing license fees shall be diverted for any other purposes than as set out in sections 456A.17 and 456A.19.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, § 107.28]

86 Acts, ch 1245, § 1839, 1845

C93, § 456A.28

456A.29 Outdoor recreational and watershed projects.

The department may perform acts as necessary to the conduct and establishment of co-operative outdoor recreational and watershed projects as defined by the Congress of the United States and by regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition, and development of outdoor recreational and watershed projects.

[C66, 71, 73, 75, 77, 79, 81, § 107.29]

86 Acts, ch 1245, § 1840, 1845

C93, § 456A.29

456A.30 Federal assistance for outdoor recreation.

The legislature finds that the state of Iowa and its subdivisions should enjoy the benefits of federal assistance programs for the planning and development of the outdoor recreation resources of the state, including the acquisition of lands and waters and interests therein. It is the purpose of this section and sections 456A.31 through 456A.34 to provide authority to enable the state of Iowa and its subdivisions to participate in the benefits of such programs.

[C66, 71, 73, 75, 77, 79, 81, § 107.30]

C93, § 456A.30

456A.31 Comprehensive plan.

The department may prepare, maintain, and keep up-to-date a comprehensive plan for the development of the outdoor recreation resources of the state, and acquire lands, waters, and interests in lands and waters for such areas and facilities.

[C66, 71, 73, 75, 77, 79, 81, § 107.31]

86 Acts, ch 1245, § 1841, 1845

C93, § 456A.31

456A.32 Application for aid.

The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation. The department may enter into contracts and agreements with the United States or any appropriate agency of the United States and, for purposes of preparation, maintenance, and updating of the comprehensive plan, may from time to time engage and contract for the services and advice of a professional planner of outdoor recreation plans and facilities and hire employees for such purposes as deemed necessary. In connection with obtaining the benefits of any such program, the department shall co-ordinate the department's activities with and represent the interests of all agencies and subdivisions of the state having interests in the planning, development, and maintenance of outdoor recreation resources and facilities.

[C66, 71, 73, 75, 77, 79, 81, § 107.32]

86 Acts, ch 1245, § 1842, 1845

C93, § 456A.32

456A.33 Watershed projects.

The department may perform acts as necessary to conduct an establishment of co-operative outdoor recreational and watershed projects as defined by the Congress of the United States and by regulations of the appropriate federal agency and may accept federal funds and assistance for the purpose of planning, acquisition, and development of outdoor recreational and watershed projects.

[C66, 71, 73, 75, 77, 79, 81, § 107.33]

86 Acts, ch 1245, § 1843, 1845

C93, § 456A.33

456A.33A Watershed priority.

The commission shall each year establish a priority list of watersheds which are of highest importance based on soil loss to be used for the allocation of moneys set aside in annual appropriations from the general fund to the department of agriculture and land stewardship for permanent soil conservation practices under chapter 161A on watersheds above publicly owned lakes. Chapter 17A does not apply to this section.

91 Acts, ch 268, §225

CS91, § 107.33A

C93, § 456A.33A

456A.34 Limit on state's commitment.

The department shall not make a commitment or enter into an agreement pursuant to an exercise of authority under sections 456A.30 through 456A.33 until the department has determined that sufficient funds are available to the department for meeting the state's share, if any, of project costs. It is the legislative intent that, to the extent necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of these sections, the areas and facilities shall be publicly maintained for outdoor recreation purposes. The department may enter into and administer agreements with the United States or any appropriate agency of the United States for planning, acquisition, and development projects involving participating federal aid funds on behalf of any subdivision of this state, if the subdivision gives necessary assurances to the department that it has available sufficient funds to meet its shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

[C66, 71, 73, 75, 77, 79, 81, § 107.34]

86 Acts, ch 1245, § 1844, 1845

C93, § 456A.34

456A.35 Applications not limited.

The commission shall not limit the number of applications submitted for consideration or the number of projects under construction with respect to United States heritage conservation and recreation service projects.

[C79, 81, § 107.35]

C93, § 456A.35

456A.36 Timber buyers.

1. As used in this section, unless the context otherwise requires:

a. "Employee" means a person in service or under contract for hire, expressed or implied, oral or written, who is engaged in any phase of the enterprise or business.

b. "Timber" means trees, standing or felled, and logs which can be used for sawing or processing into lumber for building or structural purposes or for the manufacture of an article. However, *"timber"* does not include firewood, Christmas trees, fruit or ornamental trees or wood products not used or to be used for building,

structural, manufacturing, or processing purposes.

c. *"Timber buyer"* means a person engaged in the business of buying timber from the timber growers for sawing into lumber, for processing, or for resale, but does not include a person who occasionally purchases timber for sawing or processing for the person's own use and not for resale. *"Timber buyer"* includes a person who contracts with a timber grower on a shared-profit basis to harvest timber from the timber grower's land.

d. *"Timber grower"* means the owner, tenant, or operator of land in this state who has an interest in, or is entitled to receive a part of the proceeds from, the sale of timber grown in this state and includes a person exercising authority to sell timber.

2. A timber buyer shall file with the commission a surety bond signed by the person as principal and a corporate surety authorized to engage in the business of executing surety bonds within the state. In lieu of a corporate surety a timber buyer may, with the approval of the commission, file a bond signed by the timber buyer as principal and accompanied by a bank certificate of deposit in a form approved by the commission showing to the satisfaction of the commission that funds equal to the amount of the required bond are on deposit in a bank to be held by the bank for the period covered by the certificate. The funds shall be made payable upon demand to the director, subject to the provisions of this section, for the use and benefit of the people of the state and for the use and benefit of a timber grower from whom the timber buyer purchased and who is not paid by the timber buyer or for the use and benefit of a timber grower whose timber has been cut by the timber buyer or the timber buyer's agents, and who has not been paid.

The principal amount of the bond shall be ten percent of the total amount paid to timber growers during the preceding year, plus ten percent of the total amount due or delinquent and unpaid to timber growers at the end of the preceding year, and ten percent of the market value of growers' shares of timber harvested during the previous year. However, the total amount of the bond shall be not less than three thousand dollars and not more than fifteen thousand dollars.

The bond or surety shall not be canceled or altered except upon at least sixty days' notice in writing to the commission.

Bonds shall be in the form approved by the director, be conditioned to secure an honest cutting and accounting for timber purchased by the timber buyer, secure payment to the timber growers, and insure the timber growers against all fraudulent acts of the timber buyer in the purchase and cutting of the timber of this state.

If a timber buyer fails to pay when due an amount due a timber grower for timber purchased, or fails to pay legally determined damages for timber wrongfully cut by a timber buyer or the buyer's agent, or commits a violation of this section, an action on the bond for forfeiture may be commenced. The action is not exclusive and is in addition to other legal remedies available.

The timber grower, the owner of timber cut, or the director may bring action on the bond for payment of the amount due from proceeds of the bond in the district court of the county in which the place of business of the timber buyer is situated or in any other lawful venue.

The attorney general, upon request of the commission, shall institute proceedings to have the bond of the timber buyer forfeited for violation of any of the provisions of this section or for noncompliance with a commission rule. A timber buyer whose bond has been forfeited shall not engage in the business of buying timber for one year after the forfeiture.

If the commission realizes more than the amount of liability from the security, after deducting expenses incurred in converting the security into money, the commission shall pay the excess to the timber buyer who furnished the security.

3. The following are violations of this section:

- a.* For a timber buyer to fail to pay, as agreed, for timber purchased.
- b.* For a timber buyer to cut or cause to be cut or appropriate timber not purchased.
- c.* For a timber buyer to willfully make a false statement in connection with the bond or other information required to be given to the commission or a timber grower.
- d.* For a timber buyer to fail to honestly account to the timber grower or the commission for timber purchased or cut if the buyer is under a duty to do so.
- e.* For a timber buyer to commit a fraudulent act in connection with the purchase or cutting of timber.
- f.* For a timber buyer to transport timber without written proof of ownership or the written consent of the owner.
- g.* For a person to purchase timber without obtaining, prior to taking possession of the timber, written proof of the vendor's ownership of the timber or the written consent of the owner of the timber. The purchaser shall keep the written proof of ownership or consent on file for at least three months from the date the timber was released to the purchaser's possession.

4. *a.* With the written consent of the timber buyer, the commission, its agents and other employees may inspect the premises and records of the timber buyer.

b. If the timber buyer 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 premises or records are located for the issuance of a search warrant.

c. In the application the director shall state that an inspection of the premises or record designated in the application may result in evidence tending to reveal the existence of violations of the provisions of this section or rule issued by the commission pursuant to this section. The application shall describe the premises or records to be inspected, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute or rule pursuant to which inspection is to be made.

d. 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.

e. 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.

5. A person who engages in business as a timber buyer without filing a bond or surety with the commission or in violation of any of the provisions of this section, or a timber buyer who refuses to permit inspection of premises, books, accounts, or records as provided in this section is guilty of a serious misdemeanor.

6. The commission may promulgate rules as necessary to carry out the provisions of this section.

7. The commission may, by application to a district court, obtain an injunction restraining a person who engages in the business of timber buying in this state from engaging in the business until that person complies with this section. Upon refusal or neglect to obey the order of the court, the court may compel

obedience by proceedings for contempt.

[C81, § 107.36]

C93, § 456A.36

96 Acts, ch 1073, § 1, 2

456A.37 Aquatic invasive species prevention and control.

1. *Definitions.* As used in this section:

a. "*Eurasian water milfoil*" means *myriophyllum spicatum*, a submerged aquatic weed that invades lakes, ponds, reservoirs, and other bodies of water.

b. "*Infestation of an aquatic invasive species*" means an infestation of Eurasian water milfoil that occupies more than twenty percent of the littoral area of a body of water or an infestation of any other species defined as an aquatic invasive species in this section.

c. "*Aquatic invasive species*" means a species that is not native to an ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health including but not limited to habitat alteration and degradation, and loss of biodiversity. For the purposes of this section, "*aquatic invasive species*" are limited to Eurasian water milfoil, purple loosestrife, and zebra mussels, except as provided in subsection 4.

d. "*Purple loosestrife*" means *lythrum salicaria*, a wetland plant that invades marshes, lakeshores, and other wetlands.

e. "*Watercraft*" means any vessel which through the buoyance of water floats upon the water and is capable of carrying one or more persons.

f. "*Zebra mussel*" means *dreissena polymorpha*, a small mussel that invades lakes, rivers, and other bodies of water.

2. *Aquatic invasive species management plan.* Before January 1, 2005, the commission shall prepare a long-term statewide aquatic invasive species water management plan. The plan shall address all of the following:

a. The detection and prevention of accidental introductions into the state of aquatic invasive species.

b. A public awareness campaign regarding aquatic invasive species.

c. The control and eradication of aquatic invasive species in public waters.

d. The development of a plan of containment strategies that at a minimum includes all of the following:

(1) The participation by lake associations, local citizen groups, and local units of government in the development of lake management plans where aquatic invasive species exist.

(2) Notice to travelers of the penalties for violation of laws relating to aquatic invasive species.

3. *Grants.* The director of the department of natural resources shall accept gifts, donations, and grants to aid in accomplishing the control and eradication of aquatic invasive species.

4. *Rulemaking.* The commission shall adopt rules pursuant to chapter 17A for the implementation and administration of this section. The rules shall do all of the following:

- a. Restrict the introduction, propagation, use, possession, and spread of aquatic invasive species.
- b. Identify bodies of water with infestations of aquatic invasive species. The department shall require that such bodies of water be posted as infested. The department may prohibit boating, fishing, swimming, and trapping in infested bodies of water.

If the commission determines that an additional species should be defined as an "*aquatic invasive species*", the species may be defined by the commission by rule as an "*aquatic invasive species*" subject to enactment of the definition by the general assembly at the next regular session of the general assembly. Failure of the general assembly to enact the definition pursuant to this paragraph constitutes a nullification of the definition effective upon adjournment of that next regular session of the general assembly.

5. *Prohibitions.*

a. A person shall not do any of the following:

- (1) Transport an aquatic invasive species on a public road.
- (2) Place a trailer or launch a watercraft that contains or to which an aquatic invasive species is attached in public waters.
- (3) Operate a watercraft in a marked aquatic invasive species infestation area.

b. A person who violates this subsection is subject to a scheduled fine pursuant to section 805.8B, subsection 5.

96 Acts, ch 1042, §1; 2001 Acts, ch 137, §5; 2004 Acts, ch 1137, §1