VOLUME IV

CODE OF IOWA

2020

CONTAINING

ALL STATUTES OF A GENERAL AND PERMANENT NATURE

Including the Acts of a permanent nature
with January 1, 2020, or earlier effective dates through
the Eighty-eighth General Assembly, 2019 Regular Session

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PREFACE TO 2020 IOWA CODE

IOWA CODE — ANNUAL ELECTRONIC PUBLICATIONS — BIENNIAL PRINTED HARDBOUND VOLUMES. This Iowa Code is published pursuant to Iowa Code chapters 2A and 2B by the Legislative Services Agency. An official copy in PDF format and an unofficial, more user-friendly, and searchable version of the Iowa Code are published following each regular session of a General Assembly on the Internet and on the Iowa Law Infobase. Printed hardbound volumes of the Iowa Code and the Tables and Indexes are published following the second regular session of a General Assembly.

CODE CONTENTS AND EFFECTIVE AND APPLICABILITY DATES. This 2020 Iowa Code includes all enactments with a January 1, 2020, or earlier effective date from the 2019 Session of the Eighty-eighth Iowa General Assembly and includes enactments from prior sessions that were effective on or before that date. Unless otherwise indicated in the text or in a footnote, new sections, amendments, and repeals from the 2019 Session were effective on or before July 1, 2019. Refer to specific enactments to determine effective and applicability dates not shown. The Table of Contents enumerates the titles and subtitles in this Iowa Code, and each volume contains an analysis by title, subtitle, and chapter. Codified and original versions of the Constitution of the State of Iowa are included at the beginning of Volume I.

EDITORIAL DECISIONS. All duplicative or nonconflicting amendments to a Code section or part of a Code section were harmonized as required under Iowa Code sections 2B.13 and 4.11. A strike or repeal prevailed over an amendment to the same material. If amendments were irreconcilable, the last amendment in the Act, or latest in date of enactment, was codified as provided in Iowa Code sections 2B.13 and 4.8. Code Editor's Notes at the end of Volume VI explain editorial decisions. Iowa Code sections 2B.13 and 2B.17A govern editorial changes and their effective dates.

HISTORIES AND NOTES. Bracketed material at the end of Code sections traces the sections' histories up through 1982. Beginning with the 1983 Legislative Session, Code section histories are traced by citing all Iowa Acts amending or enacting the Code sections. The history of a transferred section includes the publication year and the Code section from which the transfer took place. An explanatory note describing the most recent changes in each new, amended, or revised Code section follows the history. Internal reference citations follow Code titles, subtitles, chapters, chapter subunits, or sections.

TABLES AND INDEXES. A separate Tables and Indexes volume is published annually and contains conversion tables of Senate and House files and Joint Resolutions to Iowa Acts chapters, tables of disposition of Iowa Acts, tables of Code sections altered, tables of corresponding sections, an Iowa Constitution Index, a General Index, and a Skeleton Index.

EDITORIAL STAFF. The 2020 Iowa Code senior legal editorial staff included Ed Cook, Senior Legal Counsel; Michael Duster, Senior Legal Counsel; and Nicholas Schroeder, Legal Counsel. The editorial staff of the Iowa Code welcomes comments and suggestions for improvements.

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DESIGNATION OF GENERAL ASSEMBLY — OFFICIAL LEGAL PUBLICATIONS — CITATIONS

2.2 Designation of general assembly.

1. Each regular session of the general assembly shall be designated by the year in which it convenes and by a number with a new consecutive number assigned with the session beginning in each odd-numbered year.

2. A special session of the general assembly shall be designated as an extraordinary session in the particular year of a numbered general assembly.

2B.17 Official legal publications — citations.

1. A legal publication designated as official by the legislative services agency as provided in sections 2.42 and 2A.1 is the authoritative and official electronic or print version of the statutes, administrative rules, or court rules of the state of Iowa.

2. *a.* The codified state constitution shall be known as the Constitution of the State of Iowa.

b. For statutes, the official versions of publications shall be known as the Iowa Acts, the Iowa Code, and the Code Supplement for supplements for the years 1979 through 2011.

c. For administrative rules, the official versions of the publications shall be known as the Iowa Administrative Bulletin and the Iowa Administrative Code.

d. For court rules, the official legal publication shall be known as the Iowa Court Rules.

3. The legislative services agency may adopt a style manual providing a uniform system of citing the codified Constitution of the State of Iowa and the official versions of publications listed in subsection 2, including by reference to commonly accepted legal sources. The legislative services agency style manual may provide for a different form of citation for electronic and printed versions of the same publication. Nothing in this section affects rules for style and format adopted pursuant to section 2.42.

4. The codified Constitution of the State of Iowa, and statutes enacted and joint resolutions enacted or passed by the general assembly shall be cited as follows:

a. The codified Constitution of the State of Iowa shall be cited as the Constitution of the State of Iowa, with a reference identifying the preamble or boundaries, or article, section, and subunit of a section. Subject to the legislative services agency style manual, the Constitution of the State of Iowa may be cited as the Iowa Constitution.

b. The Iowa Acts shall be cited as the Iowa Acts with a reference identifying the year of the publication in conformance with section 2.2, and the chapter of a bill enacted or joint resolution enacted or passed during a regular session, or in the alternative the bill or joint resolution chamber designation, and the section of the chapter or bill or subunit of a section. A bill or joint resolution enacted or passed during a special session shall be cited by the extraordinary session designation in conformance with section 2.2. If the Iowa Acts have not been published, a bill or joint resolution may be cited by its bill or joint resolution chamber designation.

c. The Iowa Code shall be cited as the Iowa Code. Supplements to the Iowa Code published for the years 1979 through 2011 shall be cited as the Code Supplement. Subject to the legislative services agency style manual, the Iowa Code may be cited as the Code of Iowa or Code and the Code Supplement may be cited as the Iowa Code Supplement, with references identifying parts of the publication, including but not limited to title or chapter, section, or subunit of a section. If the citation refers to a past edition of the Iowa Code or Code Supplement, the citation shall identify the year of publication. The legislative services agency style manual shall provide for a citation form for any supplements to the Iowa Code published after the year 2013.

5. Administrative rules shall be cited as follows:

a. The Iowa Administrative Bulletin shall be cited as the IAB, with references identifying the volume number which may be based on a fiscal year cycle, the issue number, and the ARC number assigned to the rulemaking document by the administrative rules coordinator pursuant to section 17A.4. Subject to the legislative services agency style manual, the citation may also include the publication's page number.

b. The Iowa Administrative Code shall be cited as the IAC, with references to an agency's identification number placed at the beginning of the citation and with references to parts of the publication, including but not limited to chapter, rule, or subunit of a rule.

6. The Iowa Court Rules shall be cited as the Iowa Court Rules, with references to the rule number and to subunits of the publication, which may include but are not limited to the Iowa Rules of Civil Procedure, the Iowa Rules of Criminal Procedure, the Iowa Rules of Evidence, the Iowa Rules of Appellate Procedure, the Iowa Rules of Professional Conduct, and the Iowa Code of Judicial Conduct. Subject to the legislative services agency style manual, the names of the rules may be abbreviated.

Chapters of the Code are cited as whole numerals; as chapter 135 or chapter 135A.

Sections are cited as decimal numerals; as section 135.101 or section 135A.2. Sections are often divided into subunits. The following is an example of the hierarchical structure of a Code section:

Section: 8C.7A	Subparagraph division: (a)
Subsection: 3	Subparagraph subdivision: (iv)
Paragraph: *c*	Subparagraph part: (A)
Subparagraph: (3)	Subparagraph subpart: (I)

The above Code section example may be abbreviated as 8C.7A(3)(c)(3)(a)(iv)(A)(I).

ABBREVIATIONS

C51 ..... Code of 1851
R60 ..... Revision of 1860
C73 ..... Code of 1873
C97 ..... Code of 1897
S'02 ..... Supplement of 1902
S'07 ..... Supplement of 1907
S13 ..... Supplement of 1913
SS15 ..... Supplemental Supplement 1915
C24 ..... Code of 1924
C27 ..... Code of 1927
C31 ..... Code of 1931
C35 ..... Code of 1935
C39 ..... Code of 1939
C46 ..... Code of 1946
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C54 ..... Code of 1954
C58 ..... Code of 1958
C62 ..... Code of 1962
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C71 ..... Code of 1971
C73 ..... Code of 1973
C75 ..... Code of 1975
C77 ..... Code of 1977
C79 ..... Code of 1979
S79 ..... Supplement of 1979
C81 ..... Code of 1981
S81 ..... Supplement of 1981
C83 ..... Code of 1983
CS83 ..... Supplement of 1983
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CS85 ..... Code Supplement of 1985
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CS87 ..... Code Supplement of 1987
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CS2011 ..... Code Supplement of 2011
C2013 ..... Code of 2013
C2014 ..... Code of 2014
C2015 ..... Code of 2015
C2016 ..... Code of 2016
C2017 ..... Code of 2017
C2018 ..... Code of 2018
C2019 ..... Code of 2019
C2020 ..... Code of 2020
GA ..... General Assembly
§ or Sec. ..... Section
Art. ..... Article
Ch ..... Chapter
1st Ex ..... First Extra Session
2nd Ex ..... Second Extra Session
R (in tables) ..... Repealed
Vol ..... Volume
Ct.R. ..... Court Rule
R.C.P. ..... Rules of Civil Procedure
R.Cr.P. ..... Rules of Criminal Procedure
R.App.P. .... Rules of Appellate Procedure
R.Prob.P. ..... Rules of Probate Procedure
Stat. ..... Statutes at Large (U. S.)
U.S.C. ..... United States Code
U.S.C. App. United States Code Appendix
Pub. L. No. ... Public Law Number (U. S.)
C.F.R. Code of Federal Regulations (U. S.)
Tit. ..... Title in federal Acts
Subtit. ..... Subtitle in federal Acts
Pt. ..... Part in federal Acts
Subpt. ..... Subpart in federal Acts

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421.1 State board of tax review. Repealed by its own terms; 2015 Acts, ch 109, §2, 3.

421.1A Property assessment appeal board.

1. A statewide property assessment appeal board is created for the purpose of establishing a consistent, fair, and equitable property assessment appeal process. The statewide property assessment appeal board is established within the department of revenue for administrative

and budgetary purposes. The board's principal office shall be in the office of the department of revenue in the capital of the state.

2. *a.* The property assessment appeal board shall consist of three members appointed to staggered six-year terms, beginning and ending as provided in section 69.19, by the governor and subject to confirmation by the senate. Subject to confirmation by the senate, the governor shall appoint from the members a chairperson of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made. The term of office for the initial board shall begin January 1, 2007.

b. Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. Two members of the board shall be certified real property appraisers and one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals. No more than two members of the board may be from the same political party as that term is defined in section 43.2.

c. The property assessment appeal board shall organize by appointing a secretary who shall take the same oath of office as the members of the board. The board may employ additional personnel as it finds necessary. All personnel employed by the board shall be considered state employees and are subject to the merit system provisions of chapter 8A, subchapter IV.

3. At the election of a property owner or aggrieved taxpayer or an appellant described in section 441.42, the property assessment appeal board shall review any final decision, finding, ruling, determination, or order of a local board of review relating to protests of an assessment, valuation, or application of an equalization order, or any final decision of the county board of supervisors relating to denial of an application for, or the revocation of, a property tax exemption pursuant to section 427.1, subsection 40.

4. The property assessment appeal board may do all of the following:

a. Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

b. Affirm or reverse a final decision of a county board of supervisors relating to denial of an application for, or the revocation of, a property tax exemption under section 427.1, subsection 40.

c. Order the payment or refund of property taxes in a matter over which the board has jurisdiction.

d. Grant other relief or issue writs, orders, or directives that the board deems necessary or appropriate in the process of disposing of a matter over which the board has jurisdiction.

e. Subpoena documents and witnesses and administer oaths.

f. Adopt administrative rules pursuant to chapter 17A for the administration and implementation of its powers, including rules for practice and procedure for protests filed with the board, the manner in which hearings on appeals of assessments shall be conducted, filing fees to be imposed by the board, and for the determination of the correct assessment of property which is the subject of an appeal.

g. Adopt administrative rules pursuant to chapter 17A necessary for the preservation of order and the regulation of proceedings before the board, including forms or notice and the service thereof, which rules shall conform as nearly as possible to those in use in the courts of this state.

5. The property assessment appeal board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and shall represent the board in all actions instituted in a court challenging the validity of a rule or order of the board. The general counsel shall devote full time to the duties of the office. During employment as general counsel to the board, the counsel shall not be a member of a political committee, contribute to a political campaign, participate in a political campaign, or be a candidate for partisan political office. The general counsel and assistants to the general counsel shall be considered state employees and are subject to the merit system provisions of chapter 8A, subchapter IV.

6. The members of the property assessment appeal board shall receive a salary set by the governor within a range established by the general assembly. The members of the board shall be considered state employees for purposes of salary and benefits. The members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of duties.

2005 Acts, ch 150, §121; 2006 Acts, ch 1185, §30; 2007 Acts, ch 215, §27; 2013 Acts, ch 123, §47 – 49, 64 – 67; 2015 Acts, ch 120, §39, 40, 45; 2016 Acts, ch 1130, §21

Referred to in §441.37A

Confirmation, see §2.32

2013 amendment to subsection 2, paragraph b, by 2013 Acts, ch 123, §64, 66, takes effect June 12, 2013, and applies to appointments to the property assessment appeal board on or after that date; however, effective July 1, 2016, 2013 amendment to subsection 2, paragraph b, applies to appointments to the property assessment appeal board on or after July 1, 2017; 2016 Acts, ch 1130, §21

2015 amendments to subsections 3 and 4 apply to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 120, §45

421.2 Department of revenue.

A department of revenue is created. The department shall be administered by a director of revenue who shall be appointed by the governor subject to confirmation by the senate and shall serve at the pleasure of the governor. If the office of the director becomes vacant, the vacancy shall be filled in the same manner as provided for the original appointment. The director may establish, abolish, and consolidate divisions within the department of revenue when necessary for the efficient performance of the various functions and duties of the department of revenue.

[C31, 35, §6943-c11, -c12, -c15, -c17; C39, §**6943.010, 6943.011, 6943.014, 6943.016;** C46, 50, 54, 58, 62, 66, §421.1, 421.2, 421.5, 421.7; C71, 73, 75, 77, 79, 81, §421.2]

86 Acts, ch 1245, §419; 2003 Acts, ch 145, §286

Referred to in §7E.5

Confirmation, see §2.32

421.3 Director to have no conflicting interests.

The director of revenue shall not hold any other office under the laws of the United States or of this or any other state or hold any other position of profit. The director shall not engage in any occupation, business, or profession interfering with or inconsistent with the director's duties, serve on or under any committee of any political party, or contribute to the campaign fund of any person or political party. The director shall be of high moral character, shall be recognized for executive and administrative capacity, and shall possess expert knowledge and skills in the fields of taxation and property tax assessment. The director shall devote full time to the duties of the office.

[C31, 35, §6943-c14; C39, §**6943.013;** C46, 50, 54, 58, 62, 66, §421.4; C71, 73, 75, 77, 79, 81, §421.3]

2003 Acts, ch 145, §286

421.4 Deputies.

The director may appoint deputy directors and may designate one or more of the deputies as acting director. A deputy designated to serve in the absence of the director has all of the powers possessed by the director. The director may employ certified public accountants, engineering and technical assistants, and other employees, or independent contractors necessary to protect the interests of the state and any political subdivision.

[C71, 73, 75, 77, 79, 81, §421.4]

86 Acts, ch 1245, §420; 94 Acts, ch 1165, §1; 97 Acts, ch 158, §4

421.5 Settling doubtful claims for taxes.

The director may compromise and settle doubtful and disputed claims for taxes or refunds or tax liability of doubtful collectibility notwithstanding the provisions of section 7D.9. Whenever such a compromise and settlement is made, the director shall make a complete record of the case showing the tax assessed or claimed due, tax refund claimed, recommendations, reports, and audits of departmental personnel if any, the taxpayer's

grounds for dispute or contest together with all evidence thereof, and the amounts, conditions, and settlement or compromise of same.

[C71, 73, 75, 77, 79, 81, §421.5]

94 Acts, ch 1165, §2

Referred to in §453B.14

421.6 Definition of return.

For purposes of this title, unless the context otherwise requires, *"return"* means any tax or information return, amended return, declaration of estimated tax, or claim for refund that is required by, provided for, or permitted under, the provisions of this title and which is filed with the department by, on behalf of, or with respect to any person. *"Return"* includes any amendment or supplement to these items, including supporting schedules, attachments, or lists which are supplemental to or part of the filed return.

2018 Acts, ch 1161, §2, 15, 16

Section applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

421.7 Interest rate.

1. Except where a different rate of interest is stated in a provision of this Title,* the rate of interest on interest-bearing obligations arising under this Title shall be the rate of interest in effect under this section.

2. The rate of interest that shall be in effect during a calendar year shall be the rate which is two percentage points greater than the numerical average, rounded to the nearest one percent, of the respective prime rates for each of the months in the twelve-month period that ends September 30 of the previous calendar year. The rate of interest established by this subsection takes effect January 1, and applies to any amount which is due or becomes payable on or after that date.

3. Notwithstanding contrary provisions of subsection 2, the rate of interest that is in effect during a calendar year shall also be the rate of interest to be in effect for the following calendar year, unless the rate of interest as calculated under subsection 2 is at least one percentage point higher or lower than the rate then in effect.

4. In the event interest accrues or is calculated on a monthly basis, the rate of interest for each month shall be one-twelfth, rounded to the nearest one-tenth of one percent, of the rate specified in subsection 2.

5. As used in subsection 2, the term *"prime rate"* means the prime rate charged by banks on short-term business loans, as determined by the board of governors of the federal reserve system and published in the federal reserve bulletin.

6. In October of each year the director shall cause an advisory notice to be published in the Iowa administrative bulletin and in a newspaper of general circulation in this state, stating the rate of interest to be in effect on or after January 1 of the following year, as established by this section. The calculation and publication of the rate of interest by the director is exempt from chapter 17A.

[S13, §1481-a23; C24, 27, 31, §7310, 7368; C35, §6943-f20, -f21, -f24, 7310, 7368; C39, §**6943.056, 6943.057, 6943.060, 7310, 7368;** C46, 50, 54, §422.24, 422.25, 422.28, 450.6, 450.63; C58, 62, §324.64, 422.24, 422.25, 422.28, 450.6, 450.63; C66, §324.64, 422.16(9)(10, b), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63; C71, 73, 75, §324.65, 422.16(9)(10, b), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63; C77, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25, 422.28, 422.58, 423.18, 450.6, 450.63, 450.94; C79, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25, 422.28, 422.58, 422.88, 423.18, 435.4, 435.6, 450.6, 450.63, 450.94, 450A.9; C81, §324.65, 422.16(9)(10, b)(11, e), 422.24, 422.25, 422.28, 422.58, 422.88, 422.91, 423.18, 435.4, 435.6, 450.6, 450.63, 450.94, 450A.9; 81 Acts, ch 131, §1]

86 Acts, ch 1007, §16; 90 Acts, ch 1172, §5; 94 Acts, ch 1023, §48; 2013 Acts, ch 70, §17

Referred to in §184.3, 421.27, 421.60, 422.16, 422.24, 422.25, 422.88, 423.4, 423.40, 423B.8, 425.7, 425A.8, 437A.13, 437B.9, 450.6, 450.63, 452A.65, 452A.74A, 453A.28, 453A.46, 453B.12, 459.402

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this title by the Code editor. Chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters.

421.8 Penalty for defective return under certain circumstances.

If a person files a purported return of tax which does not contain information on which the substantial correctness of the self-assessment may be judged or which contains information that on its face indicates that the self-assessment is substantially incorrect and the conduct previously referred to in this section is due to a position which is frivolous or a desire which appears on the purported return to delay or impede the administration of the tax laws of this state, then the person shall pay a penalty of five hundred dollars. This penalty shall be in addition to any other penalty provided by law.

86 Acts, ch 1007, §17

421.8A Repealed by 90 Acts, ch 1232, §22.

421.9 Duties and powers — office.

1. The director of revenue or a designated deputy shall sign on behalf of the department all orders, subpoenas, warrants, and other documents of like character issued by the department.

2. The office of the department shall be maintained at the seat of government in this state. The department shall be deemed to be in continuous session and open for the transaction of business except Saturdays, Sundays, and legal holidays. The director of revenue may hold sessions in conducting investigations any place within the state when necessary to facilitate and render more thorough the performance of the director's duties.

3. The director may make application to the district court or judicial magistrate in the county where the books, records, or assets are located for an administrative search warrant as authorized by section 808.14, to ensure equitable administration of state tax law, if any of the following occurs:

a. A person refuses to allow the director or the director's authorized representative to audit the person's books or records or to inspect or value the person's assets.

b. The director has good and sufficient reason to believe that a person will not allow the department to audit books or records or inspect or value assets or to believe that the person will destroy books or records or secrete or transfer assets.

4. Immediately upon issuance of a distress warrant authorized by section 422.26, the director may make application to the district court or judicial magistrate for an administrative search warrant as authorized by section 808.14 to execute the distress warrant.

[C31, 35, §6943-c20, -c21, -c22, -c23; C39, §**6943.019, 6943.020, 6943.021, 6943.022;** C46, 50, 54, 58, 62, 66, §421.10, 421.11, 421.12, 421.13; C71, 73, 75, 77, 79, 81, §421.9]

86 Acts, ch 1245, §421; 90 Acts, ch 1232, §3; 94 Acts, ch 1165, §3; 2003 Acts, ch 145, §286; 2007 Acts, ch 126, §64

421.10 Appeal period — applicability.

The appeal period for revision of assessment of tax, interest, and penalties set out under section 422.28, 423.37, 437A.9, 437A.22, 437B.5, 437B.18, 452A.64, 453A.29, or 453A.46 applies to appeals to notices from the department denying changes in filing methods, denying refund claims, and denying portions of refund claims for the tax covered by that section, and notices of any department action directed to a specific taxpayer, other than licensing, which involves a calculation.

89 Acts, ch 251, §10; 95 Acts, ch 83, §1; 2000 Acts, ch 1114, §1, 18; 2003 Acts, 1st Ex, ch 2, §177, 205; 2013 Acts, ch 94, §3, 35, 36

Referred to in §437A.14, 437B.10

2013 amendment takes effect May 9, 2013, and applies retroactively to property tax assessment years and replacement tax years beginning on or after January 1, 2013; 2013 Acts, ch 94, §35, 36

421.11 through 421.13 Reserved.

421.14 Rules — director's duties.

The director shall have power to establish all needful rules not inconsistent with law for the orderly and methodical performance of the director's duties, and to require the observance of such rules by those having business with or appearing before the department.

[C31, 35, §6943-c24; C39, §**6943.023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.14]

421.15 Seal.

The director shall have an official seal, and orders or other papers executed by the director may, under the director's direction, be attested, with the seal affixed, by the secretary.

[C31, 35, §6943-c25; C39, §**6943.024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.15]

421.16 Expenses.

The director and department employees are entitled to receive from the state their actual necessary expenses while traveling on the business of the department. The expenditures shall be sworn to by the party who incurred the expense, and approved and allowed by the director. However, such expenses shall not be allowed residents of Polk county while in the city of Des Moines or traveling between their homes and the city of Des Moines.

[C31, 35, §6943-c26; C39, §**6943.025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.16]
88 Acts, ch 1158, §72; 89 Acts, ch 284, §6; 97 Acts, ch 23, §41; 99 Acts, ch 151, §2, 89

421.17 Powers and duties of director.

In addition to the powers and duties transferred to the director of revenue, the director shall have and assume the following powers and duties:

1. To have and exercise general supervision over the administration of the assessment and tax laws of the state, over boards of supervisors and all other officers or boards in the performance of their official duties in all matters relating to assessments and taxation, to the end that all assessments of property and taxes levied on the property be made relatively just and uniform in substantial compliance with the law.

2. To supervise the activity of all assessors and boards of review in the state of Iowa; to cooperate with them in bringing about a uniform and legal assessment of property as prescribed by law.

a. The director may order the reassessment of all or part of the property in any assessing jurisdiction in any year. Such reassessment shall be made by the local assessor according to law under the direction of the director and the cost of making the assessment shall be paid in the same manner as the cost of making an original assessment.

b. The director shall determine the degree of uniformity of valuation as between the various assessing jurisdictions of the state and shall have the authority to employ competent personnel for the purpose of performing this duty.

c. For the purpose of bringing about uniformity and equalization of assessments throughout the state of Iowa, the director shall prescribe rules relating to the standards of value to be used by assessing authorities in the determination, assessment and equalization of actual value for assessment purposes of all property subject to taxation in the state, and such rules shall be adhered to and followed by all assessing authorities.

d. To facilitate uniformity and equalization of assessments throughout the state of Iowa and to facilitate transfers of funds to local governments, the director may use geographic information system technology and may require assessing authorities and local governments that have adopted compatible technology to provide information to the department electronically using electronic geographic information system file formats. The department of revenue shall act on behalf of political subdivisions and the state to deliver a consolidated response to the boundary and annexation survey and provide legal boundary geography data to the United States census bureau. The department shall coordinate with political subdivisions and the state to ensure that consistent, accurate, and integrated geography is provided to the United States census bureau. The office of the chief information officer shall provide geographic information system and technical support to the department to facilitate the exchange.

3. To prescribe and promulgate all forms of books and forms to be used in the listing and assessment of property, and on or before November 1 of each year shall furnish to the county auditor of each county such prescribed forms of assessment rolls and other forms to properly list and assess all property subject to taxation in each county. The department of revenue shall also from time to time prepare and furnish in like manner forms for any and all other blanks, memoranda or instructions which the director deems necessary or expedient for the

use or guidance of any of the officers over which the director is authorized by law to exercise supervision.

4. To confer with, advise, and direct boards of supervisors, boards of review, and others obligated by law to make levies and assessments, as to their duties under the laws.

5. To direct proceedings, actions, and prosecutions to be instituted for the enforcement of the laws relating to the penalties, liabilities, and punishment of public officers, and officers or agents of corporations, and other persons or corporations, for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property; to make or cause to be made complaints against members of boards of review, boards of supervisors or other assessing, reviewing, or taxing officers for official misconduct or neglect of duty. Employees of the department of revenue shall not during their regular hours of employment engage in the preparation of tax returns, except in connection with a regular audit of a tax return or in connection with assistance requested by the taxpayer.

6. *a.* To require city, township, school districts, county, state, or other public officers to report information as to the assessment of property and collection of taxes and such other information as may be needful or desirable in the work of the department in such form and upon such blanks as the director may prescribe.

b. The director shall require all city and county assessors to prepare a quarterly report in the manner and form to be prescribed by the director showing for each warranty deed or contract of sale of real estate, divided between rural and urban, during the last completed quarter the amount of real property transfer tax, the sale price or consideration, and the equalized value at which that property was assessed that year. This report with further information required by the director shall be submitted to the department within sixty days after the end of each quarter. The department shall prepare annual summaries of the records of the ratio of assessments to actual sales prices for all counties, and for cities having city assessors, and the information for the preceding year shall be available for public inspection by May 1.

7. To hold public hearings either at the seat of government or elsewhere in the state, and tax the costs thereof; to summon and compel witnesses to appear and give testimony, to administer oaths to said witnesses, and to compel said witnesses to produce for examination records, books, papers, and documents relating to any matter which the director shall have the authority to investigate or determine. Provided, however, that no bank or trust company or its officers or employees shall be required to divulge knowledge concerning the property of any person when such knowledge was obtained through information imparted as a part of a business transaction with or for such person and in the usual and ordinary course of business of said bank or trust company, and was necessary and proper to the discharge of the duty of said bank or trust company in relation to such business transaction. This proviso shall be additional to other provisions of the law relating to confidential and privileged communications.

8. To cause the depositions of witnesses residing within or without the state, or absent therefrom, to be taken either on written or oral interrogatories, and the clerk of the district court of any county shall upon the order of the director issue a commission for the taking of such depositions. The proceedings therefor shall be the same as the proceedings for the taking of depositions in the district court so far as applicable.

9. To investigate the work and methods of boards of review, boards of supervisors, or other public officers, in the assessment, equalization, and taxation of all kinds of property, and for that purpose the director or employees of the department may visit the counties or localities when deemed necessary so to do.

10. To require any board of review at any time after its adjournment to reconvene and to make such orders as the director shall determine are just and necessary; to direct and order any board of review to raise or lower the valuation of the property, real or personal, in any township, city, or taxing district, to order and direct any board of review to raise or lower the valuation of any class or classes of property in any township, city, or taxing district, and generally to make any order or direction to any board of review as to the valuation of any property, or any class of property, in any township, city, county, or taxing district, which in the judgment of the director may seem just and necessary, to the end that all property shall be

valued and assessed in the manner and according to the real intent of the law. For the purpose of this subsection the words *"taxing district"* include drainage districts and levee districts.

a. The director may correct obvious errors or obvious injustices in the assessment of any individual property, but the director shall not reduce the valuation of any individual property except upon the recommendation of the local board of review and an order of the director affecting any valuation shall not be retroactive as to any reduction or increase in taxes payable prior to January 1 of the year in which that order is issued, or prior to September 1 of the preceding year in cities under special charter which collect their own municipal levies. The director shall not correct errors or injustices under the authority of this paragraph if that correction would involve the exercise of judgment. Judicial review of the actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

b. The director may order made effective reassessments or revaluations in any taxing district for any taxing year or years and the director may in any year order uniform increases or decreases in valuation of all property or upon any class of property within any taxing district or any area within such taxing district, such orders to be effective in the year specified by the director.

11. To carefully examine into all cases where evasion or violation of the law for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective or are improperly or negligently administered, and cause to be instituted such proceedings as will remedy improper or negligent administration of the laws relating to the assessment or taxation of property.

12. To make a summary of the tax situation in the state, setting out the amount of moneys raised by both direct and indirect taxation; and also to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation. To recommend such additions to and changes in the present system of taxation that in the director's judgment are for the best interest of the state and will eliminate the necessity of any levy for state purposes.

13. To transmit biennially to the governor and to each member and member-elect of the legislature, thirty days before the meeting of the legislature, the report of the director, covering the subject of assessment and taxation, the result of the investigation of the director, recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. Reserved.

15. The director may establish criteria allowing for the use of electronic filing or the use of alternative filing methods of any return, deposit, or document required to be filed for taxes administered by the department. The director may also establish criteria allowing for payment of taxes, penalty, interest, and fees by electronic funds transfer or other alternative methods. The director shall adopt rules setting forth procedures for use in electronic filing and electronic funds transfer or other alternative methods and standards that provide for acceptance of a signature in a form other than the handwriting of a person. The rules shall also take into consideration any undue hardship electronic filing or electronic funds transfer or other alternative methods create for filers.

16. To call upon a state agency or institution for technical advice and data which may be of value in connection with the work of the department.

17. To prepare and issue a state appraisal manual which each county and city assessor shall use in assessing and valuing all classes of property in the state. The appraisal manual shall be continuously revised and the manual and revisions shall be issued to the county and city assessors in such form and manner as prescribed by the director. Each county and city assessor shall use the most recently issued manual in assessing and valuing all classes of property in the state within two years of the publication date of the most recently issued manual. The department may grant an extension of up to two years to a county or city assessor upon request and demonstration of substantial hardship by an assessor.

18. To issue rules as are necessary, subject to the provisions of chapter 17A, to provide for the uniform application of the exemptions provided in section 427.1 in all assessor jurisdictions in the state.

19. To subpoena from property owners and taxpayers any and all records and documents necessary to assist the department in the determination of the fair market value of industrial real estate.

a. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director.

b. (1) The provisions of sections 17A.10 to 17A.18A relating to contested cases shall not apply to any matters involving the equalization of valuations of classes of property as authorized by this chapter and chapter 441.

(2) This exemption from the provisions of sections 17A.10 to 17A.18A shall not apply to a hearing before the director as provided in section 441.49, subsection 5.

20. To cooperate with the child support recovery unit created in chapter 252B to establish and maintain a process to implement the provisions of section 252B.5, subsection 9. The department of revenue shall forward to individuals meeting the criteria under section 252B.5, subsection 9, paragraph *"a"*, a notice by first class mail that the individual is obligated to file a state estimated tax form and to remit a separate child support payment.

a. Individuals notified shall submit a state estimated tax form on a quarterly basis.

b. The individual shall pay monthly, the lesser of the total delinquency or one hundred fifty percent of the current or most recent monthly obligation.

c. The individual shall remit the payment to the department of revenue separate from any tax liability payments, identify the payment as a support payment, and make the payment payable to the collection services center. The department shall forward all payments received pursuant to this section to the collection services center established pursuant to chapter 252B, for processing and disbursement. The department of revenue may establish a process for the child support recovery unit or collection services center to directly receive the payments. For purposes of crediting the support payments pursuant to sections 252B.14 and 598.22, payments received by the department of revenue and forwarded to the collection services center shall be credited as if received directly by the collection services center.

d. The notice shall provide that, as an alternative to the provisions of paragraph *"b"*, the individual may contact the child support recovery unit to formalize a repayment plan and obtain an exemption from the quarterly filing requirement when payments are made pursuant to the repayment plan or to contest the balance due listed in the notice.

e. The department of revenue, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

21. To provide information contained in state individual tax returns to the child support recovery unit for the purposes of establishment or enforcement of support obligations. The department of revenue and child support recovery unit may exchange information in a manual or automated fashion. The department of revenue, in cooperation with the child support recovery unit, may adopt rules, if necessary, to implement this subsection.

22. To employ collection agencies, within or without the state, to collect delinquent taxes, including penalties and interest, administered by the department or delinquent accounts, charges, loans, fees, or other indebtedness due the state or any state agency, that have formal agreements with the department for central debt collection where the director finds that departmental personnel are unable to collect the delinquent accounts, charges, loans, fees, or other indebtedness because of a debtor's location outside the state or for any other reason. Fees for services, reimbursement, or other remuneration, including attorney fees, paid to collection agencies shall be based upon the amount of tax, penalty, and interest or debt actually collected and shall be paid only after the amount of tax, penalty, and interest or debt is collected. All funds collected must be remitted in full to the department within thirty days from the date of collection from a debtor or in a lesser time as the director prescribes. The funds shall be applied toward the debtor's account and handled as are funds received by other means. An amount is appropriated from the amount of tax, penalty, and interest, delinquent accounts, charges, loans, fees, or other indebtedness actually collected by the collection agency sufficient to pay all fees for services, reimbursement, or other remuneration pursuant to a contract with a collection agency under this subsection. A collection agency entering into a contract with the department for the collection of

delinquent taxes, penalties, and interests, delinquent accounts, charges, loans, fees, or other indebtedness pursuant to this subsection is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information.

23. To develop, modify, or contract with vendors to create or administer systems or programs which identify nonfilers of returns or nonpayers of taxes administered by the department and to identify and prevent the issuance of fraudulent or erroneous refunds. Fees for services, reimbursements, costs incurred by the department, or other remuneration may be funded from the amount of tax, penalty, or interest actually collected and shall be paid only after the amount is collected. An amount is appropriated from the amount of tax, penalty, and interest actually collected, not to exceed the amount collected, which is sufficient to pay for services, reimbursement, costs incurred by the department, or other remuneration pursuant to this subsection. Vendors entering into a contract with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. The director shall report annually to the legislative services agency and the chairpersons and ranking members of the ways and means committees on the amount of costs incurred and paid during the previous fiscal year pursuant to this subsection and the incidence of refund fraud and the costs incurred and amounts prevented from issuance during the previous fiscal year pursuant to this subsection.

24. To enter into agreements or compacts with remote sellers, retailers, or third-party providers for the voluntary collection of Iowa sales or use taxes attributable to sales into Iowa. The director has the authority to enter into and perform all duties required of the office of director by multistate agreements or compacts that provide for the collection of sales and use taxes, including joint audits with other states or audits on behalf of other states. The agreements or compacts shall generally conform to the provisions of Iowa sales and use tax statutes. All fees for services, reimbursements, remuneration, incentives, and costs incurred by the department associated with these agreements or compacts may be paid or reimbursed from the additional revenue generated. An amount is appropriated from amounts generated to pay or reimburse all costs associated with this subsection. Persons entering into an agreement or compact with the department pursuant to this subsection are subject to the requirements and penalties of the confidentiality laws of this state regarding tax information. Notwithstanding any other provisions of law, the contract, agreement, or compact shall provide for the registration, collection, report, and verification of amounts subject to this subsection.

25. At the director's discretion, accept payment of taxes, penalties, interest, and fees, or any portion thereof, by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

26. To ensure that persons employed under contract, other than officers or employees of the state, who provide assistance in administration of tax laws and who are directly under contract or who are involved in any way with work under the contract and who have access to confidential information are subject to applicable requirements and penalties of tax information confidentiality laws of the state regarding all tax return, return information, or investigative or audit information that may be required to be divulged in order to carry out the duties specified under the contract.

27. *a.* To establish, administer, and make available a centralized debt collection capability and procedure for the use by any state agency or local government entity including, but not limited to, the department of revenue, along with other boards, commissions, departments, and any other entity reported in the Iowa comprehensive annual financial report, to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department's collection facilities shall only be available for use by other state agencies or local government entities for their discretionary use when resources are available to the director and subject to the director's determination that use of the procedure is feasible. The director shall prescribe the appropriate form and manner in which this information is to be submitted to the office of the department. The obligations

or indebtedness must be delinquent and not subject to litigation, claim, appeal, or review pursuant to the appropriate remedies of each state agency or local government entity.

b. The director shall establish, as provided in this section, a centralized computer data bank to compile the information provided and shall establish in the centralized data bank all information provided from all sources within the state concerning addresses, financial records, and other information useful in assisting the department in collection services.

c. The director shall establish a formal debt collection policy for use by state agencies and local government entities which have not established their own policy. Other state agencies and local government entities may use the collection facilities of the department pursuant to formal agreement with the department. The agreement shall provide that the information provided to the department shall be sufficient to establish the obligation in a court of law and to render it as a legal judgment on behalf of the state or the local government agency. After transferring the file to the department for collection, an individual state agency or the local government agency shall terminate all collection procedures and be available to provide assistance to the department. Upon receipt of the file, the department shall assume all liability for its actions without recourse to the agency or the local government agency, and shall comply with all applicable state and federal laws governing collection of the debt. The department may use a participating agency's or local government agency's statutory collection authority to collect the participating agency's delinquent accounts, charges, fees, loans, taxes, or other indebtedness owed to or being collected by the state. The department has the powers granted in this section regarding setoff from income tax refunds or other accounts payable by the state for any of the obligations transferred by state agencies or local government agencies.

d. The department's existing right to credit against tax due shall not be impaired by any right granted to, or duty imposed upon, the department or other state agency or local government agency by this section.

e. All state agencies and local government agencies shall be given access, at the discretion of the director, to the centralized computer data bank and, notwithstanding any other provision of law to the contrary, may deny, revoke, or suspend any license or deny any renewal authorized by the laws of this state to any person who has defaulted on an obligation owed to or collected by the state. The confidentiality provisions of sections 422.20 and 422.72 do not apply to tax information contained in the centralized computer data bank. State agencies and local government agencies shall endeavor to obtain from all applicants the applicant's social security or federal tax identification number, or, if the applicant has neither, the applicant's state driver's license number.

f. At the director's discretion, the department may accept payment of debts, interest, and fees, or any portion by credit card. The director may adjust the payable amount to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charge by the credit card issuer.

g. The director shall adopt administrative rules to implement this subsection, including, but not limited to, rules necessary to prevent conflict with federal laws and regulations or the loss of federal funds, to establish procedures necessary to guarantee due process of law, and to provide for reimbursement of the department by other state agencies and local government entities for the department's costs related to debt collection for state agencies and local government entities.

h. The director shall report quarterly to the legislative fiscal committee, the legislative services agency, and the chairpersons and ranking members of the joint appropriations subcommittee on administration and regulation concerning the implementation of the centralized debt collection program, the number of departmental collection programs initiated, the amount of debts collected, and an estimate of future costs and benefits which may be associated with the collection program. It is the intent of the general assembly that the centralized debt collection program will result in the collection of at least two dollars of indebtedness for every dollar expended in administering the collection program during a fiscal year.

i. The director may distribute to credit reporting entities and for publication the names,

addresses, and amounts of indebtedness owed to or being collected by the state if the indebtedness is subject to the centralized debt collection procedure established in this subsection. The director shall adopt rules to administer this paragraph, and the rules shall provide guidelines by which the director shall determine which names, addresses, and amounts of indebtedness may be distributed for publication. The director may distribute information for publication pursuant to this paragraph, notwithstanding sections 422.20, 422.72, and 423.42, or any other provision of state law to the contrary pertaining to confidentiality of information.

j. Of the amount of debt actually collected pursuant to this subsection an amount, not to exceed the amount collected, which is sufficient to pay for salaries, support, maintenance, services, and other costs incurred by the department related to the administration of this subsection shall be retained by the department. Revenues retained by the department pursuant to this section shall be considered repayment receipts as defined in section 8.2. The director shall, in the annual budget request pursuant to section 8.23, make an estimate as to the amount of receipts to be retained and the estimated amount of additional receipts to be collected. The director shall report annually to the department of management, the legislative fiscal committee, and the legislative services agency on any additional positions added and the costs incurred during the previous fiscal year pursuant to this subsection.

k. A county treasurer may collect delinquent taxes, including penalties and interest, administered by the department in conjunction with renewal of a vehicle registration as provided in section 321.40, subsection 6, paragraph *"b"*, and rules adopted pursuant to this paragraph. County treasurers shall be given access to information required for the collection of delinquent taxes, including penalties and interest, as necessary to accomplish the purposes of section 321.40, subsection 6, paragraph *"b"*. The confidentiality provisions of sections 422.20 and 422.72 do not apply to information provided by the department to a county treasurer pursuant to this paragraph. A county treasurer collecting taxes, penalties, and interest administered by the department is subject to the requirements and penalties of the confidentiality laws of this state regarding tax or indebtedness information. The director shall adopt rules to implement the collection of tax debt as authorized in section 321.40 and this paragraph.

28. To place on the department's official internet site the official electronic state of Iowa voter registration form and a link to the Iowa secretary of state's official internet site.

29. To administer the county endowment fund created in section 15E.311.

30. If a natural disaster is declared by the governor in any area of the state, the director may extend for a period of up to one year the due date for the filing of any tax return and may suspend any associated penalty or interest that would accrue during that period of time for any affected taxpayer whose principal residence or business is located in the covered area if the director determines it necessary for the efficient administration of the tax laws of this state.

31. If the director has reason to believe, as a result of an investigation or audit, that a taxpayer may have misclassified workers, then to assist the department of workforce development, the director is authorized to provide to the department of workforce development the following confidential information with respect to such a taxpayer:

a. Withholding and payroll tax information.

b. The taxpayer's identity, including taxpayer identification number and date of birth.

c. The results or most recent status of the audit or investigation.

32. *a.* To the extent permissible by federal law, to subpoena certain records held by a public or private utility company with respect to an individual who has a debt or obligation placed with the centralized collection unit of the department. The subpoena authority granted in this subsection may be used only after reasonable efforts have been made by the centralized collection unit to identify and locate the individual.

b. The department may subpoena customer records in order to obtain a telephone number and last known address, but shall not request or require the disclosure of transaction information, account activity, or proprietary information.

c. A public or private utility company shall respond to the subpoenas. The subpoenas shall not be served more frequently than quarterly.

d. The burden of showing reasonable cause to believe that the documents or records sought by the subpoena are necessary to assist the department under this subsection shall be upon the director. In administering this subsection, the director and the department shall comply with all applicable state and federal laws pertaining to the confidentiality or privacy of individuals or public or private utility companies. The information and customer records obtained by the department pursuant to this subsection are confidential records and are not subject to requests for examination pursuant to chapter 22.

e. A public or private utility company shall not be held liable for any action arising as a result of providing the records described in paragraph *"b"* or for any other action taken reasonably and in good faith to comply with this subsection.

f. As used in this subsection, *"public or private utility company"* means a public utility, cable, video, or satellite television company, cellular telephone company, or internet service provider.

33. To adopt rules ensuring that the total amount of transfers and disbursements in a fiscal year by the department to a local government or other entity with respect to projects under chapter 15J, chapter 418, or section 423B.10 does not exceed the amount of applicable taxes collected during the same fiscal year within the geographic boundaries of the reinvestment districts, governmental entities, or urban renewal areas in which such projects are located.

34. At the director's discretion, to retain in an electronic format any record, application, tax return, deposit, report, or any other information or document required to be submitted to the department.

35. To audit and examine all taxes collected or administered by the department.

[C97, §1010, 1011; C24, 27, §6868, 6869; C31, 35, §6868, 6869, 6943-c27; C39, §**6868, 6869, 6943.026;** C46, §420.209, 420.210, 421.17; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.17; 82 Acts, ch 1057, §2 – 4, ch 1216, §1]

83 Acts, ch 96, §157, 159, 160; 83 Acts, ch 153, §20, 21; 85 Acts, ch 197, §8, 9; 86 Acts, ch 1091, §4; 86 Acts, ch 1237, §24; 86 Acts, ch 1245, §422; 87 Acts, ch 199, §4, 5; 88 Acts, ch 1109, §25, 26; 89 Acts, ch 250, §2, 3; 90 Acts, ch 1232, §4; 90 Acts, ch 1253, §122; 91 Acts, ch 159, §3; 91 Acts, ch 268, §127; 92 Acts, ch 1195, §208, 507; 92 Acts, ch 1242, §32, 33; 92 Acts, ch 1243, §31; 93 Acts, ch 79, §34; 93 Acts, ch 97, §40; 93 Acts, ch 110, §5, 6; 94 Acts, ch 1107, §22 – 24; 94 Acts, ch 1142, §1; 94 Acts, ch 1165, §4 – 6; 94 Acts, ch 1171, §39; 95 Acts, ch 169, §4, 5; 95 Acts, ch 194, §7 – 9; 96 Acts, ch 1167, §1; 97 Acts, ch 153, §3; 97 Acts, ch 158, §5 – 9; 97 Acts, ch 175, §231; 98 Acts, ch 1047, §30, 68; 98 Acts, ch 1115, §4 – 6; 98 Acts, ch 1202, §41, 46; 99 Acts, ch 152, §1, 40; 2000 Acts, ch 1195, §1, 7; 2001 Acts, ch 116, §3, 4; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 44, §114; 2003 Acts, ch 145, §254, 286; 2003 Acts, ch 178, §110, 121; 2003 Acts, ch 179, §142; 2003 Acts, 1st Ex, ch 2, §178, 180, 205; 2004 Acts, ch 1073, §4; 2004 Acts, ch 1136, §56; 2005 Acts, ch 19, §52; 2006 Acts, ch 1158, §7; 2006 Acts, ch 1177, §28, 29; 2006 Acts, ch 1185, §82; 2008 Acts, ch 1184, §52; 2010 Acts, ch 1146, §7, 8, 26; 2010 Acts, ch 1193, §146, 149; 2013 Acts, ch 70, §18 – 20; 2013 Acts, ch 90, §257; 2013 Acts, ch 110, §4; 2014 Acts, ch 1093, §1; 2014 Acts, ch 1128, §1; 2015 Acts, ch 109, §5, 75; 2015 Acts, ch 138, §105, 161, 162; 2018 Acts, ch 1161, §22; 2019 Acts, ch 152, §53; 2019 Acts, ch 165, §18

Referred to in §123.30, 321.31, 321.40, 421.17A, 421.17B, 421.30, 422.20, 422.72, 422.75, 441.47, 443.22, 602.8102(58)

Joint annual report by the economic development authority and the department of revenue to the general assembly due by November 1, detailing financial assistance awarded to a person during the prior fiscal year by the authority; 2018 Acts, ch 1169, §4; 2019 Acts, ch 154, §5

Subsection 17 amended

NEW subsection 35

421.17A Administrative levy against accounts.

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

a. *"Account"* means "account" as defined in section 524.103, or the savings or deposits of a member received or being held by a credit union or a savings association, or certificates of deposit. *"Account"* also includes deposits held by an agent, a broker-dealer, or an issuer as defined in section 502.102. However, *"account"* does not include amounts held by a financial institution as collateral for loans extended by the financial institution.

b. *"Bank"* means "bank", "insured bank", and "state bank" as these are defined in section 524.103.

c. *"Credit union"* means "credit union" as defined in section 533.102.

d. *"Facility"* means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

e. *"Financial institution"* includes a bank, credit union, or savings association. *"Financial institution"* also includes an institution which holds deposits for an agent, broker-dealer, or an issuer as defined in section 502.102.

f. *"Obligor"* means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

g. *"Working days"* means Monday through Friday, excluding the holidays specified in section 1C.2, subsection 1.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or being collected by the state provided that any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative levy under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers, employees, or representatives to pursue any other remedy provided by law.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded by a financial institution under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the state.

3. *Notice of intent to obligor.* The facility may proceed under this section only if twenty days' notice has been provided by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section and of the facility's intention to use the levy process. The twenty days' notice period shall not be required if the facility determines that the collection of past due amounts would be jeopardized.

4. *Verification of accounts and immunity from liability.*

a. The facility may contact a financial institution to obtain verification of the account number, the names and social security numbers listed for the account, and the account balance of an account held by an obligor. Contact with a financial institution may be by telephone or by written communication. The financial institution may require positive voice recognition and may require the telephone number of the authorized person from the facility before releasing an obligor's account information by telephone.

b. The financial institution is immune from any civil or criminal liability which might otherwise be incurred or imposed for information released by the financial institution to the facility pursuant to this section.

c. The financial institution or the facility is not liable for the cost of any early withdrawal penalty of an obligor's certificate of deposit.

5. *Administrative levy — notice to financial institution.*

a. If an obligor is subject to this section, the facility may initiate an administrative action to levy against an account of the obligor.

b. The facility shall send a notice to the financial institution with which the account is placed, directing that the financial institution forward all or a portion of the moneys in the obligor's account to the facility.

c. The notice to the financial institution shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frame which the financial institution must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) The telephone number of the agent for the facility initiating the action.

6. *Administrative levy — notice of initiation of action to obligor and other account holders.*

a. The facility may administratively initiate an action to seize one or more accounts of an obligor who is subject to this section and section 421.17, subsection 27.

b. The facility shall notify an obligor subject to this section. The notice shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have an account at the financial institution.

(3) A statement that pursuant to the provisions of this section, the obligor's account is subject to seizure and the financial institution is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the financial institution, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the state by the obligor.

(5) The prescribed time frames the financial institution must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) The telephone number of the agent for the facility initiating the action.

c. The facility shall forward the notice of initiation of action to the obligor by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph *"b"*.

d. The facility shall notify any other party known to have an interest in the account. The notice shall contain all of the following:

(1) The name of the obligor.

(2) The name of the financial institution.

(3) A statement that the account in which the other party is known to have an interest is subject to seizure.

(4) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the party known to have an interest.

(5) The address of the facility and the name of the obligor who also has an interest in the account.

(6) The telephone number of the agent for the facility initiating the action.

e. The facility shall forward the notice to the other party known to have an interest by regular mail within two working days of sending the notice to the financial institution pursuant to subsection 5, paragraph *"b"*.

7. *Responsibilities of financial institution.* Upon receipt of a notice under subsection 5, paragraph *"b"*, the financial institution shall do all of the following:

a. Immediately encumber funds in any account in which the obligor has an interest to the extent of the debt indicated in the notice from the facility.

b. No sooner than fifteen days, and no later than twenty days from the date the financial institution receives the notice under subsection 5, paragraph *"b"*, unless notified by the facility of a challenge by the obligor or an account holder of interest, forward the moneys encumbered to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The financial institution may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the state by the obligor. If insufficient moneys are available in the debtor's account to cover the fee and the amount in the notice, the institution may deduct the

fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the state shall be reduced by the fee amount.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor or by an account holder of interest. Reviews by the facility under this section are not subject to chapter 17A.

b. The person challenging the action shall submit a written challenge to the person identified as the agent for the facility in the notice, within ten days of the date of the notice of initiation of the levy.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative levy with the challenging party within ten days of receipt of the challenge. If the challenging party is not available for the review on the scheduled date, the review shall take place without the challenging party being present. Information in favor of the challenging party shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the state shall be considered as a reason to dismiss or modify the action.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the state, the facility shall notify the financial institution that the administrative levy has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the state is less than the amount indicated in the notice, the facility shall provide a notice to the financial institution of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the financial institution shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative levy.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the challenging party by regular mail and notify the financial institution to forward the moneys pursuant to the administrative levy.

f. The challenging party shall have the right to file an action for wrongful levy in district court within thirty days of the date of the notice in paragraph "*e*", either in the county where the obligor or the party known to have an interest in the account resides or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

g. Recovery under this section is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the levy can be raised in a challenge to an administrative action under this subsection.

95 Acts, ch 194, §10, 12; 96 Acts, ch 1034, §34; 96 Acts, ch 1079, §11; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §5 – 10; 2007 Acts, ch 174, §93; 2008 Acts, ch 1031, §113; 2012 Acts, ch 1017, §79 – 81

See also chapter 252I pertaining to collection of child support payments

421.17B Administrative wage assignment cooperative agreement.

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

a. "*Employer*" means any person or entity that pays an obligor to do a specific task. "*Employer*" only includes such a person or entity in an employer-employee relationship and does not include an obligor acting as a contractor, distributor, agent, or in any representative capacity in which the obligor receives any form of consideration.

b. "*Employment*" means the performance of personal services for another. "*Employment*" only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.

c. *"Facility"* means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

d. *"Obligor"* means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

e. *"Wage"* means any form of compensation due to an obligor. *"Wage"* includes, but is not limited to, wages, salary, bonus, commission, or other payment directly or indirectly related to employment. If a wage is assigned to the facility, *"wage"* only includes a payment in the form of money.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or the attorney general shall be construed to be an election on the part of the state or any of its officers or representatives to pursue any other remedy provided by law.

b. An obligor is subject to this section if the obligor's debt is being collected by the facility.

c. Any amount forwarded to the facility by an employer under this section shall not exceed the delinquent or accrued amount of the obligor's debt being collected by the facility.

3. *Notice of intent to the obligor.*

a. (1) The facility may proceed under this section only if twenty days' notice has been provided by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneously with the remainder of or in lieu of the obligor's compensation due from the employer.

(2) The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or more of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers from whom an assignment is sought.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) The telephone number of the agent for the facility initiating the action.

4. *Verification of employment and immunity from liability.*

a. The facility may contact an employer to obtain verification of employment, and any specific information from the employer that the facility needs to initiate, effectuate, or maintain collection of the obligation. Contact with an employer may be by telephone, fax, or by written communication. The employer may require proof of authority from the person

from the facility and the telephone number of the authorized person from the facility before releasing an obligor's employment information by telephone.

b. The employer is immune from any civil or criminal liability for information released by the employer to the facility pursuant to this section.

5. *Costs.* The facility is not liable for any costs incurred or imposed for initiating, effectuating, or maintaining an administrative wage assignment under this section. Such costs will be the sole responsibility of the obligor and will be added to the amount to be collected by the facility.

6. *Administrative wage assignment — notice to the employer.*

a. If an obligor is subject to this section, the facility may initiate an administrative wage assignment to have compensation due the obligor to be assigned by the employer to the facility up to the amount of the full debt to be collected by the facility.

b. The facility shall send a notice to the employer within fourteen days of sending notice of the wage assignment to the obligor. The notice shall inform the employer of the amount to be assigned to the facility from each wage, salary, or payment period that is due the obligor. The facility may receive assignment of up to one hundred percent of the obligor's disposable income, salary, or payment for any given period until the full obligation to the facility is paid in full.

c. The notice to the employer shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to be employed by the employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages are subject to assignment and the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frame the employer must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) The telephone number of the agent for the facility initiating the action.

7. *Responsibilities of employer.* Upon receipt of the notice of wage assignment from the facility, the employer shall do all of the following:

a. Immediately give effect to the wage assignment and hold compensation which the obligor has owing to the extent of the debt indicated in the notice from the facility.

b. No sooner than ten days, and no later than twenty days from the date the employer receives the notice of wage assignment, unless notified by the facility of a challenge of the wage assignment by the obligor, the employer shall begin forwarding the obligor's compensation, to the extent required in the notice, to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The employer may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the facility from the obligor. If insufficient moneys are available from the obligor's compensation to cover the fee and the amount in the notice, the employer may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the facility shall be reduced by the fee amount. However, if the employer can present evidence to the facility that the employer's costs were in excess of twenty-five dollars and that such costs were necessary and reasonable, then the employer may impose a fee in excess of the twenty-five dollar fee limit.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A.

b. The obligor challenging the administrative wage assignment shall submit a written

challenge to the person identified as the agent for the facility in the notice, within ten days of the date of the notice of initiation of the assignment.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative wage assignment with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the facility, the facility shall notify the employer that the administrative wage assignment has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the facility is less than the amount indicated in the notice, the facility shall provide a notice to the employer of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the employer shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative wage assignment.

(3) Any moneys received by the facility in excess of the amount owed to or to be collected by the facility shall be returned to the obligor.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the obligor by regular mail and notify the employer to forward the moneys pursuant to the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

g. Recovery under this subsection is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the assignment can be raised in a challenge to an administrative action under this subsection.

9. *Validity and duration of a wage assignment notice.*

a. A notice of wage assignment given to the obligor is effective without the serving of another notice until the earliest of either of the following:

(1) The debt owed to the facility is paid in full.

(2) The obligor receives notice that the wage assignment shall cease.

b. Cessation of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

2002 Acts, ch 1151, §2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §11 – 16; 2011 Acts, ch 25, §143

421.18 Duties of public officers and employees.

It shall be the duty of all public officers and employees of the state and local governments to give to the director of revenue information in their possession relating to taxation when required by the director, and to cooperate with and aid the director's efforts to secure a fair, equitable, and just enforcement of the taxation and revenue laws.

[C31, 35, §6943-c28; C39, §**6943.027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.18]
99 Acts, ch 151, §3, 89; 2003 Acts, ch 145, §286
Referred to in §162.2A

421.19 Counsel — disclosures authorized.

1. It shall be the duty of the attorney general and of the county attorneys in their respective counties to commence and prosecute actions, prosecutions, and complaints, when so directed by the director of revenue and to represent the director in any litigation arising from the discharge of the director's duties.

2. If the department has information that indicates a taxpayer intentionally filed a false claim, affidavit, return, or other information with intent to evade tax or to obtain a refund, credit, or other benefit from the department, the department may notify federal, state, or local law enforcement and may disclose state returns, state return information, state investigative or audit information, or any other state information to such law enforcement, notwithstanding sections 422.20 and 422.72.

3. Notwithstanding sections 422.20 and 422.72, the department may disclose state returns, state return information, state investigative or audit information, or any other state information under this section.

[C31, 35, §6943-c29; C39, §**6943.028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.19]
2003 Acts, ch 145, §286; 2018 Acts, ch 1161, §23
Referred to in §422.20, 422.72
Assistant attorney general assigned, §13.5

421.20 Actions.

1. The director of revenue may bring actions of mandamus or injunction or any other proper actions in the district court to compel the performance of any order made by the director or to require any board or any other officer or person to perform any duty required by this chapter. The director shall commence an action only in the district court in the county in which the defendant or defendants in the action perform their official duties.

2. Upon the filing of an action in the county required by this section the director may move to change the action to another county, and the motion shall be granted upon a showing of good cause. As used in this section, good cause shall mean those grounds for change specified in rule of civil procedure 1.801; however, the director shall not be required to submit affidavits of disinterested persons in order to prevail in the motion.

[C31, 35, §6943-c30; C39, §**6943.029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.20]
94 Acts, ch 1107, §25; 2003 Acts, ch 145, §286
Garnishment proceedings for collection of tax, §626.29 – 626.31

421.21 Administration of oaths.

1. The director of revenue, or the deputies and other employees of the department when duly authorized by the director, shall have the power to administer all oaths authorized and required under the provisions of this chapter.

2. Each county treasurer, each deputy treasurer, and each automobile clerk of each county treasurer's office shall have the power to administer all oaths authorized and required by the director in connection with the issuance in this state of an original certificate of registration for motor vehicles and trailers and concerning the collection of, or exemption from, use tax thereon. The personal signature of the person administering such an oath shall be subscribed to the jurat thereof and the seal of the county treasurer shall be affixed thereto.

[C31, 35, §6943-c31; C39, §**6943.030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.21]
2003 Acts, ch 145, §286
Referred to in §331.553

421.22 Service of orders.

Any sheriff or other person may serve any subpoena or order issued under the provisions of this chapter.

[C31, 35, §6943-c32; C39, §**6943.031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.22]
Referred to in §331.652

421.23 Fees and mileage.

The fees and mileage of witnesses attending any hearing of the department, including contested case hearings, pursuant to any subpoena, shall be the same as those of witnesses in civil cases in district court.

[C31, 35, §6943-c33; C39, §**6943.032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §421.23]
94 Acts, ch 1165, §7
Civil case fees and mileage, §622.69 – 622.75

421.24 Reciprocal interstate tax enforcement.

1. At the request of the director the attorney general may bring suit in the name of this state, in the appropriate court of any other state to collect any tax legally due in this state, and any political subdivision of this state or the appropriate officer thereof, acting in its behalf, may bring suit in the appropriate court of any other state to collect any tax legally due to such political subdivision.

2. The courts of this state shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or any political subdivision thereof, which extends a like comity to this state, and the duly authorized officer of any such state or a political subdivision thereof may sue for the collection of such tax in the courts of this state. A certificate by the secretary of state of such other state that an officer suing for the collection of such a tax is duly authorized to collect the same shall be conclusive proof of such authority.

3. *a.* For the purposes of this section, the words *"tax"* and *"taxes"* shall include interest and penalties due under any taxing statute, and liability for such interest or penalties, or both, due under a taxing statute of another state or a political subdivision thereof, shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such interest or penalties, or both, due under a taxing statute of this state or a political subdivision thereof.

b. The courts of this state may not enforce interest rates or penalties on taxes of any other state which exceed the interest rates and penalties imposed by the state of Iowa for the same or a similar tax.

[C66, 71, 73, 75, 77, 79, 81, §421.24]
2013 Acts, ch 30, §85

421.25 Professional appraisers employed.

The director shall employ professional appraisers to assist county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors and assist the director in equalizing property values in the state. The department shall, upon request, provide technical assistance to county and city assessors in assessing and valuing property required to be assessed and valued by county and city assessors.

[C73, 75, 77, 79, 81, §421.25]

421.26 Personal liability for tax due.

If a licensee or other person under section 452A.65, a retailer or purchaser under chapter 423A, 423B, 423C, 423D, or 423E, or section 423.14, 423.14A, 423.29, 423.31, 423.32, or 423.33, or a user under section 423.34, or a permit holder or licensee under section 453A.13, 453A.16, or 453A.44 fails to pay a tax under those sections when due, an officer of a corporation or association, notwithstanding section 489.304, a member or manager of a limited liability company, or a partner of a partnership, having control or supervision of or the authority for remitting the tax payments and having a substantial legal or equitable interest in the ownership of the corporation, association, limited liability company, or partnership, who has intentionally failed to pay the tax is personally liable for the payment of the tax, interest, and penalty due and unpaid. However, this section shall not apply to taxes on accounts receivable. The dissolution of a corporation, association, limited liability

company, or partnership shall not discharge a person's liability for failure to remit the tax due.

86 Acts, ch 1007, §19; 90 Acts, ch 1232, §5; 94 Acts, ch 1165, §8; 2003 Acts, 1st Ex, ch 2, §181, 205; 2007 Acts, ch 186, §5; 2008 Acts, ch 1162, §134, 154, 155; 2018 Acts, ch 1161, §154, 229

421.27 Penalties.

1. *Failure to timely file a return or deposit form.* If a person fails to file with the department on or before the due date a return or deposit form there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax shown due or required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b. Those taxpayers who are required to file quarterly returns, or monthly or semimonthly deposit forms may have one late return or deposit form within a three-year period. The use of any other penalty exception will not count as a late return or deposit form for purposes of this exception.

c. The death of a taxpayer, death of a member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, of a member of the immediate family of the taxpayer, or of the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or other act of God.

f. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

g. Reliance upon results in a previous audit was a direct cause for the failure to file where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

h. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

l. If the availability of funds in payment of tax required to be made through electronic funds transfer is delayed and the delay of availability is due to reasons beyond the control of the taxpayer. *"Electronic funds transfer"* means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal telephone, computer, magnetic tape, or similar device for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

m. The failure to file a timely inheritance tax return resulting solely from a disclaimer that required the personal representative to file an inheritance tax return. The penalty shall be waived if such return is filed and any tax due is paid within the later of nine months from the date of death or sixty days from the delivery or filing of the disclaimer pursuant to section 633E.12.

n. That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

2. *Failure to timely pay the tax shown due, or the tax required to be shown due, with the filing of a return or deposit form.* If a person fails to pay the tax shown due or required to be shown due, on a return or deposit form on or before the due date there shall be added to the tax shown due or required to be shown due a penalty of five percent of the tax due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date of the tax.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within sixty days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the internal revenue service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

i. That an Iowa inheritance tax return is filed for an estate within the later of nine months from the date of death or sixty days from the filing of a disclaimer by the beneficiary of the estate refusing to take the property or right or interest in the property.

3. *Audit deficiencies.* If any person fails to pay the tax required to be shown due with the filing of a return or deposit and the department discovers the underpayment, there shall be added to the tax required to be shown due a penalty of five percent of the tax required to be shown due. The penalty, if assessed, shall be waived by the department upon a showing of any of the following conditions:

a. At least ninety percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal internal revenue service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. Under rules prescribed by the director, the taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form.

4. *Willful failure to file or deposit.*

a. In case of willful failure to file a return or deposit form with the intent to evade tax, or in case of willfully filing a false return or deposit form with the intent to evade tax, in lieu of the penalties otherwise provided in this section, a penalty of seventy-five percent shall be added to the amount shown due or required to be shown as tax on the return or deposit form. If penalties are applicable for failure to file a return or deposit form and failure to pay the tax shown due or required to be shown due on the return or deposit form, the penalty provision for failure to file shall be in lieu of the penalty provisions for failure to pay the tax shown due or required to be shown due on the return or deposit form, except in the case of willful failure to file a return or deposit form or willfully filing a false return or deposit form with intent to evade tax.

b. The penalties imposed under this subsection are not subject to waiver.

5. *Failure to remit on extension.* If a person fails to remit at least ninety percent of the tax required to be shown due by the time an extension for further time to file a return is made, there shall be added to the tax shown due or required to be shown due a penalty of ten percent of the tax due.

6. *Improper receipt of payments.* A person who makes an erroneous application for refund, credit, reimbursement, rebate, or other payment shall be liable for any overpayment received or tax liability reduced plus interest at the rate in effect under section 421.7. In addition, a person who willfully makes a false or frivolous application for refund, credit, reimbursement, rebate, or other payment with intent to evade tax or with intent to receive a refund, credit, reimbursement, rebate, or other payment to which the person is not entitled is guilty of a fraudulent practice and is liable for a penalty equal to seventy-five percent of the refund, credit, reimbursement, rebate, or other payment being claimed. Payments, penalties, and interest due under this subsection may be collected and enforced in the same manner as the tax imposed.

7. *Failure to use required form.* If a person fails to remit payment of taxes in the form required by the rules of the director, there shall be added to the amount of the tax a penalty of five percent of the amount of tax shown due or required to be shown due. The penalty imposed by this subsection shall be waived if the taxpayer did not receive notification of the requirement to remit tax payments electronically or if the electronic transmission of the payment was not in a format or by means specified by the director and the payment was made before the taxpayer was notified of the requirement to remit tax payments electronically.

86 Acts, ch 1007, §20; 89 Acts, ch 6, §3; 90 Acts, ch 1172, §6, 7, 14 – 16; 90 Acts, ch 1232, §6, 29; 91 Acts, ch 97, §45; 91 Acts, ch 159, §4 – 6; 94 Acts, ch 1165, §9; 96 Acts, ch 1167, §2, 8; 2007 Acts, ch 134, §1, 28; 2007 Acts, ch 186, §6, 7; 2010 Acts, ch 1193, §124; 2018 Acts, ch 1161, §17, 20

Referred to in §422.16, 422.25, 423.31, 423.40, 425.29, 437A.13, 437B.9, 450.63, 452A.65, 453A.28, 453A.46

Legislative intent regarding 2018 amendment; 2018 Acts, ch 1161, §19

421.28 Exceptions to successor liability.

The immediate successor to a licensee's or retailer's business or stock of goods under chapter 423A or 423B, or section 423.33 or 452A.65, is not personally liable for the amount of delinquent tax, interest, or penalty due and unpaid if the immediate successor shows that the purchase of the business or stock of goods was made in good faith that no delinquent tax, interest, or penalty was due and unpaid. For purposes of this section the immediate successor shows good faith by evidence that the department had provided the immediate successor with a certified statement that no delinquent tax, interest, or penalty is unpaid, or that the immediate successor had taken in good faith a certified statement from the licensee, retailer, or seller that no delinquent tax, interest, or penalty is unpaid. When requested to do so by a person with whom the licensee or retailer is negotiating the sale of the business or stock of goods, the director of revenue shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid delinquent tax, interest, or penalty due

by the licensee or the retailer. The giving of the information under this circumstance is not a violation of section 422.20, 422.72, or 452A.63.

86 Acts, ch 1007, §21; 90 Acts, ch 1232, §7; 92 Acts, 2nd Ex, ch 1001, §236; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §182, 205

Referred to in §422.20, 422.72, 423.33, 452A.65

421.29 Registrations.

For purposes of the provisions of the Code which are administered by the department, *"permit"* or *"license"* includes registration. Unless otherwise specifically provided, the director shall determine by rule the circumstances for which registrations shall be issued and displayed.

94 Acts, ch 1165, §10

421.30 Reassessment expense fund.

1. A reassessment expense fund is created in the office of the treasurer of state for the purpose of providing loans to a city and county conference board for conducting reassessments of property. There is appropriated to the reassessment expense fund from the general fund of the state from any unappropriated funds in the general fund of the state such funds as are necessary to carry out the provisions of this section, section 421.17, subsection 19, and section 441.19, subsection 2, subject to the approval of the director of revenue. Repayment of loans shall be credited to the fund.

2. The director of revenue shall maintain and administer the reassessment expense fund created pursuant to subsection 1.

3. Within sixty days of the receipt of an order of the director to reassess all or part of the property in an assessing jurisdiction, the conference board and assessor of the assessing jurisdiction shall submit to the director a detailed proposal for complying with the order. The proposal shall contain specifications for the completion of the reassessment project, the financial condition of the assessing jurisdiction, and any other information deemed necessary by the director.

4. Each proposal submitted pursuant to subsection 3 shall be reviewed by the director to determine if the proposal will result in compliance with the reassessment order. The director shall approve or disapprove each proposal and shall notify the appropriate conference board and assessor of the decision. If the director determines the proposal will not result in compliance with the reassessment order, the notice shall contain the reasons for the director's determination and an explanation as to how the proposal shall be corrected in order to be approved by the director.

5. If the notice to the conference board and the assessor states that the director has determined that the proposal will result in compliance with the reassessment order, the conference board may, if it lacks the financial resources to comply in all respects with the reassessment order, file with the director an application for a loan from the reassessment expense fund. The loan to the conference board may be for all or part of the funds required to comply with the reassessment order. The director shall approve, amend and approve, or reject each application and notify the conference board and assessor of its decision. If the application is amended or rejected, the notice shall contain the director's reasons for the amendment or rejection.

6. Upon the director's approval of the advancement of funds from the reassessment expense fund, the director shall certify to the appropriate conference board and assessor a schedule for disbursing the loan to the assessing jurisdiction's assessment expense fund authorized by section 441.16. The schedule shall provide for the disbursement of funds over the period of the reassessment project, except that ten percent of the funds shall not be disbursed until the project is completed. The conference board shall at its next opportunity levy pursuant to section 441.16 sufficient funds for purposes of repaying the loan made from the reassessment expense fund. The amount levied shall be sufficient to repay the loan in semiannual installments during the course of the reappraisal project as specified by a repayment schedule established by the director. The repayment schedule shall provide for repayment of the loan not later than one year following the completion of the reassessment.

Semiannual repayments of the proceeds of the loan shall be made on or before December 1 and May 1 of each year.

7. Any reassessment of property ordered by the director, whether or not undertaken with funds provided in this section, shall be conducted by the assessor in accordance with the Iowa real property appraisal manual issued under authority of section 421.17, subsection 17, the assessment laws of this state, and any reassessment order issued by the director under authority of this chapter. The conference board may employ appraisers or other expert help to assist the assessor in completing the reassessment, except that no conference board receiving funds under this section shall enter into a contract for the reassessment of property until the board's proposal for completing the reassessment is approved. The director shall supervise the conduct of all reassessments of property and issue to the assessor or conference board such instructions, directives, or orders as are necessary to ensure compliance with the provisions of this section and the assessment laws of this state.

8. The assessor of each assessing jurisdiction receiving funds under this section shall submit to the director, in the form and manner prescribed by the director, reports showing the progress of the reassessment. If the director determines that a reassessment undertaken with funds provided in this section is not being conducted in accordance with the proposal submitted pursuant to subsection 3, the director shall notify the appropriate conference board and assessor of the director's determination. The notice shall contain an explanation as to how the deficiencies in the reassessment may be corrected. If the deficiencies noted by the director are not corrected within sixty days of the date the assessor and conference board are notified of their existence, the director shall suspend payments from the reassessment expense fund until the deficiencies have been corrected.

9. Funds obtained under this section shall be used only to conduct reassessments of property as approved and conducted pursuant to this section.

[C79, 81, §421.30]

86 Acts, ch 1245, §423; 2003 Acts, ch 145, §286; 2012 Acts, ch 1081, §1; 2013 Acts, ch 90, §101

421.31 through 421.45 Repealed by 2003 Acts, ch 145, §291. See §8A.502, 8A.506 – 8A.519.

421.46 Terminal liability health insurance fund. Transferred to §8A.460; 2017 Acts, ch 29, §168.

421.47 Tax agreements with Indian tribes.

1. *"Indian country"* means the Indian country as defined in 18 U.S.C. §1151, and includes trust land as defined by the United States secretary of the interior.

2. *a.* The department and the governing body of an Indian tribe may enter into an agreement to provide for the collection and distribution or refund by the department within Indian country of any tax or fee imposed by the state and administered by the department.

b. An agreement may also provide for the collection and distribution by the department of any tribal tax or fee imposed by tribal ordinance. The agreement may provide for the retention of an administrative fee by the department which fee shall be an agreed-upon percentage of the gross revenue of the tribal tax or fee collected.

3. An Act of Congress regulating the collection of state taxes and their remittance to the states shall preempt an agreement between the department and the governing body of an Indian tribe under this section to the extent such federal Act regulates the collection and remittance of a tax covered by the agreement.

4. An agreement between the department and the governing body of an Indian tribe under this section shall not preclude the negotiation of an amendment to such agreement, which conforms to an Act of Congress regulating the collection of state taxes and their remittance to the states.

2002 Acts, ch 1151, §4; 2011 Acts, ch 25, §143

421.48 Background checks.

An applicant for employment with the department of revenue shall be subject to a national criminal history check through the federal bureau of investigation. A contractor, vendor, employee, or any other individual performing work for the department of revenue, shall be subject to a national criminal history check through the federal bureau of investigation at least once every ten years. The department of revenue shall request the national criminal history check and shall provide the individual's fingerprints to the department of public safety for submission through the state criminal history repository to the federal bureau of investigation. The individual shall authorize release of the results of the national criminal history check to the department of revenue. The department of revenue shall pay the actual cost of the fingerprinting and national criminal history check, if any. The results of a criminal history check conducted pursuant to this section shall not be considered a public record under chapter 22.

2016 Acts, ch 1128, §1, 16

421.49 through 421.59 Reserved.

421.60 Tax procedures and practices.

1. *Short title.* This section shall be known and may be cited as the *"Tax Procedures and Practices Act"*.

2. *Procedures and practices.*

a. (1) The department shall prepare a statement which sets forth in simple and nontechnical terms all of the following:

(a) The rights of a taxpayer and the obligations of the department during an audit.

(b) The procedures by which a taxpayer may appeal an adverse decision of the department, including administrative and judicial appeals.

(c) The procedures which the department may use in enforcing the tax laws, including notices of assessment and jeopardy assessment and the filing and enforcement of liens.

(2) The statement prepared in accordance with this paragraph shall be distributed by the department to all taxpayers at the first contact by the department with respect to the determination or collection of any tax, except in the case of simply providing tax forms.

b. The department shall furnish to the taxpayer, before or at the time of issuing a notice of assessment or denial of a refund claim, an explanation of the reasons for the assessment or refund denial. An inadequate explanation shall not invalidate the notice. For purposes of this section, an explanation by the department shall be sufficient where the amount of tax, interest, and penalty is stated together with an attachment setting forth the computation of the tax by the department.

c. (1) If the notice of assessment or denial of a claim for refund relates to a tax return filed pursuant to section 422.14 or chapter 450 by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to that return, or if a power of attorney has been filed with the department by the taxpayer which designates an individual as an authorized representative of the taxpayer with respect to any tax that is included in the notice of assessment or denial of a claim for refund, a copy of the notice together with any additional information required to be sent to the taxpayer shall be sent to the authorized representative as well.

(2) If the department fails to mail a notice of assessment to the last known address of a taxpayer or fails to personally deliver such notice to a taxpayer, interest for the month such mailing or personal delivery fails to occur through the month of the correct mailing or personal delivery is waived.

(3) If the department fails to mail a notice of assessment or denial of a claim for refund to the taxpayer's last known address or fails to personally deliver such notice to a taxpayer and, if applicable, to the taxpayer's authorized representative, the time period to appeal the notice of assessment or a denial of a claim for refund is suspended until the notice or claim denial is correctly mailed or personally delivered, or in any event, for a period not to exceed one year, whichever is the lesser period.

(4) Collection activities, except where a jeopardy situation exists, shall be suspended and

the statute of limitations for assessment or collection of the tax shall be tolled during the period in which interest is waived.

d. A taxpayer is permitted to designate in writing the type of tax and tax periods to which any voluntary payment relates, provided that separate written instructions accompany the payment. This paragraph does not apply to jeopardy assessments and does not apply if the department has to enforce collection of the payment.

e. All Iowa taxes which are administered by the department and which result in a refund shall accrue interest at the rate in effect under section 421.7 from the first day of the second calendar month following the date of payment or the date the return upon which the refund is claimed was due to be filed, including any extensions, or was filed, whichever is the latest.

f. A taxpayer may appeal a refund claim to the director if a claim for refund has been filed and not denied by the department within six months of the filing of the claim. The filing of an appeal by a taxpayer shall not affect the ability of the department to examine and inspect a taxpayer's records.

g. A taxpayer may request in writing that a contested case proceeding be commenced by the department after a period of six months from the filing of a proper appeal by the taxpayer. The department shall file an answer within thirty days of receipt of the request and a contested case proceeding shall be commenced. In the case of an appeal of an assessment, failure to answer within the thirty-day time period and after a request has been made shall result in the suspension of interest from the time that the department was required to answer until the date that the department files its answer. In the case of an appeal of a denial of a refund, failure to answer within the thirty-day time period, and after a request has been made, shall result in the accrual of interest payable to the taxpayer at double the rate in effect under section 421.7 from the time the department was required to answer until the date that the department files its answer.

h. A taxpayer who has failed to appeal a notice of assessment to the department within the time provided by law may contest the assessment by paying the tax, interest, and penalty, which in the case of divisible taxes might not be the entire liability and by filing a refund claim within the time period provided for filing such claim. The filing of a refund claim allows the time period for which the refund is claimed to be open to examination and to be open to offset, to zero, based upon any issue associated with the type of tax for which the refund is claimed and which has not up to that time been resolved between the taxpayer and the department, irrespective of whether the period of limitations to issue a notice of assessment has expired. The department may make this offset at any time until the department grants or denies the refund.

i. The director may, at any time, abate any unpaid portion of assessed tax, interest, or penalties which the director determines is erroneous, illegal, or excessive. The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer.

j. The director shall adopt rules for setting times and places for taxpayer interviews and to permit any taxpayer to record the interviews.

k. If the determination that a return is incorrect is the result of an audit of the books and records of the taxpayer, the tax or additional tax, if any, shall be assessed and the notice of assessment to the taxpayer shall be given by the department within one year after the completion of the examination of the books and records.

l. The department shall annually report to the general assembly all areas of recurrent taxpayer noncompliance with rules or guidelines issued by the department and shall make recommendations concerning the noncompliance in the report.

m. (1) The director may abate unpaid state sales and use taxes and local sales and services taxes owed by a retailer in the event that the retailer failed to collect tax from the purchaser as a result of erroneous written advice issued by the department that was specially directed to the retailer by the department and the retailer is unable to collect the tax, interest, or penalties from the purchaser. Before the tax, interest, and penalties shall be abated on the basis of erroneous written advice, the retailer must present a copy of the retailer's request for written advice to the department and a copy of the department's reply. The department shall not maintain a position against the retailer that is inconsistent with the erroneous written advice,

except on the basis of subsequent written advice sent by the department to that retailer, or a change in state or federal law, a reported court case to the contrary, a contrary rule adopted by the department, a change in material facts or circumstances relating to the retailer, or the retailer's misrepresentation or incomplete or inadequate representation of material facts and circumstances in requesting the written advice.

(2) (a) The director shall abate the unpaid state sales and use taxes and any local sales and services taxes owed by a retailer where the retailer failed to collect the tax from the purchaser on the charges paid for access to on-line computer services as a result of erroneous written advice issued by the department regarding the taxability of charges paid for access to on-line computer services. To qualify for the abatement under this subparagraph, the erroneous written advice shall have been issued by the department prior to July 1, 1999, and shall have been specially directed to the retailer by the department.

(b) If an abatement of unpaid state sales and use taxes and any local sales and services taxes is granted to the retailer by the director pursuant to this subparagraph, the department is precluded from collecting from the purchaser any unpaid state sales and use taxes and any local sales and services taxes which were abated.

(3) The director shall prepare quarterly reports summarizing each case in which abatement of tax, interest, or penalties was made. However, the report shall not disclose the identity of the taxpayer. An abatement authorized by this paragraph to a retailer shall not preclude the department from proceeding to collect the liability from a purchaser, except as provided in subparagraph (2).

3. *Installment payments.* The department may permit the payment of a delinquent tax on a deferred basis where the equities indicate that a deferred payment agreement would be in the interest of the state and that without a deferred payment agreement the taxpayer would experience extreme financial hardship. A deferred payment agreement shall include applicable penalty and interest at the rate in effect under section 421.7 on the unpaid balance of the liability.

4. *Costs.*

a. A prevailing taxpayer in an administrative hearing or a court proceeding related to the determination, collection, or refund of a tax, penalty, or interest may be awarded reasonable litigation costs by the department or a court that are incurred subsequent to the issuance of the notice of assessment or denial of claim for refund in the proceeding, based upon the following:

(1) The reasonable expenses of expert witnesses.

(2) The reasonable costs of studies, reports, and tests.

(3) The reasonable fees of independent attorneys or independent accountants retained by the taxpayer.

(4) An award for reasonable litigation costs shall not exceed twenty-five thousand dollars per case.

b. An award under paragraph "*a*" shall not be made with respect to a portion of the proceedings during which the prevailing taxpayer has unreasonably protracted the proceedings.

c. For purposes of this section, "*prevailing taxpayer*" means a taxpayer who establishes that the position of the state was not substantially justified and who has substantially prevailed with respect to the amount in controversy or has substantially prevailed with respect to the most significant issue or set of issues presented. The determination of whether a taxpayer is a prevailing taxpayer is to be determined in accordance with chapter 17A.

d. An award for reasonable litigation costs shall be paid to the taxpayer from the general fund of the state. For purposes of this subsection, there is appropriated from the general fund of the state an amount sufficient to pay each taxpayer entitled to an award under this subsection.

e. This subsection does not apply to the tax imposed by chapter 453B if the department relied upon information provided or action conducted by federal, state, or local officials or law enforcement agencies.

5. *Damages.* Notwithstanding section 669.14, subsection 2, if the director or an employee of the department recklessly or intentionally disregards any tax law or rule in

the collection of any tax, or if the director or an employee of the department knowingly or negligently fails to release a lien against or bond on a taxpayer's property, the taxpayer may file a claim in accordance with the Iowa tort claims Act, chapter 669, for damages against the state. However, the damages shall be limited to the actual direct economic damages suffered by the taxpayer as a proximate result of the actions of the director or employee, plus costs, reduced by the amount of such damages and costs as could reasonably have been mitigated by the taxpayer. The Iowa tort claims Act shall be the exclusive remedy for recovering damages resulting from such actions. This subsection does not apply to the tax imposed by chapter 453B.

6. *Burden of proof.* The burden of proof with respect to assessments or denial of refunds in contested case proceedings shall be allocated as follows:

a. With respect to the issue of fraud with intent to evade tax, the burden of proof is upon the department. The burden of proof must be carried by clear and convincing evidence.

b. In a case where the assessment was not made within six years after the return became due, excluding any extension of time for filing, the burden of proof shall be upon the department. However, the burden of proof shall be upon the taxpayer where the determination of the department is the result of the final disposition of a matter between the taxpayer and the internal revenue service or where the taxpayer and the department have signed a waiver of the statute of limitations.

c. In all other cases, the burden of proof shall be upon the taxpayer who challenges the assessment or refund denial, except that, with respect to any new matter or affirmative defense, the burden of proof shall be upon the department. For purposes of this provision, "*new matter*" means an adjustment not set forth in the computation of the tax in the assessment or refund denial as distinguished from a new reason for the assessment or refund denial. *"Affirmative defense"* is one resting on facts not necessary to support the taxpayer's case.

7. *Employee evaluations.* It is unlawful to base a performance evaluation for an employee of the department on the total amount of assessments issued by that employee.

8. *Refund of untimely assessed taxes.* Notwithstanding any other refund statute, if it appears that an amount of tax, penalty, or interest has been paid to the department after the expiration of the statute of limitations for the department to determine and assess or collect the amount of such tax due, then the amount paid shall be credited against another tax liability of the taxpayer which is outstanding, if the statute of limitations for assessment or collection of that other tax has not expired or the amount paid shall be refunded to the person or, with the person's approval, credited to tax to become due. An application for refund or credit under this subsection must be filed within one year of payment. This subsection shall not be construed to prohibit the department from offsetting the refund claim against any tax due, if the statute of limitations for that other tax has not expired. However, any tax, penalty, or interest due for which a notice of assessment was not issued by the department but which was voluntarily paid by a taxpayer after the expiration of the statute of limitations for assessment shall not be refunded.

9. *No applicability to real property.* The provisions of this section do not apply to the assessment and taxation of real property.

10. *Illegal tax.* A tax shall not be collected by the department if it is prohibited under the Constitution of the United States or laws of the United States, or under the Constitution of the State of Iowa.

94 Acts, ch 1133, §1, 16; 95 Acts, ch 83, §2; 2000 Acts, ch 1189, §28, 34; 2002 Acts, ch 1122, §2, 4; 2008 Acts, ch 1119, §6; 2008 Acts, ch 1184, §53; 2010 Acts, ch 1138, §52; 2011 Acts, ch 25, §143; 2014 Acts, ch 1076, §15; 2015 Acts, ch 109, §6, 75; 2018 Acts, ch 1161, §3, 15, 16

Referred to in §15.335, 422.10, 422.16, 422.25, 422.28, 422.33, 422.75, 422.91, 423.4, 423.33, 450.94, 452A.65

2018 amendment to subsection 2, paragraph e, applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

421.61 Unconstitutionally withheld tax benefits.

If a provision in the Code grants a tax benefit to taxpayers that is unconstitutionally withheld from other taxpayers as expressed in an Iowa attorney general's opinion based upon decisions of the Iowa supreme court, United States supreme court, or other courts

of competent jurisdiction, the tax benefit shall also be granted to the adversely affected taxpayers as if the unconstitutional provision did not exist.

97 Acts, ch 158, §10
Referred to in §421.64

421.62 Inclusion of preparer tax identification number.

1. For purposes of this section, unless the context otherwise requires:

a. *"Department"* means the Iowa department of revenue.

b. *"PTIN"* means a preparer tax identification number, as defined in Internal Revenue Service Notice 2011-6.

c. (1) *"Tax return preparer"* means any individual who, for a fee or other consideration, prepares ten or more tax returns or claims for refund under chapter 422 during a calendar year, or who assumes final responsibility for completed work on such tax returns or claims for refund under chapter 422 on which preliminary work has been done by another individual.

(2) *"Tax return preparer"* does not include any of the following:

(a) An individual licensed as a certified public accountant or a licensed public accountant under chapter 542 or a similar law of another state.

(b) An individual admitted to practice law in this state or another state.

(c) An enrolled agent enrolled to practice before the federal internal revenue service pursuant to 31 C.F.R. §10.4.

(d) A fiduciary of an estate, trust, or individual, while functioning within the fiduciary's legal duty and authority with respect to that individual, or that estate or trust or its testator, trustor, grantor, or beneficiaries.

(e) An individual who prepares the tax returns of the individual's employer, while functioning within the individual's scope of employment with the employer.

(f) An individual employed by a local, state, or federal government agency, while functioning within the individual's scope of employment with the government agency.

(g) An employee of a person described in subparagraph (1), if the employee provides only clerical or other comparable services and does not sign tax returns.

d. *"Willful or reckless"* means the same as *"willful or reckless conduct"* defined in section 6694(b)(2) of the Internal Revenue Code.

2. *a.* On or after January 1, 2020, a tax return preparer is required to include the tax return preparer's PTIN on any tax return or claim for refund prepared by the tax return preparer and filed under chapter 422.

b. (1) A tax return preparer who violates paragraph *"a"* shall pay a civil penalty in the amount of fifty dollars for each violation unless the tax return preparer shows that the failure was reasonable under the circumstances and not willful or reckless conduct.

(2) The maximum aggregate penalty imposed upon a tax return preparer pursuant to this subsection shall not exceed twenty-five thousand dollars during any calendar year.

(3) The penalty shall be paid to the department.

3. The department shall draft relevant tax return forms to provide the space necessary for a tax return preparer to include a PTIN.

4. This section shall not be construed to limit the authority of the department to require any individual preparing a tax return to include the individual's PTIN.

2019 Acts, ch 147, §1
Referred to in §421.63
NEW section

421.63 Authority to enjoin certain tax return preparers.

1. For purposes of this section, unless the context otherwise requires:

a. *"Department"* means the Iowa department of revenue.

b. *"State"* means any state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

c. *"Tax return preparer"* means the same as defined in section 421.62.

d. *"Unreasonable position"* means the same as defined in section 6694(a)(2) of the Internal Revenue Code.

e. *"Willful or reckless"* means the same as *"willful or reckless conduct"* defined in section 6694(b)(2) of the Internal Revenue Code.

2. The director of the department may seek a temporary or permanent injunction from any court of competent jurisdiction to prevent a tax return preparer from engaging in further conduct described in subsection 3.

3. A tax return preparer may be temporarily or permanently enjoined from engaging in activity described in section 421.62, subsection 1, paragraph *"c"*, if the court finds that a tax return preparer has continually engaged in the following conduct and that injunctive relief is necessary to prevent the recurrence of such conduct:

a. Preparation of any income tax return or claim for refund that includes an unreasonable position that understates the taxpayer's liability.

b. Preparation of any income tax return or claim for refund that includes a willful or reckless understatement of the taxpayer's liability.

c. Failure to do any of the following:

(1) Furnish a copy of an income tax return or claim for refund, when required.

(2) Sign the income tax return or claim for refund, when required.

(3) Furnish an identifying number, when required.

(4) Retain a copy of the income tax return, when required.

(5) Complete continuing education requirements as required pursuant to section 421.64.

(6) Use diligence in determining eligibility for tax benefits, when subject to due diligence requirements imposed by department rules.

d. Negotiating on behalf of a taxpayer the issuance of a check by the department, without the permission of the taxpayer.

e. Engaging in conduct subject to a criminal penalty under this chapter.

f. Misrepresenting the eligibility of the preparer to practice before the department or otherwise misrepresenting the experience or education of the preparer.

g. Guaranteeing the payment of any income tax refund or the allowance of any income tax credit.

h. Engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the tax laws of this state.

4. The fact that the person has been enjoined from preparing tax returns or claims for refund for the United States or any other state, in the five years preceding the petition for an injunction, shall establish a prima facie case for an injunction to be issued pursuant to this section.

2019 Acts, ch 147, §2
NEW section

421.64 Tax return preparer — continuing education.

1. For purposes of this section, *"tax return preparer"* means the same as defined in section 421.61.

2. *a.* Beginning January 1, 2020, and every year thereafter, a tax return preparer shall complete a minimum of fifteen hours of continuing education courses on subject matters prescribed by the department of revenue, including two hours of continuing education on professional ethics. Each course shall be taken from an Internal Revenue Service approved provider of continuing education. A tax return preparer shall not engage in activity as such a preparer unless the preparer has completed, during the previous calendar year, a minimum of fifteen hours of continuing education courses prescribed by the department of revenue, including two hours of continuing education on professional ethics. For purposes of completing continuing education pursuant to this section, a new tax preparer shall not be required to complete continuing education prior to the first year of preparing returns.

b. A tax return preparer is required to retain records of continuing education completion.

2019 Acts, ch 147, §3
Referred to in §421.63
NEW section

421.65 through 421.69 Reserved.

421.70 Electronic commerce data collection. Repealed by 2002 Acts, ch 1161, §1.

421.71 Class actions — implied right of action — private cause of action immunity.

1. *Class actions prohibited.* No class action may be brought against the department, a taxpayer, or a person required to collect any tax imposed under this title, in any court, agency, or other adjudicative body, or in any other forum, based on any act or omission arising from or related to any provision of this title.

2. *No implied right of action.* Nothing in this title shall be construed as creating or providing an implied private right of action or any private common law claim against any taxpayer, or against any person required to collect any tax imposed under this title, in any court, agency, or other adjudicative body, or in any other forum. This subsection shall not apply to or otherwise limit any claim, action, mandate, power, remedy, or discretion of the department, or an agent or designee of the department.

3. *Private cause of action immunity for overpayment of certain taxes.*

a. A taxpayer, or any person required to collect taxes imposed under chapters 423, 423A, 423B, 423C, 423D, and 423G, shall be immune from any private cause of action arising from or related to the overpayment of taxes imposed under chapters 423, 423A, 423B, 423C, 423D, and 423G that are collected and remitted to the department.

b. Nothing in this subsection shall apply to or otherwise limit any of the following:

(1) Any claim, action, mandate, power, remedy, or discretion of the department, or an agent or designee of the department.

(2) A taxpayer's right to seek a refund from the department related to taxes imposed under chapters 423, 423A, 423B, 423C, 423D, and 423G that are collected from or paid by the taxpayer.

2018 Acts, ch 1161, §24, 28

CHAPTER 421A

DISCLOSURE OF INFORMATION IN PREPARATION OF TAX RETURNS

421A.1	Definitions.	421A.3	Engaged in business.
421A.2	Disclosure prohibited.	421A.4	Penalty.

421A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Person"* means any person, firm, corporation, association, partnership or an employee or agent of one of these.

2. *"Tax return"* means any federal, state, or local form required to be filled out, by or for a taxpayer, incident to the collection or refund of a tax.

3. *"Information"* for the purpose of this chapter shall include but not be limited to the name, address and statistical data of the taxpayer.

[C73, 75, 77, 79, 81, §423A.1]
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §421A.1

421A.2 Disclosure prohibited.

A person who obtains any information in the course of or arising out of the business of preparing or assisting in the preparation of a tax return of another person, shall not disclose any of the information obtained unless the disclosure is within any of the following:

1. Consented to in writing by the taxpayer in a separate document.
2. Expressly authorized by state or federal law.
3. Necessary to the preparation of the return.

4. Pursuant to court order.
[C73, 75, 77, 79, 81, §423A.2]
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §421A.2

421A.3 Engaged in business.
A person is engaged in the business of preparing income tax returns or assisting in preparing of returns if the person does any of the following:
1. Advertises, or gives publicity to the effect that the person prepares or assists others in the preparation of tax returns.
2. Prepares or assists others in the preparation of tax returns for compensation.
[C73, 75, 77, 79, 81, §423A.3]
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §421A.3

421A.4 Penalty.
A person who violates the provisions of this chapter shall upon conviction be guilty of an aggravated misdemeanor.
[C73, 75, 77, 79, 81, §423A.4]
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §421A.4

CHAPTER 421B

CIGARETTE SALES

Referred to in §669.14

This chapter not enacted as a part of this title;
transferred from chapter 551A in Code 1993

421B.1 Short title.
421B.2 Definitions.
421B.3 Sales at less than cost — penalties.
421B.4 Combination sales.
421B.5 Sales by a wholesaler to a wholesaler.
421B.6 Sales exceptions.
421B.7 Transactions permitted to meet lawful competition.
421B.8 Cost determined.
421B.9 Sales outside ordinary channels of business — effect.
421B.10 Injunction.
421B.11 Director of revenue — powers and duties.

421B.1 Short title.
This chapter shall be known and cited as the *"Iowa Unfair Cigarette Sales Act."*
[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.1]
C93, §421B.1

421B.2 Definitions.
When used in any part of this chapter, the following words, terms and phrases shall have the meaning ascribed to them except where the context clearly indicates a different meaning:
1. *"Basic cost of cigarettes"* shall mean whichever of one of the two following amounts is lower, less, in either case, all trade discounts and customary discounts for cash, plus one-half of the full face value of any stamps which may be required by any cigarette tax act of this state:
a. The true invoice cost of cigarettes to the wholesaler or retailer, as the case may be.
b. The lowest replacement cost of cigarettes to the wholesaler or retailer in the quantity last purchased.
2. *"Cigarettes"* shall mean and include any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated

or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

3. *a.* *"Cost to the retailer"* shall mean the basic cost of the cigarettes involved to the retailer plus the cost of doing business by the retailer as defined in this chapter.

b. The cost of doing business by the retailer is presumed to be eight percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

c. If any retailer in connection with the retailer's purchase of any cigarettes shall receive the discounts ordinarily allowed upon purchases by a retailer and in whole or in part discounts ordinarily allowed upon purchases by a wholesaler, the cost of doing business by the retailer with respect to the said cigarettes shall be, in the absence of proof of a lesser or higher cost of doing business, the sum of the cost of doing business by the retailer and, to the extent that the retailer shall have received the full discounts allowed to a wholesaler, the cost of doing business by a wholesaler as hereinabove defined in subsection 4, paragraph *"b"*.

4. *a.* *"Cost to wholesaler"* shall mean the basic cost of the cigarettes plus the cost of doing business by the wholesaler, as defined in this chapter.

b. The cost of doing business by the wholesaler is presumed to be four percent of the basic cost of cigarettes in the absence of proof of a lesser or higher cost, which includes cartage to the retail outlet, plus the full face value of any stamps which may be required by any cigarette tax act of this state to the extent not already included in the basic cost of cigarettes.

5. *"Person"* shall mean and include any individual, firm, association, company, partnership, corporation, joint stock company, club agency, syndicate, or anyone engaged in the sale of cigarettes.

6. *"Retailer"* means any person who is engaged in this state in the business of selling, or offering to sell, cigarettes at retail. For purposes of this chapter, a person who does not meet the definition of retailer or wholesaler but who is engaged in the business of selling cigarettes in this state to a retailer or final consumer shall be considered a retailer and subject to the minimum pricing requirements of this chapter.

7. *"Sale"* and *"sell"* shall mean and include any transfer for a consideration, exchange, barter, gift, offer for sale and distribution in any manner or by any means whatsoever.

8. *"Sell at retail"*, *"sale at retail"* and *"retail sales"* shall mean and include any sale or offer for sale for consumption or use made in the ordinary course of trade of the seller's business.

9. *"Sell at wholesale"*, *"sale at wholesale"*, and *"wholesale sales"* shall mean and include any sale or offer for sale made in the course of trade or usual conduct of the wholesaler's business to a retailer for the purpose of resale.

10. *"Wholesaler"* means and includes any person who acquires cigarettes for the purpose of sale to retailers or to other persons for resale, and who maintains an established place of business when any part of the business is the sale of cigarettes at wholesale to persons licensed under this chapter, and where at all times a stock of cigarettes is available to retailers for resale.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.2]
83 Acts, ch 165, §3 – 5
C93, §421B.2
2001 Acts, ch 116, §5; 2007 Acts, ch 17, §1, 2, 12; 2011 Acts, ch 34, §165
Referred to in §421B.4, 421B.5

421B.3 Sales at less than cost — penalties.

1. It shall be unlawful for any wholesaler or retailer to offer to sell, or sell, at wholesale or retail, cigarettes at less than cost to such wholesaler or retailer, as the case may be, as defined in this chapter. Any wholesaler or retailer who violates the provisions of this section shall be guilty of a simple misdemeanor.

2. Evidence of advertisement, offering to sell, or sale of cigarettes by any wholesaler or retailer at less than cost to the wholesaler or retailer as defined by this chapter shall be evidence of a violation of this chapter.

3. *a.* The following civil penalties shall be imposed for a violation of this section:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A thousand dollar penalty for a third or subsequent violation within three years of the first violation.

b. Each day a violation occurs counts as a new violation for purposes of this subsection.

c. The civil penalty imposed under this subsection is in addition to the penalty imposed under subsection 1. Penalties collected under this subsection shall be deposited into the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.3]
C93, §421B.3
2007 Acts, ch 186, §32; 2009 Acts, ch 133, §134

421B.4 Combination sales.

In all offers for sale or sales involving cigarettes and any other item at a combined price, and in all offers for sale or sales involving the giving of any gift or concession of any kind whatsoever, whether it be coupons or otherwise, the wholesaler's or retailer's combined selling price shall not be below the cost to the wholesaler or the cost to the retailer, respectively, of the total of all articles, products, commodities, gifts and concessions included in such transactions. If any such articles, products, commodities, gifts, or concessions are not cigarettes, the basic cost thereof shall be determined in the same manner as provided in section 421B.2, subsection 8.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.4]
C93, §421B.4
2019 Acts, ch 59, §122
Section amended

421B.5 Sales by a wholesaler to a wholesaler.

When one wholesaler sells cigarettes to any other wholesaler, the former shall not be required to include in the selling price to the latter, the cost to the wholesaler, as defined by section 421B.2, but the latter wholesaler, upon resale to a retailer, shall be subject to the provisions of section 421B.2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.5]
C93, §421B.5
2019 Acts, ch 24, §49
Section amended

421B.6 Sales exceptions.

The provisions of this chapter shall not apply to a sale at wholesale or a sale at retail made as follows:

1. In an isolated transaction.

2. Where cigarettes are offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such cigarettes and said offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale, or to be sold.

3. Where cigarettes are offered for sale or are sold as imperfect or damaged, and the offer to sell, or sale shall state the reason therefor and the quantity of such cigarettes offered for sale or to be sold.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.6]
C93, §421B.6
2009 Acts, ch 41, §123
Referred to in §421B.7

421B.7 Transactions permitted to meet lawful competition.

1. Any wholesaler may advertise, offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling the same article at the cost to the competing wholesaler as defined by this chapter. Any retailer may offer to sell or sell cigarettes at a price made in good faith to meet the price of a competitor who is selling at the cost to the

said competing retailer as defined in this chapter. The price of cigarettes offered for sale, or sold under the exceptions specified in section 421B.6 shall not be considered the price of a competitor and shall not be used as a basis for establishing prices below cost, nor shall the price established at a bankrupt or forced sale be considered the price of a competitor within the purview of this section.

2. In the absence of proof of the actual cost to a competing wholesaler or to a competing retailer, as the case may be, such cost shall be the lowest cost to wholesalers or the lowest cost to retailers, as the case may be, within the same trading area as determined by a cost survey made pursuant to section 421B.8, subsection 2.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.7]

C93, §421B.7

Referred to in §421B.11

421B.8 Cost determined.

1. *Admissible evidence.* In determining cost to the wholesaler and cost to the retailer the court shall receive and consider as bearing on the bona fides of such cost, evidence that any person complained against under any of the provisions of this chapter purchased the cigarettes involved in the complaint before the court, at a fictitious price, or upon terms, or in such a manner, or under such invoices, as to conceal the true cost, discounts or terms of purchase, and shall also receive and consider as bearing on the bona fides of such cost, evidence of the normal, customary and prevailing terms and discounts in connection with other sales of a similar nature in the trade area or state.

2. *Cost survey.* Where a cost survey pursuant to recognized statistical and cost accounting practices has been made for the trading area in which a violation of this chapter is committed or charged, to determine and establish the lowest cost to wholesalers or the lowest cost to retailers within the area, the cost survey shall be deemed competent evidence in any action or proceeding under this chapter to establish actual cost to the wholesaler or actual cost to the retailer complained against. In such surveys to determine cost to the wholesaler or retailer there shall be included in the cost of doing business without limitation, labor, rent, depreciation, sales costs, compensation, maintenance of equipment, cartage, licenses, taxes, insurance and other expenses.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.8]

C93, §421B.8

Referred to in §421B.7, 421B.11

421B.9 Sales outside ordinary channels of business — effect.

In establishing the basic cost of cigarettes to a wholesaler or a retailer, it shall not be permissible to use the invoice cost or the actual cost of any cigarettes purchased at a forced, bankrupt, or close out sale, or other sale outside of the ordinary channels of trade.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.9]

C93, §421B.9

421B.10 Injunction.

The director of revenue, or any person or persons injured by any violation, or who would suffer injury from any threatened violation of this chapter, may maintain an action in any equity court to enjoin such actual or threatened violation. If a violation or threatened violation of this chapter shall be established, the court shall enjoin such violation or threatened violation, and, in addition thereto, the court shall assess in favor of the plaintiff and against the defendant the costs of suit including reasonable attorney fees. Where alleged and proved, the plaintiff, in addition to such injunctive relief and costs of suit, including reasonable attorney fees, shall be entitled to recover from the defendant the actual damages sustained by the plaintiff.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.10]

C93, §421B.10; 2003 Acts, ch 145, §286

421B.11 Director of revenue — powers and duties.

1. The director of revenue may adopt rules for the enforcement of this chapter and the

director is empowered to and may from time to time undertake and make or cause to be made such cost surveys for the state or such trading area or areas as the director shall deem necessary and it shall be permissible to use such cost survey as provided in section 421B.7, subsection 2, and section 421B.8, subsection 2.

2. The director of revenue may, upon notice and after hearing, suspend or revoke any permit issued under the provisions of the cigarette tax chapter and the rules of the director promulgated thereunder, for failure of the permit holder to comply with any provision of this unfair cigarette sales chapter or any rule adopted thereunder. The suspension or revocation of a permit shall be for a period of not less than six months from the date of suspension or revocation, and no permit shall be issued for the location designated in the suspended or revoked permit, during the period of suspension or revocation.

3. Judicial review of the actions of the director may be sought in accordance with chapter 17A and section 423.38.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §551A.11]

C93, §421B.11

2003 Acts, ch 44, §114; 2003 Acts, ch 108, §71; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §183, 205; 2018 Acts, ch 1041, §127

CHAPTER 421C

STATE DEBT COLLECTIONS

Chapter repealed by its own terms effective January 1, 2014; 2010 Acts, ch 1146, §13

CHAPTER 422

INDIVIDUAL INCOME, CORPORATE, AND FRANCHISE TAXES

Referred to in §15E.204, 16.78, 63A.2, 85.61, 316.12, 404A.3, 421.62, 423.14A

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DIVISION I

INTRODUCTORY PROVISIONS

422.1 Classification of chapter.

The provisions of this chapter are herein classified and designated as follows:

1. Division I — Introductory provisions.
2. Division II — Personal net income tax.
3. Division III — Business tax on corporations.
4. Division IV — Repealed by 2003 Acts, 1st Ex., ch. 2, §151, 205; see chapter 423.
5. Division V — Taxation of financial institutions.
6. Division VI — Administration.
7. Division VII — Estimated taxes by corporations and financial institutions.
8. Division VIII — Allocation of revenues.
9. Division IX — Fuel tax credit.

10. Division X Repealed by 2009 Acts, ch. 179, §152, 153.

[C35, §6943-f1; C39, §**6943.033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.1]
2006 Acts, ch 1010, §100; 2011 Acts, ch 34, §97

422.2 Purpose or object.

This chapter shall be known as the *"Property Relief Act"*, and shall have for its purpose the direct replacement of taxes already levied or to be levied on property to the extent of the net revenue obtained from the taxes imposed herein, which shall be apportioned back to the credit of individual taxpayers on the basis of the assessed valuation of taxable property as provided in division VIII of this chapter.

[C35, §6943-f2; C39, §**6943.034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.2]

422.3 Definitions controlling chapter.

For the purpose of this chapter and unless otherwise required by the context:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Court"* means the district court in the county of the taxpayer's residence.

3. *"Department"* means the department of revenue.

4. *"Director"* means the director of revenue.

5. *"Internal Revenue Code"* means one of the following:

a. For tax years beginning during the 2019 calendar year, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on March 24, 2018. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

b. For tax years beginning on or after January 1, 2020, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986, as amended.

6. The word *"taxpayer"* includes any person, corporation, or fiduciary who is subject to a tax imposed by this chapter.

[C35, §6943-f3; C39, §**6943.035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.3]

84 Acts, ch 1305, §25; 85 Acts, ch 230, §3; 86 Acts, ch 1213, §8; 86 Acts, ch 1245, §439; 88 Acts, ch 1028, §1; 89 Acts, ch 285, §2; 90 Acts, ch 1171, §1; 91 Acts, ch 215, §1; 92 Acts, ch 1219, §1; 93 Acts, ch 113, §1; 94 Acts, ch 1166, §1; 95 Acts, ch 152, §2; 96 Acts, ch 1166, §2, 4; 97 Acts, ch 135, §3, 9; 98 Acts, ch 1078, §3, 10; 99 Acts, ch 95, §3, 12, 13; 2000 Acts, ch 1146, §3, 9, 11; 2000 Acts, ch 1148, §1; 2001 Acts, ch 127, §3, 9, 10; 2002 Acts, ch 1069, §3, 10, 14; 2002 Acts, ch 1119, §200, 201; 2003 Acts, ch 139, §3; 2003 Acts, ch 145, §286; 2004 Acts, 1st Ex, ch 1001, §37, 41, 42; 2005 Acts, ch 24, §3, 10, 11; 2006 Acts, ch 1140, §3, 10, 11; 2007 Acts, ch 12, §3, 7, 8; 2008 Acts, ch 1011, §3, 9; 2011 Acts, ch 41, §1, 5, 6; 2012 Acts, ch 1007, §3, 7, 8; 2013 Acts, ch 1, §2, 7, 8; 2014 Acts, ch 1076, §2, 6, 7; 2015 Acts, ch 1, §2, 7, 8; 2017 Acts, ch 157, §3; 2018 Acts, ch 1161, §69, 97, 98

Referred to in §7C.3, 8A.438, 15.335, 16.1, 16.26, 96.3, 97A.5, 97B.1A, 99B.1, 99B.27, 99D.7, 99D.8, 99F.1, 99F.6, 260C.14, 261.38, 261.43A, 262.21, 273.3, 294.10A, 294.16, 411.5, 422.7(37)(a), 425.23, 450.1, 450B.1, 504B.5, 511.39, 513B.3, 535B.2, 538A.2, 557B.1, 633.266, 633A.5107, 633E.4, 634.5, 725.12

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For provisions relating to the definition of Internal Revenue Code for the period beginning January 1, 2015, and ending December 31, 2015, and for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §1, 4, 5

For provisions relating to federal law applicable to calculation of federal adjusted gross income or federal taxable income for state tax purposes for tax years beginning during the 2018 calendar year; see 2018 Acts, ch 1161, §63, 66

2018 amendment to subsection 5 effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

DIVISION II

PERSONAL NET INCOME TAX

Referred to in §15.293A, 15.319, 15.333, 15.355, 15E.43, 15E.44, 15E.52, 15E.62, 15E.305, 16.64, 16.82, 16.82A, 28A.24, 29C.24, 35A.13, 100B.13, 190B.103, 235A.2, 257.21, 404A.2, 422.1, 422.73, 422.110, 422D.2, 422D.3, 476B.2, 476B.6, 476B.7, 476C.4, 476C.6, 483A.1A

422.4 Definitions controlling division.

For the purpose of this division and unless otherwise required by the context:

1. *a.* *"Annual inflation factor"* means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual inflation factor, the department shall use the annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual inflation factor and the cumulative inflation factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual inflation factor shall not be less than one hundred percent.

b. *"Cumulative inflation factor"* means the product of the annual inflation factor for the 1988 calendar year and all annual inflation factors for subsequent calendar years as determined pursuant to this subsection. The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined.

c. The annual inflation factor for the 1988 calendar year is one hundred percent.

2. *a.* *"Annual standard deduction factor"* means an index, expressed as a percentage, determined by the department by October 15 of the calendar year preceding the calendar year for which the factor is determined, which reflects the purchasing power of the dollar as a result of inflation during the fiscal year ending in the calendar year preceding the calendar year for which the factor is determined. In determining the annual standard deduction factor, the department shall use the annual percent change, but not less than zero percent, in the gross domestic product price deflator computed for the second quarter of the calendar year by the bureau of economic analysis of the United States department of commerce and shall add all of that percent change to one hundred percent. The annual standard deduction factor and the cumulative standard deduction factor shall each be expressed as a percentage rounded to the nearest one-tenth of one percent. The annual standard deduction factor shall not be less than one hundred percent.

b. *"Cumulative standard deduction factor"* means the product of the annual standard deduction factor for the 1989 calendar year and all annual standard deduction factors for subsequent calendar years as determined pursuant to this subsection. The cumulative standard deduction factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual standard deduction factor has been determined.

3. The term *"employer"* shall mean and include those who have a right to exercise control as to how, when, and where services are to be performed.

4. The word *"fiduciary"* means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

5. The words *"fiscal year"* mean an accounting period of twelve months, ending on the last day of any month other than December.

6. The words *"foreign country"* mean any jurisdiction other than one embraced within the United States. The words *"United States"*, when used in a geographical sense, include the states, the District of Columbia, and the possessions of the United States.

7. The words *"head of household"* have the same meaning as provided by the Internal Revenue Code.

8. The words *"income year"* mean the calendar year or the fiscal year upon the basis of which the net income is computed under this division.

9. The word *"individual"* means a natural person; and if an individual is permitted to file as a corporation, under the Internal Revenue Code, that fictional status is not recognized for purposes of this chapter, and the individual's taxable income shall be computed as required under the Internal Revenue Code relating to individuals not filing as a corporation, with the adjustments allowed by this chapter.

10. The word *"nonresident"* applies only to individuals, and includes all individuals who are not "residents" within the meaning of subsection 15 hereof.

11. *"Notice of assessment"* means a notice by the department to a taxpayer advising the taxpayer of an assessment of tax due.

12. The term *"other person"* shall mean that person or entity properly empowered to act in behalf of an individual payee and shall include authorized agents of such payees whether they be individuals or married couples.

13. The word *"paid"*, for the purposes of the deductions under this division, means "paid or accrued" or "paid or incurred", and the terms *"paid or incurred"* and *"paid or accrued"* shall be construed according to the method of accounting upon the basis of which the net income is computed under this division. The term *"received"*, for the purpose of the computation of net income under this division, means "received or accrued", and the term *"received or accrued"* shall be construed according to the method of accounting upon the basis of which the net income is computed under this division.

14. The word *"person"* includes individuals and fiduciaries.

15. The word *"resident"* applies only to individuals and includes, for the purpose of determining liability to the tax imposed by this division upon or with reference to the income of any tax year, any individual domiciled in the state, and any other individual who maintains a permanent place of abode within the state.

16. The words *"taxable income"* mean the net income as defined in section 422.7 minus the deductions allowed by section 422.9, in the case of individuals; in the case of estates or trusts, the words *"taxable income"* mean the taxable income as computed for federal income tax purposes under the Internal Revenue Code, but with the following adjustments:

a. Add back the personal exemption deduction taken in computing federal taxable income.

b. Make the adjustments specified in section 422.7.

c. Add back Iowa income tax deducted in computing federal taxable income.

d. Subtract federal income taxes as provided in section 422.9.

e. Add back the following percentage of the qualified business income deductions under sections 199A(a) and 199A(g) of the Internal Revenue Code taken and allowable in calculating federal taxable income for the applicable tax year:

(1) For tax years beginning on or after January 1, 2019, but before January 1, 2021, seventy-five percent.

(2) For tax years beginning during the 2021 calendar year, fifty percent.

(3) For tax years beginning on or after January 1, 2022, twenty-five percent.

17. The words *"tax year"* mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this division.

a. If a taxpayer has made the election provided by section 441, subsection *"f"*, of the Internal Revenue Code, *"tax year"* means the annual period so elected, varying from fifty-two to fifty-three weeks.

b. If the effective date or the applicability of a provision of this division is expressed in terms of a tax year beginning, including, or ending with reference to a specified date which is the first or last day of a month, a tax year described in paragraph *"a"* of this subsection shall be treated as beginning with the first day of the calendar month beginning nearest to the first day of the tax year or as ending with the last day of the calendar month ending nearest to the last day of the tax year.

18. The word *"wages"* has the same meaning as provided by the Internal Revenue Code.

19. The term *"withholding agent"* means any individual, fiduciary, estate, trust, corporation, partnership or association in whatever capacity acting and including all officers and employees of the state of Iowa, or any municipal corporation of the state of Iowa and of any school district or school board of the state, or of any political subdivision of the state

of Iowa, or any tax-supported unit of government that is obligated to pay or has control of paying or does pay to any resident or nonresident of the state of Iowa or the resident's or nonresident's agent any wages that are subject to the Iowa income tax in the hands of such resident or nonresident, or any of the above-designated entities making payment or having control of making such payment of any taxable Iowa income to any nonresident. The term *"withholding agent"* shall also include an officer or employee of a corporation or association, or a member or employee of a partnership, who as such officer, employee, or member has the responsibility to perform an act under section 422.16 and who subsequently knowingly violates the provisions of section 422.16.

[C35, §6943-f4; C39, §**6943.036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.4; 81 Acts, ch 132, §1, 2, 9; 82 Acts, ch 1023, §1, 30, ch 1203, §1]

83 Acts, ch 179, §1, 2, 21, 23; 84 Acts, ch 1305, §26, 27; 87 Acts, 1st Ex, ch 1, §1; 87 Acts, 2nd Ex, ch 1, §1; 88 Acts, ch 1028, §2 – 4; 89 Acts, ch 268, §1; 94 Acts, ch 1107, §11; 94 Acts, ch 1133, §2, 16; 96 Acts, ch 1197, §1 – 4, 13, 18; 97 Acts, ch 111, §1, 8; 99 Acts, ch 152, §2, 40; 2002 Acts, ch 1119, §163; 2018 Acts, ch 1161, §70, 97, 98; 2019 Acts, ch 152, §1, 15

Referred to in §257.22, 422.7(41)(a), 422.9, 422.16, 422.32, 422D.3, 423.14A, 425.23, 476.20, 541B.2

For future amendments to subsection 1, paragraphs b and c, and subsections 2 and 16, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §101 – 103, 133, 134

2018 amendment to subsection 16 effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2019 amendment to subsection 16, paragraph e, unnumbered paragraph 1 applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §15

Subsection 16, paragraph e, unnumbered paragraph 1 amended

422.5 Tax imposed — exclusions — alternative minimum tax.

1. *a.* A tax is imposed upon every resident and nonresident of the state which tax shall be levied, collected, and paid annually upon and with respect to the entire taxable income as defined in this division at rates as provided in section 422.5A.

b. (1) The tax imposed upon the taxable income of a nonresident shall be computed by reducing the amount determined pursuant to paragraph *"a"* by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the nonresident's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph *"a"*, is the numerator and the nonresident's total net income computed under section 422.7 is the denominator. This provision also applies to individuals who are residents of Iowa for less than the entire tax year.

(2) (a) The tax imposed upon the taxable income of a resident shareholder in an S corporation or of an estate or trust with a situs in Iowa that is a shareholder in an S corporation, which S corporation has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, may be computed by reducing the amount determined pursuant to paragraph *"a"* by the amounts of nonrefundable credits under this division and by multiplying this resulting amount by a fraction of which the resident's or estate's or trust's net income allocated to Iowa, as determined in section 422.8, subsection 2, paragraph *"b"*, is the numerator and the resident's or estate's or trust's total net income computed under section 422.7 is the denominator. If a resident shareholder, or an estate or trust with a situs in Iowa that is a shareholder, has elected to take advantage of this subparagraph (2), and for the next tax year elects not to take advantage of this subparagraph, the resident or estate or trust shareholder shall not reelect to take advantage of this subparagraph for the three tax years immediately following the first tax year for which the shareholder elected not to take advantage of this subparagraph, unless the director consents to the reelection. This subparagraph also applies to individuals who are residents of Iowa for less than the entire tax year.

(b) This subparagraph (2) shall not affect the amount of the taxpayer's checkoffs under this division, the credits from tax provided under this division, and the allocation of these credits between spouses if the taxpayers filed separate returns or separately on combined returns.

2. *a.* There is imposed upon every resident and nonresident of this state, including estates and trusts, the greater of the tax determined in subsection 1 or the state alternative minimum tax equal to seventy-five percent of the maximum state individual income tax rate for the tax

year, rounded to the nearest one-tenth of one percent, times the state alternative minimum taxable income of the taxpayer as computed under this subsection.

b. The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income, as computed with the deductions in section 422.9, with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1), (a)(2), and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (b)(1)(C)(iii), and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. To the extent that any preference or adjustment is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsections 39, 39A, 39B, and 53. In the case of an estate or trust, the items of tax preference, adjustments, and losses shall be apportioned between the estate or trust and the beneficiaries in accordance with rules prescribed by the director.

(2) Subtract the applicable exemption amount as follows:

(a) Seventeen thousand five hundred dollars for a married person who files separately or for an estate or trust.

(b) Twenty-six thousand dollars for a single person or a head of household.

(c) Thirty-five thousand dollars for a married couple which files a joint return.

(d) The exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph (2), exceeds the following:

(i) Seventy-five thousand dollars in the case of a taxpayer described in subparagraph division (a).

(ii) One hundred twelve thousand five hundred dollars in the case of a taxpayer described in subparagraph division (b).

(iii) One hundred fifty thousand dollars in the case of a taxpayer described in subparagraph division (c).

(3) In the case of a net operating loss computed for a tax year beginning after December 31, 1982, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of the items of tax preference arising in such year which was taken into account in computing the net operating loss in section 422.9, subsection 3. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

c. The state alternative minimum tax of a taxpayer whose net capital gain deduction includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure, where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange, shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange.

d. In the case of a resident, including a resident estate or trust, the state's apportioned share of the state alternative minimum tax is one hundred percent of the state alternative minimum tax computed in this subsection 2. In the case of a resident or part-year resident shareholder in an S corporation which has in effect for the tax year an election under subchapter S of the Internal Revenue Code and carries on business within and without the state, a nonresident, including a nonresident estate or trust, or an individual, estate, or trust that is domiciled in the state for less than the entire tax year, the state's apportioned share of the state alternative minimum tax is the amount of tax computed under this subsection 2, reduced by the applicable credits in sections 422.10 through 422.12 and this result multiplied by a fraction with a numerator of the sum of state net income allocated to Iowa

as determined in section 422.8, subsection 2, paragraph *"a"* or *"b"* as applicable, plus tax preference items, adjustments, and losses under subparagraph (1) attributable to Iowa and with a denominator of the sum of total net income computed under section 422.7 plus all tax preference items, adjustments, and losses under subparagraph (1). In computing this fraction, those items excludable under subparagraph (1) shall not be used in computing the tax preference items. Married taxpayers electing to file separate returns or separately on a combined return must allocate the minimum tax computed in this subsection in the proportion that each spouse's respective preference items, adjustments, and losses under subparagraph (1) bear to the combined preference items, adjustments, and losses under subparagraph (1) of both spouses.

3. *a.* The tax shall not be imposed on a resident or nonresident whose net income, as defined in section 422.7, is thirteen thousand five hundred dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or nine thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirteen thousand five hundred dollars or nine thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirteen thousand five hundred dollars or nine thousand dollars as applicable. The preceding sentence does not apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income, except for military retirement pay excluded under section 422.7, subsection 31A, paragraph *"a"*, or section 422.7, subsection 31B, paragraph *"a"*, received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirteen thousand five hundred dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirteen thousand five hundred dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirteen thousand five hundred dollars or nine thousand dollars as applicable.

b. In lieu of the computation in subsection 1 or 2, or in paragraph *"a"* of this subsection, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirteen thousand five hundred dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirteen thousand five hundred dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

3A. Reserved.

3B. *a.* The tax shall not be imposed on a resident or nonresident who is at least sixty-five years old on December 31 of the tax year and whose net income, as defined in section 422.7, is thirty-two thousand dollars or less in the case of married persons filing jointly or filing separately on a combined return, heads of household, and surviving spouses or twenty-four thousand dollars or less in the case of all other persons; but in the event that the payment of tax under this division would reduce the net income to less than thirty-two thousand dollars or twenty-four thousand dollars as applicable, then the tax shall be reduced to that amount which would result in allowing the taxpayer to retain a net income of thirty-two thousand dollars or twenty-four thousand dollars as applicable. The preceding sentence does not

apply to estates or trusts. For the purpose of this subsection, the entire net income, including any part of the net income not allocated to Iowa, shall be taken into account. For purposes of this subsection, net income includes all amounts of pensions or other retirement income, except for military retirement pay excluded under section 422.7, subsection 31A, paragraph "*a*", or section 422.7, subsection 31B, paragraph "*a*", received from any source which is not taxable under this division as a result of the government pension exclusions in section 422.7, or any other state law. If the combined net income of a husband and wife exceeds thirty-two thousand dollars, neither of them shall receive the benefit of this subsection, and it is immaterial whether they file a joint return or separate returns. However, if a husband and wife file separate returns and have a combined net income of thirty-two thousand dollars or less, neither spouse shall receive the benefit of this paragraph, if one spouse has a net operating loss and elects to carry back or carry forward the loss as provided in section 422.9, subsection 3. A person who is claimed as a dependent by another person as defined in section 422.12 shall not receive the benefit of this subsection if the person claiming the dependent has net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable or the person claiming the dependent and the person's spouse have combined net income exceeding thirty-two thousand dollars or twenty-four thousand dollars as applicable.

b. In lieu of the computation in subsection 1, 2, or 3, if the married persons', filing jointly or filing separately on a combined return, head of household's, or surviving spouse's net income exceeds thirty-two thousand dollars, the regular tax imposed under this division shall be the lesser of the maximum state individual income tax rate times the portion of the net income in excess of thirty-two thousand dollars or the regular tax liability computed without regard to this sentence. Taxpayers electing to file separately shall compute the alternate tax described in this paragraph using the total net income of the husband and wife. The alternate tax described in this paragraph does not apply if one spouse elects to carry back or carry forward the loss as provided in section 422.9, subsection 3.

c. This subsection applies even though one spouse has not attained the age of sixty-five, if the other spouse is at least sixty-five at the end of the tax year.

4. The tax herein levied shall be computed and collected as hereinafter provided.

5. The provisions of this division shall apply to all salaries received by federal officials or employees of the United States government as provided for herein.

6. Upon determination of the latest cumulative inflation factor, the director shall multiply each dollar amount set forth in section 422.5A by this cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year.

7. The state income tax of a taxpayer whose net income includes the gain or loss from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure where the fair market value of the taxpayer's assets exceeds the taxpayer's liabilities immediately before such forfeiture, transfer, or sale or exchange shall not be greater than such excess, including any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered in determining if the fair market value of the taxpayer's assets exceed the taxpayer's liabilities.

8. In addition to the other taxes imposed by this section, a tax is imposed on the amount of a lump sum distribution for which the taxpayer has elected under section 402(e) of the Internal Revenue Code to be separately taxed for federal income tax purposes for the tax year. The rate of tax is equal to twenty-five percent of the separate federal tax imposed on the amount of the lump sum distribution. A nonresident is liable for this tax only on that portion of the lump sum distribution allocable to Iowa. The total amount of the lump sum distribution subject to separate federal tax shall be included in net income for purposes of determining eligibility under subsections 3 and 3B, as applicable.

9. In the case of income derived from the sale or exchange of livestock which qualifies

under section 451(e) of the Internal Revenue Code because of drought, the taxpayer may elect to include the income in the taxpayer's net income in the tax year following the year of the sale or exchange in accordance with rules prescribed by the director.

10. If an individual's federal income tax was forgiven for a tax year under section 692 of the Internal Revenue Code, because the individual was killed while serving in an area designated by the president of the United States or the United States Congress as a combat zone, the individual was missing in action and presumed dead, or the individual was killed outside the United States in a terroristic or military action while the individual was a military or civilian employee of the United States, the individual's Iowa income tax is also forgiven for the same tax year.

11. If a taxpayer repays in the current tax year certain amounts of income that were subject to tax under this division in a prior year and a tax benefit would be allowed under similar circumstances under section 1341 of the Internal Revenue Code, a tax benefit shall be allowed on the Iowa return. The tax benefit shall be the reduced tax for the current tax year due to the deduction for the repaid income or the reduction in tax for the prior year or years due to exclusion of the repaid income. The reduction in tax shall qualify as a refundable tax credit on the return for the current year pursuant to rules prescribed by the director.

[C35, §6943-f5; C39, §**6943.037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.5; 81 Acts, ch 132, §3; 82 Acts, ch 1023, §2, 31, ch 1064, §1, 2, ch 1226, §1, 2, 6]

83 Acts, ch 101, §86; 83 Acts, ch 179, §3, 20, 22; 85 Acts, ch 243, §1, 2; 86 Acts, ch 1213, §9; 86 Acts, ch 1232, §1; 86 Acts, ch 1236, §3, 4; 87 Acts, ch 214, §2; 87 Acts, 1st Ex, ch 1, §2; 87 Acts, 2nd Ex, ch 1, §2, 3; 88 Acts, ch 1028, §5 – 11; 89 Acts, ch 228, §4, 5; 89 Acts, ch 251, §11; 89 Acts, ch 268, §2, 3; 89 Acts, ch 296, §41; 91 Acts, ch 159, §7; 91 Acts, ch 196, §1; 92 Acts, 2nd Ex, ch 1001, §217, 218, 224; 96 Acts, ch 1166, §3, 4; 96 Acts, ch 1197, §14, 15, 18; 96 Acts, ch 1219, §27; 97 Acts, ch 8, §1, 2; 97 Acts, ch 111, §2 – 4, 7, 8; 97 Acts, ch 158, §11, 49; 99 Acts, ch 151, §4, 89; 2003 Acts, ch 139, §4; 2006 Acts, ch 1112, §1 – 3, 5; 2006 Acts, ch 1158, §8 – 10; 2007 Acts, ch 126, §65, 112, 116; 2009 Acts, ch 41, §263; 2009 Acts, ch 133, §135; 2011 Acts, ch 41, §17, 23, 24; 2012 Acts, ch 1021, §72; 2013 Acts, ch 140, §120, 123, 124; 2014 Acts, ch 1116, §1, 2, 5; 2017 Acts, ch 157, §4; 2018 Acts, ch 1161, §71, 72, 74, 97, 98

Referred to in §2.48, 257.21, 422.5A, 422.6, 422.8, 422.10, 422.11B, 422.13, 422.16, 422.21, 422D.2

For future amendment to subsection 1, paragraph b, subparagraph (2), subparagraph division (b), effective on or after January 1, 2023, contingent upon the meeting of certain net general fund revenue criteria, see 2018 Acts, ch 1161, §104, 133, 134

For future amendments to subsections 2, 3, and 3B, effective on or after January 1, 2023, contingent upon the meeting of certain net general fund revenue criteria, see 2018 Acts, ch 1161, §105, 106, 133, 134

For provisions relating to the calculation of state alternative minimum taxable income in light of the disallowance of additional first-year depreciation under section 168(k) of the Internal Revenue Code for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §3 – 5; 2017 Acts, ch 157, §11 – 13

2018 amendments to subsection 1, subsection 2, paragraph a, and subsection 6, effective January 1, 2019, and apply to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

422.5A Tax rates.

The tax imposed in section 422.5 shall be calculated at the following rates:

1. On all taxable income from 0 through $1,000, the rate of 0.33 percent.

2. On all taxable income exceeding $1,000 but not exceeding $2,000, the rate of 0.67 percent.

3. On all taxable income exceeding $2,000 but not exceeding $4,000, the rate of 2.25 percent.

4. On all taxable income exceeding $4,000 but not exceeding $9,000, the rate of 4.14 percent.

5. On all taxable income exceeding $9,000 but not exceeding $15,000, the rate of 5.63 percent.

6. On all taxable income exceeding $15,000 but not exceeding $20,000, the rate of 5.96 percent.

7. On all taxable income exceeding $20,000 but not exceeding $30,000, the rate of 6.25 percent.

8. On all taxable income exceeding $30,000 but not exceeding $45,000, the rate of 7.44 percent.

9. On all taxable income exceeding $45,000, the rate of 8.53 percent.

2018 Acts, ch 1161, §73, 97, 98

Referred to in §422.5, 422.16

For future amendment to this section, effective on or after January 1, 2023, contingent upon the meeting of certain net general fund revenue criteria, see 2018 Acts, ch 1161, §107, 133, 134

422.6 Income from estates or trusts.

1. The tax imposed by section 422.5 less the amounts of nonrefundable credits allowed under this division apply to and are a charge against estates and trusts with respect to their taxable income, and the rates are the same as those applicable to individuals. The fiduciary shall make the return of income for the estate or trust for which the fiduciary acts, whether the income is taxable to the estate or trust or to the beneficiaries. However, for tax years ending after August 5, 1997, if the trust is a qualified preneed funeral trust as set forth in section 685 of the Internal Revenue Code and the trustee has elected the special tax treatment under section 685 of the Internal Revenue Code, neither the trust nor the beneficiary is subject to Iowa income tax on income accruing to the trust.

2. The beneficiary of a trust who receives an accumulation distribution shall be allowed credit without interest for the Iowa income taxes paid by the trust attributable to the accumulation distribution in a manner corresponding to the provisions for credit under the federal income tax relating to accumulation distributions as contained in the Internal Revenue Code. The trust is not entitled to a refund of taxes paid on the distributions. The trust shall maintain detailed records to verify the computation of the tax.

[C35, §6943-f6; C39, §**6943.038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.6]

83 Acts, ch 179, §4, 25; 84 Acts, ch 1305, §28; 88 Acts, ch 1028, §12; 89 Acts, ch 251, §12; 91 Acts, ch 159, §8; 97 Acts, ch 23, §42; 98 Acts, ch 1078, §4, 11; 99 Acts, ch 95, §4, 12, 13; 2002 Acts, ch 1145, §8; 2006 Acts, ch 1158, §11; 2019 Acts, ch 24, §104

Referred to in §422.14, 422.16

Code editor directive applied

422.7 "Net income" — how computed.

The term *"net income"* means the adjusted gross income before the net operating loss deduction as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities and from securities of state and other political subdivisions exempt from federal income tax under the Internal Revenue Code, except for those securities the interest and dividends from which are exempt from taxation by the state of Iowa as otherwise provided by law, including:

a. Vision Iowa program bonds pursuant to section 12.71, subsection 8.

b. School infrastructure program bonds pursuant to section 12.81, subsection 8.

c. Iowa jobs program revenue bonds pursuant to section 12.87, subsection 8.

d. Iowa utility board and Iowa consumer advocate building project bonds pursuant to section 12.91, subsection 9.

e. Iowa finance authority beginning farmer loan program bonds pursuant to section 16.64, subsection 2.

f. Water pollution control works and drinking facilities financing program bonds pursuant to section 16.131, subsection 5.

g. Iowa prison infrastructure revenue bonds pursuant to section 12.80, subsection 3, and section 16.177, subsection 8.

h. Quad cities interstate metropolitan authority bonds pursuant to section 28A.24.

i. Iowa finance authority 911 program bonds pursuant to section 34A.20, subsection 6.

j. Soil and water conservation subdistrict bonds pursuant to section 161A.22.

k. Community college residence hall and dormitory bonds pursuant to section 260C.61.

l. Community college bond program bonds pursuant to section 260C.71, subsection 6.

m. Higher education loan authority bonds pursuant to section 261A.27.

n. State board of regents bonds pursuant to sections 262.41, 262.51, 262.60, 262A.8, and 263A.6.

o. Interstate bridges bonds pursuant to section 313A.36.

p. Aviation authority bonds pursuant to section 330A.16.

q. County health center bonds pursuant to section 331.441, subsection 2, paragraph "*c*", subparagraph (7).

r. Rural water district bonds pursuant to section 357A.15.

s. Urban renewal bonds pursuant to section 403.9, subsection 2.

t. Municipal housing project bonds pursuant to section 403A.12.

u. Comprehensive petroleum underground storage tank fund bonds pursuant to section 455G.6, subsection 14.

3. Where the adjusted gross income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. Reserved.

5. Individual taxpayers and married taxpayers who file a joint federal income tax return and who elect to file a joint return, separate returns, or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the disability income exclusion and shall compute the amount of the disability income exclusion subject to the limitations for joint federal income tax return filers provided by section 105(d) of the Internal Revenue Code. The disability income exclusion provided in section 105(d) of the Internal Revenue Code, as amended up to and including December 31, 1982, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1984.

6. Reserved.

7. Married taxpayers who file a joint federal income tax return and who elect to file separate returns or separate filing on a combined return for Iowa income tax purposes, may avail themselves of the expensing of business assets and capital loss provisions of sections 179(a) and 1211(b) respectively of the Internal Revenue Code and shall compute the amount of expensing of business assets and capital loss subject to the limitations for joint federal income tax return filers provided by sections 179(b) and 1211(b) respectively of the Internal Revenue Code.

8. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

9. Subtract the amount of the alcohol and cellulosic biofuel fuels credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal adjusted gross income.

10. Notwithstanding the method for computing the amount of travel expenses that may be deducted under section 162(h) of the Internal Revenue Code, for tax years beginning on or after January 1, 1987, a member of the general assembly whose place of residence within the legislative district is greater than fifty miles from the capitol building of the state may deduct the total amount per day determined under section 162(h)(1)(B) of the Internal Revenue Code and a member of the general assembly whose place of residence within the legislative district is fifty or fewer miles from the capitol building of the state may deduct fifty dollars per day. This subsection does not apply to a member of the general assembly who elects to itemize for state tax purposes the member's travel expenses.

11. Add the amounts deducted and subtract the amounts included as income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property included in a sale-leaseback agreement which is placed in service by the transferee prior to January 1,

1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

12. *a.* If the adjusted gross income includes income or loss from a small business operated by the taxpayer, an additional deduction shall be allowed in computing the income or loss from the small business if the small business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year any of the following:

(1) An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has a physical or mental impairment which substantially limits one or more major life activities.

(b) Has a record of that impairment.

(c) Is regarded as having that impairment.

(2) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, subchapter IX.

(3) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. (1) The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraph *"a"*, subparagraphs (1), (2), and (3) who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

(2) The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

(3) A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

c. For purposes of this subsection:

(1) *"Physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) (a) *"Small business"* means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

(i) It is not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) It has twenty or fewer full-time equivalent positions and not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.

(iii) It does not include the practice of a profession.

(b) *"Small business"* includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraph division (a), subparagraph subdivisions (i) through (iii).

(c) For purposes of this definition, "*dominant in its field of operation*" means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and "*affiliate or subsidiary of a business dominant in its field of operation*" means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

12A. *a.* If the adjusted gross income includes income or loss from a business operated by the taxpayer, and if the business does not qualify for the adjustment under subsection 12, an additional deduction shall be allowed in computing the income or loss from the business if the business hired for employment in the state during its annual accounting period ending with or during the taxpayer's tax year either of the following:

(1) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, subchapter IX.

(2) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. The amount of the additional deduction is equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in paragraph "*a*", subparagraphs (1) and (2) who were hired for the first time by that business during the annual accounting period for work done in the state. This additional deduction is allowed for the wages paid to those individuals successfully completing a probationary period during the twelve months following the date of first employment by the business and shall be deducted at the close of the annual accounting period.

c. The additional deduction shall not be allowed for wages paid to an individual who was hired to replace an individual whose employment was terminated within the twelve-month period preceding the date of first employment. However, if the individual being replaced left employment voluntarily without good cause attributable to the employer or if the individual was discharged for misconduct in connection with the individual's employment as determined by the department of workforce development, the additional deduction shall be allowed.

d. A taxpayer who is a partner of a partnership or a shareholder of a subchapter S corporation, may deduct that portion of wages qualified under this subsection paid by the partnership or subchapter S corporation based on the taxpayer's pro rata share of the profits or losses from the partnership or subchapter S corporation.

e. The department shall develop and distribute information concerning the deduction available for businesses employing persons named in paragraph "*a*", subparagraphs (1) and (2).

13. *a.* Subtract, to the extent included, the amount of additional social security benefits taxable under the Internal Revenue Code for tax years beginning on or after January 1, 1994, but before January 1, 2014. The amount of social security benefits taxable as provided in section 86 of the Internal Revenue Code, as amended up to and including January 1, 1993, continues to apply for state income tax purposes for tax years beginning on or after January 1, 1994, but before January 1, 2014.

b. (1) For tax years beginning in the 2007 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "*a*".

(2) For tax years beginning in the 2008 calendar year, subtract, to the extent included, thirty-two percent of taxable social security benefits remaining after the subtraction in paragraph "*a*".

(3) For tax years beginning in the 2009 calendar year, subtract, to the extent included,

forty-three percent of taxable social security benefits remaining after the subtraction in paragraph *"a"*.

(4) For tax years beginning in the 2010 calendar year, subtract, to the extent included, fifty-five percent of taxable social security benefits remaining after the subtraction in paragraph *"a"*.

(5) For tax years beginning in the 2011 calendar year, subtract, to the extent included, sixty-seven percent of taxable social security benefits remaining after the subtraction in paragraph *"a"*.

(6) For tax years beginning in the 2012 calendar year, subtract, to the extent included, seventy-seven percent of taxable social security benefits remaining after the subtraction in paragraph *"a"*.

(7) For tax years beginning in the 2013 calendar year, subtract, to the extent included, eighty-nine percent of taxable social security benefits remaining after the subtraction in paragraph *"a"*.

c. Married taxpayers, who file a joint federal income tax return and who elect to file separate returns or who elect separate filing on a combined return for state income tax purposes, shall allocate between the spouses the amount of benefits subtracted under paragraphs *"a"* and *"b"* from net income in the ratio of the social security benefits received by each spouse to the total of these benefits received by both spouses.

d. For tax years beginning on or after January 1, 2014, subtract, to the extent included, the amount of social security benefits taxable under section 86 of the Internal Revenue Code.

14. Add the amount of intangible drilling and development costs optionally deducted in the year paid or incurred as described in section 57(a)(2) of the Internal Revenue Code. This amount may be recovered through cost depletion or depreciation, as appropriate under rules prescribed by the director.

15. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well as described in section 57(a)(1) of the Internal Revenue Code.

16. Subtract the income resulting from the forfeiture of an installment real estate contract, the transfer of real or personal property securing a debt to a creditor in cancellation of that debt, or from the sale or exchange of property as a result of actual notice of foreclosure if all of the following conditions are met:

a. The forfeiture, transfer, or sale or exchange was done for the purpose of establishing a positive cash flow.

b. Immediately before the forfeiture, transfer, or sale or exchange, the taxpayer's debt to asset ratio exceeded ninety percent as computed under generally accepted accounting practices.

c. The taxpayer's net worth at the end of the tax year is less than seventy-five thousand dollars. In determining a taxpayer's net worth at the end of the tax year a taxpayer shall include any asset transferred within one hundred twenty days prior to the end of the tax year without adequate and full consideration in money or money's worth. In determining the taxpayer's debt to asset ratio, the taxpayer shall include any asset transferred within one hundred twenty days prior to such forfeiture, transfer, or sale or exchange without adequate and full consideration in money or money's worth. For purposes of this subsection, actual notice of foreclosure includes, but is not limited to, bankruptcy or written notice from a creditor of the creditor's intent to foreclose where there is a reasonable belief that the creditor can force a sale of the asset. For purposes of this subsection, in the case of married taxpayers, except in the case of a husband and wife who live apart at all times during the tax year, the assets and liabilities of both spouses shall be considered for purposes of determining the taxpayer's net worth or the taxpayer's debt to asset ratio.

17. Add interest and dividends from regulated investment companies exempt from federal income tax under the Internal Revenue Code and subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

18. Reserved.

19. Reserved.

20. *a.* Subtract, to the extent included, the proceeds received pursuant to a judgment in

or settlement of a lawsuit against the manufacturer or distributor of a Vietnam herbicide for damages resulting from exposure to the herbicide. This subsection applies to proceeds received by a taxpayer who is a disabled veteran or who is a beneficiary of a disabled veteran.

b. For purposes of this subsection:

(1) *"Vietnam herbicide"* means a herbicide, defoliant or other causative agent containing dioxin, including, but not limited to, Agent Orange, used in the Vietnam Conflict beginning December 22, 1961, and ending May 7, 1975, inclusive.

(2) *"Agent Orange"* means the herbicide composed of trichlorophenoxyacetic acid and dichlorophenoxyacetic acid and the contaminant dioxin (TCDD).

21. Subtract the net capital gain from the following:

a. (1) Net capital gain from the sale of real property used in a business, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years, or from the sale of a business, as defined in section 423.1, in which the taxpayer materially participated for ten years, as defined in section 469(h) of the Internal Revenue Code, and which has been held for a minimum of ten years. The sale of a business means the sale of all or substantially all of the tangible personal property or service of the business.

However, where the business is sold to individuals who are all lineal descendants of the taxpayer, the taxpayer does not have to have materially participated in the business in order for the net capital gain from the sale to be excluded from taxation.

However, in lieu of the net capital gain deduction in this paragraph and paragraphs *"b"*, *"c"*, and *"d"*, where the business is sold to individuals who are all lineal descendants of the taxpayer, the amount of capital gain from each capital asset may be subtracted in determining net income.

(2) For purposes of this paragraph, *"lineal descendant"* means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

b. Net capital gain from the sale of cattle or horses held by the taxpayer for breeding, draft, dairy, or sporting purposes for a period of twenty-four months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

c. Net capital gain from the sale of breeding livestock, other than cattle or horses, if the livestock is held by the taxpayer for a period of twelve months or more from the date of acquisition; but only if the taxpayer received more than one-half of the taxpayer's gross income from farming or ranching operations during the tax year.

d. Net capital gain from the sale of timber as defined in section 631(a) of the Internal Revenue Code.

However, to the extent otherwise allowed, the deduction provided in this subsection is not allowed for purposes of computation of a net operating loss in section 422.9, subsection 3, and in computing the income for the taxable year or years for which a net operating loss is deducted.

For purposes of this subsection, the term *"held"* shall be determined with reference to the holding period provisions of section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant thereto.

e. (1) To the extent not already excluded, fifty percent of the net capital gain from the sale or exchange of employer securities of an Iowa corporation to a qualified Iowa employee stock ownership plan when, upon completion of the transaction, the qualified Iowa employee stock ownership plan owns at least thirty percent of all outstanding employer securities issued by the Iowa corporation.

(2) For purposes of this paragraph:

(a) *"Employer securities"* means the same as defined in section 409(l) of the Internal Revenue Code.

(b) *"Iowa corporation"* means a corporation whose commercial domicile, as defined in section 422.32, is in this state.

(c) *"Qualified Iowa employee stock ownership plan"* means an employee stock ownership

plan, as defined in section 4975(e)(7) of the Internal Revenue Code, and trust that are established by an Iowa corporation for the benefit of the employees of the corporation.

22. Subtract, to the extent included, the amounts paid to an eligible individual under section 105 of the Civil Liberties Act of 1988, Pub. L. No. 100-383, Tit. I, as satisfaction for a claim against the United States arising out of the confinement, holding in custody, relocation, or other deprivation of liberty or property of an individual of Japanese ancestry.

23. Subtract, to the extent included, the amount of federal Segal AmeriCorps education award payments.

24. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for services performed on or after August 2, 1990, pursuant to military orders related to the Persian Gulf Conflict.

25. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after November 21, 1995, pursuant to military orders related to peacekeeping in Bosnia-Herzegovina.

26. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property under the accelerated cost recovery system of the Internal Revenue Code during the period during which it is owned by the for-profit entity and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the for-profit entity, subsidiary of the for-profit entity, or majority owners of the for-profit entity, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

27. Subtract, to the extent included, payments received by an individual providing unskilled in-home health-related care services pursuant to section 249.3, subsection 2, paragraph *"a"*, subparagraph (2), to a member of the individual caregiver's family. For purposes of this subsection, a member of the individual caregiver's family includes a spouse, parent, stepparent, child, stepchild, brother, stepbrother, sister, stepsister, lineal ancestor, or lineal descendant, and such persons by marriage or adoption. A health care professional licensed by an examination board designated in section 147.13, subsections 1 through 10, is not eligible for the exemption authorized in this subsection.

28. If the taxpayer is owner of an individual development account certified under chapter 541A at any time during the tax year, deductions of all of the following shall be allowed:

a. Contributions made to the account by persons and entities, other than the taxpayer, as authorized in chapter 541A.

b. The amount of any state match payments authorized under section 541A.3, subsection 1.

c. Earnings from the account.

29. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer for the purchase of health benefits coverage or insurance for the taxpayer or taxpayer's spouse or dependent.

30. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal adjusted gross income.

31. For a person who is disabled, or is fifty-five years of age or older, or is the surviving spouse of an individual or a survivor having an insurable interest in an individual who would have qualified for the exemption under this subsection for the tax year, subtract, to the extent included, the total amount of a governmental or other pension or retirement pay, including, but not limited to, defined benefit or defined contribution plans, annuities, individual retirement accounts, plans maintained or contributed to by an employer, or maintained or contributed to by a self-employed person as an employer, and deferred compensation plans or any earnings attributable to the deferred compensation plans, up to a maximum of six thousand dollars for a person, other than a husband or wife, who files a separate state income tax return and up to a maximum of twelve thousand dollars for a husband and wife who file a joint state income tax return. However, a surviving spouse who is not disabled or fifty-five years of age or older can only exclude the amount of pension or

retirement pay received as a result of the death of the other spouse. A husband and wife filing separate state income tax returns or separately on a combined state return are allowed a combined maximum exclusion under this subsection of up to twelve thousand dollars. The twelve thousand dollar exclusion shall be allocated to the husband or wife in the proportion that each spouse's respective pension and retirement pay received bears to total combined pension and retirement pay received.

31A. *a.* Subtract, to the extent included, retirement pay received by a taxpayer from the federal government for military service performed in the armed forces, the armed forces military reserve, or national guard.

b. The exclusion of retirement pay under this subsection is in addition to any exclusion provided under subsection 31.

31B. *a.* Subtract, to the extent included, amounts received as survivor benefits by a taxpayer from the federal government pursuant to 10 U.S.C. §1447, et seq.

b. The exclusion of survivor benefits under this subsection is in addition to any exclusion provided under subsection 31.

32. *a.* Subtract the maximum contribution that may be deducted for Iowa income tax purposes as a participant in the Iowa educational savings plan trust pursuant to section 12D.3, subsection 1. For purposes of this paragraph, a participant who makes a contribution on or before the date prescribed in section 422.21 for making and filing an individual income tax return, excluding extensions, may elect to be deemed to have made the contribution on the last day of the preceding calendar year. The director, after consultation with the treasurer of state, shall prescribe by rule the manner and method by which a participant may make an election authorized by the preceding sentence.

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as a participant in the Iowa educational savings plan trust to the extent previously deducted as a contribution to the trust.

c. (1) Add, to the extent previously deducted as a contribution to the trust, the amount resulting from a withdrawal or transfer made by the taxpayer from the Iowa educational savings plan trust for purposes other than any of the following:

(a) The payment of qualified higher education expenses.

(b) The payment of tuition to an elementary or secondary school if the tuition amounts are qualified education expenses.

(c) A change in beneficiaries under, or transfer to another account within, the Iowa educational savings plan trust, or a transfer to the Iowa ABLE savings plan trust, provided such change or transfer is permitted under section 12D.6, subsection 5.

(2) For purposes of this paragraph:

(a) *"Elementary or secondary school"* means an elementary or secondary school in this state which is accredited under section 256.11, and adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216.

(b) *"Qualified education expenses"* and *"tuition"* all mean the same as defined in section 12D.1, subsection 2.

(c) (i) *"Qualified higher education expenses"* means the same as defined in section 529(e)(3) of the Internal Revenue Code.

(ii) For purposes of this subparagraph division (c), *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on January 1, 2018. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

33. Subtract, to the extent included, income from interest and earnings received from the Iowa educational savings plan trust created in chapter 12D.

34. *a.* (1) Subtract the amount contributed during the tax year on behalf of a designated beneficiary that is a resident of this state to the Iowa ABLE savings plan trust or to the qualified ABLE program with which the state has contracted pursuant to section 12I.10, not to exceed the maximum contribution level established in section 12I.3, subsection 1, paragraph *"d"*, or section 12I.10, subsection 2, paragraph *"a"*, as applicable.

(2) This paragraph *"a"* shall not apply to any amount of contribution that represents a transfer from the Iowa educational savings plan trust created in chapter 12D that meets the requirements of subsection 32, paragraph "c", subparagraph (1), subparagraph division (c), and that was previously deducted as a contribution to the Iowa educational savings plan trust.

b. Add the amount resulting from the cancellation of a participation agreement refunded to the taxpayer as an account owner in the Iowa ABLE savings plan trust or the qualified ABLE program with which the state has contracted pursuant to section 12I.10 to the extent previously deducted pursuant to this subsection by the taxpayer or any other person as a contribution to the trust or qualified ABLE program, or to the extent the amount was previously deducted by the taxpayer or any other person pursuant to subsection 32, paragraph *"a"*, and qualified as a transfer under paragraph *"a"*, subparagraph (2), of this subsection.

c. Add the amount resulting from a withdrawal made by a taxpayer from the Iowa ABLE savings plan trust or the qualified ABLE program with which the state has contracted pursuant to section 12I.10 for purposes other than the payment of qualified disability expenses to the extent previously deducted pursuant to this subsection by the taxpayer or any other person as a contribution to the trust or qualified ABLE program, or to the extent the amount was previously deducted by the taxpayer or any other person pursuant to subsection 32, paragraph *"a"*, and qualified as a transfer under paragraph *"a"*, subparagraph (2), of this subsection.

34A. Subtract, to the extent included, income from interest and earnings received from the Iowa ABLE savings plan trust created in chapter 12I, or received by a resident account owner from a qualified ABLE program with which the state has contracted pursuant to section 12I.10.

35. Subtract, to the extent included, the following:

a. Payments made to the taxpayer because of the taxpayer's status as a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or as an heir of such victim.

b. Items of income attributable to, derived from, or in any way related to assets stolen from, hidden from, or otherwise lost to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime immediately prior to, during, and immediately after World War II, including, but not limited to, interest on the proceeds receivable as insurance under policies issued to a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime by European insurance companies immediately prior to and during World War II. However, income from assets acquired with such assets or with the proceeds from the sale of such assets shall not be subtracted. This paragraph shall only apply to a taxpayer who was the first recipient of such assets after recovery of the assets and who is a victim of persecution for racial, ethnic, or religious reasons by Nazi Germany or any other Axis regime or is an heir of such victim.

36. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state individual income tax.

37. *a.* Notwithstanding the method for computing income from an installment sale under section 453 of the Internal Revenue Code, as defined in section 422.3, the method to be used in computing income from an installment sale shall be the method under section 453 of the Internal Revenue Code, as amended up to and including January 1, 2000. A taxpayer affected by this subsection shall make adjustments in the adjusted gross income pursuant to rules adopted by the director.

b. The adjustment to net income provided in this subsection is repealed for tax years beginning on or after January 1, 2002. However, to the extent that a taxpayer using the accrual method of accounting reported the entire capital gain from the sale or exchange of property on the Iowa return for the tax year beginning in the 2001 calendar year and the capital gain was reported on the installment method on the federal income tax return, any additional installment from the capital gain reported for federal income tax purposes is not to be included in net income in tax years beginning on or after January 1, 2002.

38. Subtract, to the extent not otherwise excluded, the amount of withdrawals from qualified retirement plan accounts made during the tax year if the taxpayer or taxpayer's spouse is a member of the Iowa national guard or reserve forces of the United States who is ordered to national guard duty or federal active duty. In addition, a penalty for such withdrawals shall not be assessed by the state.

39. *a.* The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, §101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing federal adjusted gross income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No. 108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

39A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

39B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, §710, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal adjusted gross income, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

40. Subtract, to the extent included, active duty pay received by a person in the national guard or armed forces military reserve for service performed on or after January 1, 2003, pursuant to military orders related to Operation Iraqi Freedom, Operation New Dawn, Operation Noble Eagle, and Operation Enduring Freedom.

41. *a.* Subject to the restrictions in paragraph "*b*", subtract the sum of the following amounts:

(1) The amount of contributions made by an account holder during the tax year to the account holder's first-time homebuyer savings accounts, not to exceed the following annual limit:

(a) (i) For married taxpayers who file a joint return and maintain a joint first-time homebuyer savings account, four thousand dollars.

(ii) For any other account holder, two thousand dollars.

(b) For the tax year beginning in the 2018 calendar year and for each subsequent tax year, the director shall multiply each dollar amount set forth in subparagraph division (a), subparagraph subdivisions (i) and (ii), by the latest cumulative inflation factor, shall round off the resulting product to the nearest one dollar, and shall incorporate the result into the income tax forms and instructions for each tax year. For purposes of this subparagraph division, "*cumulative inflation factor*" means the product of the annual inflation factor for the 2018 calendar year and all annual inflation factors for subsequent calendar years as determined by section 422.4, subsection 1, paragraph "*a*". The cumulative inflation factor applies to all tax years beginning on or after January 1 of the calendar year for which the latest annual inflation factor has been determined. Notwithstanding any other provision, the annual inflation factor for the 2018 calendar year is one hundred percent.

(2) To the extent included, income from interest received from the account holder's first-time homebuyer savings accounts.

b. (1) The subtraction in paragraph "*a*" shall not exceed the following aggregate lifetime limit:

(a) For married taxpayers who file a joint return and maintain a joint first-time homebuyer savings account, an amount equal to the product of the deductible amount determined for the year in paragraph "*a*", subparagraph (1), subparagraph division (a), subparagraph subdivision (i), multiplied by ten.

(b) For any other account holder, an amount equal to the product of the deductible amount determined for the year in paragraph "*a*", subparagraph (1), subparagraph division (a), subparagraph subdivision (ii), multiplied by ten.

(2) The subtraction in paragraph "*a*" shall not be allowed to an account holder upon one of the following dates, whichever occurs first:

(a) January 1 of the tenth calendar year after the calendar year during which the account holder first opened a first-time homebuyer savings account.

(b) The date on which funds within an account holder's first-time homebuyer savings account are withdrawn for purposes other than the payment or reimbursement of the designated beneficiary's eligible home costs in connection with a qualified home purchase. Any amount transferred between different first-time homebuyer savings accounts of the same account holder by a person other than the account holder shall not be considered a withdrawal for purposes of this subparagraph division (b).

c. (1) Add, to the extent previously deducted under paragraph "*a*", subparagraph (1), the amount withdrawn during the tax year from an account holder's first-time homebuyer savings account for purposes other than the payment or reimbursement of the designated beneficiary's eligible home costs in connection with a qualified home purchase.

(2) For purposes of this paragraph "*c*", any amount remaining in an account holder's first-time homebuyer savings account on January 1 of the tenth calendar year after the calendar year during which the account holder first opened a first-time homebuyer savings account shall be considered immediately withdrawn under subparagraph (1).

(3) For purposes of this paragraph "*c*", the transfer of amounts between different first-time

homebuyer accounts of the same account holder by a person other than the account holder shall not cause such transfer to be considered a withdrawal under subparagraph (1).

d. For any amount considered a withdrawal required to be added to net income pursuant to paragraph "*c*", the account holder shall be assessed a penalty equal to ten percent of the amount of the withdrawal. The penalty shall not apply to withdrawals made by reason of the death of the account holder, or to withdrawals made pursuant to a garnishment, levy, or other order, including but not limited to an order in bankruptcy following a filing for protection under the federal bankruptcy code, 11 U.S.C. §101 et seq.

e. For purposes of this subsection, "*account holder*", "*designated beneficiary*", "*eligible home costs*", "*first-time homebuyer savings account*", and "*qualified home purchase*" mean the same as defined in section 541B.2.

42. Subtract, to the extent included, military student loan repayments received by the taxpayer serving on active duty in the national guard or armed forces military reserve or on active duty status in the armed forces.

42A. Subtract, to the extent included, all pay received by the taxpayer from the federal government for military service performed while on active duty status in the armed forces, the armed forces military reserve, or the national guard.

43. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, §202, in computing adjusted gross income for state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

a. Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

b. Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, §202.

c. Any other adjustments to gains and losses to the adjustments made in paragraphs "*a*" and "*b*" pursuant to rules adopted by the director.

44. *a.* If the taxpayer, while living, donates one or more of the taxpayer's human organs to another human being for immediate human organ transplantation during the tax year, subtract, to the extent not otherwise excluded, the following unreimbursed expenses incurred by the taxpayer and related to the taxpayer's organ donation:

(1) Travel expenses.

(2) Lodging expenses.

(3) Lost wages.

b. The maximum amount that may be deducted under paragraph "*a*" is ten thousand dollars. A taxpayer shall only take the deduction under this subsection once. If a deduction is taken under this subsection, the amount of expenses shall not be considered medical care expenses under section 213 of the Internal Revenue Code for state tax purposes.

c. For purposes of this subsection, "*human organ*" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow.

45. Subtract, to the extent not otherwise deducted, the amount of two thousand dollars for the cost of a clean fuel motor vehicle if the taxpayer was eligible for the alternative motor vehicle credit under section 30B of the Internal Revenue Code for such motor vehicle.

46. Subtract, to the extent included, the amount of any grant provided pursuant to the injured veterans grant program pursuant to section 35A.14.

46A. Subtract, to the extent included, amounts received from the veterans trust fund for any of the following items:

a. Travel expenses pursuant to section 35A.13, subsection 6, paragraph "*a*".

b. Unemployment assistance pursuant to section 35A.13, subsection 6, paragraph "*c*".

47. Subtract, to the extent not otherwise deducted in computing adjusted gross income, the amounts paid by the taxpayer to the department of veterans affairs for the purpose of providing grants under the injured veterans grant program established in section 35A.14. Amounts subtracted under this subsection shall not be used by the taxpayer in computing the amount of charitable contributions as defined by section 170 of the Internal Revenue Code.

48. Reserved.

49. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

50. Subtract, to the extent included, the amount of victim compensation awards paid under the victim compensation program, victim restitution payments received pursuant to chapter 910 or 915, and any damages awarded by a court, and received by the taxpayer, in a civil action filed by the victim against the offender, during the tax year.

51. *a.* Notwithstanding any other provision of law to the contrary, the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, applies in computing net income for state tax purposes for tax years beginning on or after January 1, 2018, subject to the limitations in this subsection for tax years beginning prior to January 1, 2020.

b. If the taxpayer has taken the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, for purposes of computing federal adjusted gross income for tax years beginning on or after January 1, 2018, but before January 1, 2020, then the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes for the same tax year:

(1) Add the total amount of expense deduction taken on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) (a) For tax years beginning on or after January 1, 2018, but before January 1, 2019, subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, not to exceed seventy thousand dollars. The subtraction in this subparagraph division shall be reduced, but not below zero, by the amount by which the total cost of section 179 property placed in service by the taxpayer during the tax year exceeds two hundred eighty thousand dollars.

(b) For tax years beginning on or after January 1, 2019, but before January 1, 2020, subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, not to exceed one hundred thousand dollars. The subtraction in this subparagraph division shall be reduced, but not below zero, by the amount by which the total cost of section 179 property placed in service by the taxpayer during the tax year exceeds four hundred thousand dollars.

(3) Any other adjustments to gains or losses necessary to reflect adjustments made in subparagraphs (1) and (2).

c. The director shall adopt rules pursuant to chapter 17A to administer this subsection.

52. *a.* For tax years beginning on or after January 1, 2018, but before January 1, 2020, a taxpayer may elect to take advantage of this subsection in lieu of subsection 51, but only if the taxpayer's total expensing allowance deduction for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, that is allocated to the taxpayer from one or more partnerships, S corporations, or limited liability companies electing to have the income taxed directly to the individual exceeds seventy thousand dollars for a tax year beginning during the 2018 calendar year, or exceeds one hundred thousand dollars for a tax year beginning during the 2019 calendar year, and would, except as provided in this subsection, be limited for purposes of computing net income for state tax purposes pursuant to subsection 51.

b. A taxpayer who elects to take advantage of this subsection shall make the following

adjustments to federal adjusted gross income when computing net income for state tax purposes:

(1) Add the total amount of section 179 expense deduction allocated to the taxpayer from all partnerships, S corporations, or limited liability companies electing to have the income taxed directly to the individual, to the extent the allocated amount was allowed as a deduction to the taxpayer for federal tax purposes for the tax year under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) From the amount added in subparagraph (1), do the following:

(a) For tax years beginning on or after January 1, 2018, but before January 1, 2019, subtract the first seventy thousand dollars of expensing allowance deduction on section 179 property.

(b) For tax years beginning on or after January 1, 2019, but before January 1, 2020, subtract the first one hundred thousand dollars of expensing allowance deduction on section 179 property.

(3) The remaining amount, equal to the difference between the amount added in subparagraph (1), and the amount subtracted in subparagraph (2), may be deducted by the taxpayer but such deduction shall be amortized equally over five tax years beginning in the following tax year.

(4) Any other adjustments to gains or losses necessary to reflect adjustments made in subparagraphs (1) through (3).

c. A taxpayer who elects to take advantage of this subsection shall not take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, for any section 179 property placed in service by the taxpayer in computing adjusted gross income for state tax purposes. If the taxpayer has taken any such deduction for purposes of computing federal adjusted gross income, the taxpayer shall make the following adjustments to federal adjusted gross income when computing net income for state tax purposes:

(1) Add the total amount of expense deduction for federal tax purposes taken on section 179 property placed in service by the taxpayer under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) Subtract the amount of depreciation allowable on such property under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code, without regard to section 168(k) of the Internal Revenue Code. The taxpayer shall continue to take depreciation on the applicable property in future tax years to the extent allowed under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code, without regard to section 168(k) of the Internal Revenue Code.

(3) Any other adjustments to gains or losses necessary to reflect the adjustments made in subparagraphs (1) and (2).

d. The election made under this subsection is for one tax year and the taxpayer may elect or not elect to take advantage of this subsection in any subsequent tax year. However, not electing to take advantage of this subsection in a subsequent tax year shall not affect the taxpayer's ability to claim the tax deduction under paragraph "*b*", subparagraph (3), that originated from a previous tax year.

e. The director shall adopt rules pursuant to chapter 17A to administer this subsection.

53. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 111-5, §1202, in computing adjusted gross income for state tax purposes.

54. Subtract, to the extent included, the amount of any biodiesel production refund provided pursuant to section 423.4.

55. A taxpayer is allowed to take the deduction for certain expenses of elementary and secondary school teachers allowed under section 62(a)(2)(D) of the Internal Revenue Code, as amended by the federal Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, in computing net income for state tax purposes.

56. A taxpayer is allowed to take the deduction for qualified tuition and related expenses allowed under section 222 of the Internal Revenue Code, as amended by the federal

Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, in computing net income for state tax purposes.

57. *a.* Subtract, to the extent included, payments received by an individual from an electric utility for the following:

(1) Emergency response work performed in this state for the electric utility pursuant to a mutual aid agreement between this state and any other state if such emergency response work is performed while the individual is a nonresident.

(2) Training received in this state from the electric utility if such training is received while the individual is a nonresident.

b. For purposes of this subsection, "*electric utility*" means the same as defined in section 476.22.

58. On the Iowa fiduciary income tax return, subtract the amount of administrative expenses that were not taken or allowed as a deduction in calculating net income for federal fiduciary income tax purposes.

[C35, §6943-f7; C39, §**6943.039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.7; 81 Acts, ch 132, §4 – 6, 9 – 11; 82 Acts, ch 1023, §3 – 8, 25, 30, 31, ch 1203, §2]

83 Acts, ch 174, §1, 3; 83 Acts, ch 179, §5, 6, 21, 24; 84 Acts, ch 1305, §29, 30; 85 Acts, ch 230, §4; 86 Acts, ch 1232, §2; 86 Acts, ch 1236, §5; 86 Acts, ch 1238, §18; 86 Acts, ch 1241, §14; 86 Acts, ch 1243, §33; 87 Acts, 1st Ex, ch 1, §3; 87 Acts, 2nd Ex, ch 1, §4 – 6; 88 Acts, ch 1028, §13 – 15; 89 Acts, ch 175, §2; 89 Acts, ch 225, §18, 19; 89 Acts, ch 228, §6, 7, 11; 89 Acts, ch 249, §2; 89 Acts, ch 251, §13; 89 Acts, ch 268, §4; 89 Acts, ch 285, §3; 90 Acts, ch 1171, §2; 90 Acts, ch 1195, §1; 90 Acts, ch 1251, §52; 90 Acts, ch 1271, §1901, 1903; 91 Acts, ch 196, §2; 91 Acts, ch 210, §1; 92 Acts, ch 1225, §1, 5; 92 Acts, ch 1247, §30, 31, 39; 93 Acts, ch 97, §14, 20; 94 Acts, ch 1165, §12, 46; 94 Acts, ch 1166, §2, 3, 12; 94 Acts, ch 1183, §77 – 79, 97; 95 Acts, ch 5, §1, 14; 95 Acts, ch 152, §3, 7; 95 Acts, ch 206, §1, 4; 96 Acts, ch 1106, §7; 96 Acts, ch 1129, §113; 96 Acts, ch 1186, §23; 97 Acts, ch 133, §1; 97 Acts, ch 135, §4, 9; 98 Acts, ch 1100, §57; 98 Acts, ch 1172, §12, 14; 98 Acts, ch 1174, §5, 6; 98 Acts, ch 1177, §1 – 6; 2000 Acts, ch 1103, §2, 3; 2000 Acts, ch 1163, §5, 6; 2000 Acts, ch 1194, §8, 21; 2001 Acts, ch 15, §1, 2; 2001 Acts, ch 116, §6, 28; 2001 Acts, ch 127, §4, 5, 9, 10; 2001 Acts, 2nd Ex, ch 6, §21, 22, 25, 26, 37; 2002 Acts, ch 1069, §4, 11, 14; 2002 Acts, ch 1150, §4; 2002 Acts, ch 1151, §5, 36; 2003 Acts, ch 139, §5, 11, 12; 2003 Acts, ch 142, §5, 6, 11; 2003 Acts, 1st Ex, ch 2, §184, 205; 2004 Acts, ch 1086, §66; 2004 Acts, 1st Ex, ch 1001, §38, 41, 42; 2005 Acts, ch 2, §1, 2, 6; 2005 Acts, ch 19, §53; 2005 Acts, ch 24, §4, 10, 11; 2005 Acts, ch 127, §1, 2; 2006 Acts, ch 1013, §1, 2; 2006 Acts, ch 1106, §2, 4; 2006 Acts, ch 1112, §4, 5; 2006 Acts, ch 1140, §4, 10, 11; 2006 Acts, ch 1158, §12; 2006 Acts, ch 1179, §71; 2006 Acts, 1st Ex, ch 1001, §41, 49; 2007 Acts, ch 27, §2, 11; 2007 Acts, ch 54, §35; 2007 Acts, ch 162, §4, 13; 2007 Acts, ch 176, §2, 4; 2007 Acts, ch 186, §8; 2008 Acts, ch 1011, §4, 9; 2008 Acts, ch 1131, §2 – 4; 2008 Acts, ch 1178, §8, 17; 2009 Acts, ch 118, §6, 12; 2009 Acts, ch 133, §136 – 139; 2009 Acts, ch 161, §3, 4; 2010 Acts, ch 1107, §1, 2; 2011 Acts, ch 41, §2, 5, 7, 18, 19, 23 – 25; 2011 Acts, ch 105, §1 – 3; 2011 Acts, ch 113, §57, 60; 2011 Acts, ch 131, §137, 139, 140, 142; 2012 Acts, ch 1019, §129; 2012 Acts, ch 1021, §73; 2012 Acts, ch 1059, §12; 2012 Acts, ch 1072, §37; 2012 Acts, ch 1110, §7; 2012 Acts, ch 1123, §1, 32; 2012 Acts, ch 1136, §33, 39 – 41; 2012 Acts, ch 1138, §133, 134; 2013 Acts, ch 1, §9, 11, 12; 2013 Acts, ch 70, §1, 2; 2013 Acts, ch 100, §23, 27; 2014 Acts, ch 1080, §85, 98; 2014 Acts, ch 1093, §19, 21; 2014 Acts, ch 1116, §3 – 5; 2015 Acts, ch 1, §9, 11, 12; 2015 Acts, ch 116, §27, 29, 30; 2015 Acts, ch 125, §1, 7; 2015 Acts, ch 137, §87, 91, 162; 2015 Acts, ch 138, §72, 73, 161; 2016 Acts, ch 1011, §68; 2017 Acts, ch 116, §1, 10; 2017 Acts, ch 170, §37, 45; 2018 Acts, ch 1026, §129; 2018 Acts, ch 1161, §58, 65, 67, 75, 76, 97, 98, 144, 145, 147, 148; 2019 Acts, ch 46, §3

Referred to in §8.57E, 12D.9, 12I.8, 12I.10, 217.39, 422.4, 422.5, 422.8, 422.9, 422.16, 422.35, 425.17, 541A.2, 541A.3, 541B.6

For future amendments to this section, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §108 – 118, 133, 134; 2019 Acts, ch 162, §1

2015 amendment to subsection 32, paragraph a, takes effect July 2, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 138, §73, 161

Subsections 34 and 34A apply to tax years beginning on or after January 1, 2016; 2015 Acts, ch 137, §91

2015 amendment to subsection 39A takes effect February 17, 2015, and applies retroactively to January 1, 2014, for tax years ending on or after that date; 2015 Acts, ch 1, §11, 12

Subsection 57 takes effect June 18, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 116, §29, 30

Subsection 58 applies to Iowa fiduciary income tax returns filed for tax years ending on or after July 1, 2015; 2015 Acts, ch 125, §7

For provisions relating to the disallowance of additional first-year depreciation under §168(k) of the Internal Revenue Code for tax years ending on or after January 1, 2015, see 2016 Acts, ch 1007, §3 – 5; 2017 Acts, ch 157, §11 – 13

Subsection 41 applies to tax years beginning on or after January 1, 2018; 2017 Acts, ch 116, §10; 2017 Acts, ch 170, §45

2018 amendment to subsection 32, paragraph c, applies retroactively to January 1, 2018, for withdrawals from the Iowa educational savings plan trust made on or after that date; 2018 Acts, ch 1161, §148

2018 amendment to subsection 34 applies retroactively to January 1, 2018, for withdrawals from the Iowa educational savings plan trust made on or after that date; 2018 Acts, ch 1161, §148

2018 amendment to subsection 39A, unnumbered paragraph 1 effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsections 51 and 52 apply retroactively to January 1, 2018, for tax years beginning on or after that date; 2018 Acts, ch 1161, §67

Exclusion of certain qualified charitable distributions from individual retirement plans when computing net income for tax years beginning during the 2018 calendar year; 2018 Acts, ch 1161, §60, 66

Subsection 59, applicable to tax years beginning January 1, 2019, stricken per its own terms, effective January 1, 2020, for tax years beginning on or after that date; 2018 Acts, ch 1161, §76, 97, 98.

Subsection 2, paragraph v stricken

Subsection 59 stricken per its own terms

422.8 Allocation of income earned in Iowa and other states.

Under rules prescribed by the director, net income of individuals, estates, and trusts shall be allocated as follows:

1. The amount of income tax paid to another state or foreign country by a resident taxpayer of this state on income derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this chapter, except that the credit shall not exceed what the amount of the Iowa tax would have been on the same income which was taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: Income earned outside of Iowa and taxed by another state or foreign country shall be divided by the total income of the resident taxpayer of Iowa. This quotient multiplied times the net Iowa tax as determined on the total income of the taxpayer as if entirely earned in Iowa shall be the maximum tax credit against the Iowa net tax.

2. *a.* Nonresident's net income allocated to Iowa is the net income, or portion of net income, which is derived from a business, trade, profession, or occupation carried on within this state or income from any property, trust, estate, or other source within Iowa. However, income derived from a business, trade, profession, or occupation carried on within this state and income from any property, trust, estate, or other source within Iowa shall not include distributions from pensions, including defined benefit or defined contribution plans, annuities, individual retirement accounts, and deferred compensation plans or any earnings attributable thereto so long as the distribution is directly related to an individual's documented retirement and received while the individual is a nonresident of this state. If a business, trade, profession, or occupation is carried on partly within and partly without the state, only the portion of the net income which is fairly and equitably attributable to that part of the business, trade, profession, or occupation carried on within the state is allocated to Iowa for purposes of section 422.5, subsection 1, paragraph *"b"*, and section 422.13 and income from any property, trust, estate, or other source partly within and partly without the state is allocated to Iowa in the same manner, except that annuities, interest on bank deposits and interest-bearing obligations, and dividends are allocated to Iowa only to the extent to which they are derived from a business, trade, profession, or occupation carried on within the state. Net income described in section 29C.24, subsection 3, paragraph *"a"*, subparagraph (3), and paragraph *"b"*, subparagraph (2), shall not be allocated and apportioned to the state, as provided in section 29C.24.

b. A resident's income, or the income of an estate or trust with a situs in Iowa, allocable to Iowa is the income determined under section 422.7 reduced by items of income and expenses from an S corporation that carries on business within and without the state when those items of income and expenses pass directly to the shareholders under provisions of the Internal Revenue Code. These items of income and expenses are increased by the greater of the following:

(1) The net income or loss of the corporation which is fairly and equitably attributable to this state under section 422.33, subsections 2 and 3.

(2) Any cash or the value of property distributions which are made only to the extent that they are paid from income upon which Iowa income tax has not been paid, as determined under rules of the director, reduced by the amount of any of these distributions that are made

to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

3. Taxable income of resident and nonresident estates and trusts shall be allocated in the same manner as individuals.

4. The amount of minimum tax paid to another state or foreign country by a resident taxpayer of this state from preference items derived from sources outside of Iowa shall be allowed as a credit against the tax computed under this division except that the credit shall not exceed what the amount of state alternative minimum tax would have been on the same preference items which were taxed by the other state or foreign country. The limitation on this credit shall be computed according to the following formula: The total of preference items earned outside of Iowa and taxed by another state or foreign country shall be divided by the total of preference items of the resident taxpayer of Iowa. In computing this quotient, those items excludable under section 422.5, subsection 2, paragraph *"b"*, subparagraph (1), shall not be used in computing the preference items. This quotient multiplied times the net state alternative minimum tax as determined in section 422.5, subsection 2, on the total of preference items as if entirely earned in Iowa shall be the maximum tax credit against the Iowa alternative minimum tax. However, the maximum tax credit will not be allowed to the extent that the minimum tax imposed by the other state or foreign country is less than the maximum tax credit computed above.

5. *a.* The director may, in accordance with the provisions of this subsection, and when cost-efficient, administratively feasible, and of mutual benefit to both states, enter into reciprocal agreements with tax administration agencies of other states to further tax administration and eliminate duplicate withholding by exempting from Iowa taxation income earned from personal services in Iowa by residents of another state, if the other state provides a tax exemption for the same type of income earned from personal services by Iowa residents in the other state. For purposes of this subsection, *"income earned from personal services"* means wages, salaries, commissions, and tips, and earned income from other sources. This subsection does not authorize the department to withhold taxes on deferred compensation payments, pension distributions, and annuity payments when paid to a nonresident of the state of Iowa. All the terms of the agreements shall be described in the rules adopted by the department.

b. A reciprocal agreement entered into on or after April 4, 2002, with a tax administration agency of another state shall not take effect until such agreement has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. A reciprocal agreement in effect on or after January 1, 2002, shall not be terminated by the state of Iowa unless the termination has been authorized by a constitutional majority of each house of the general assembly and approved by the governor. An amendment to an existing reciprocal agreement does not constitute a new agreement.

6. If the resident or part-year resident is a shareholder of an S corporation which has in effect an election under subchapter S of the Internal Revenue Code, subsections 1 and 3 do not apply to any income taxes paid to another state or foreign country on the income from the corporation which has in effect an election under subchapter S of the Internal Revenue Code.

[C35, §6943-f8; C39, §**6943.037, 6943.040, 6943.050;** C46, 50, 54, 58, §422.5, 422.8, 422.18; C62, 66, 71, 73, 75, 77, 79, 81, §422.5, 422.8; 82 Acts, ch 1226, §3, 6]

83 Acts, ch 16, §1, 2; 85 Acts, ch 243, §3; 88 Acts, ch 1028, §16; 92 Acts, ch 1224, §1, 2, 4; 94 Acts, ch 1149, §1, 2; 96 Acts, ch 1197, §16 – 18; 97 Acts, ch 111, §5, 6, 8; 2002 Acts, ch 1005, §10, 11; 2002 Acts, ch 1069, §5, 12, 14; 2009 Acts, ch 133, §242; 2011 Acts, ch 25, §143; 2013 Acts, ch 140, §121, 123, 124; 2016 Acts, ch 1095, §3, 14, 15; 2018 Acts, ch 1161, §77, 97, 98

Referred to in §2.48, 29C.24, 260E.2, 422.5, 422.9, 422.12B, 422.13, 422.16

For future strike of subsection 4, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §119, 133, 134

2016 amendment to subsection 2, paragraph a, takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

422.9 Deductions from net income.

In computing taxable income of individuals, there shall be deducted from net income the larger of the amounts computed under subsection 1 or 2, plus the amount computed under subsection 2A.

1. An optional standard deduction, after deduction of federal income tax, equal to one thousand two hundred thirty dollars for a married person who files separately or a single person or equal to three thousand thirty dollars for a husband and wife who file a joint return, a surviving spouse, or a head of household. The optional standard deduction shall not exceed the amount remaining after deduction of the federal income tax. The amount of federal income tax deducted shall be computed as provided in subsection 2, paragraph *"b"*.

2. The total of contributions, interest, taxes, medical expense, nonbusiness losses, and miscellaneous expenses deductible for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

a. Subtract the deduction for Iowa income taxes.

b. Add the amount of federal income taxes paid or accrued, as the case may be, during the tax year and subtract any federal income tax refunds received during the tax year. Where married persons, who have filed a joint federal income tax return, file separately, such total shall be divided between them according to the portion of the total paid or accrued, as the case may be, by each. Federal income taxes paid for a tax year in which an Iowa return was not required to be filed shall not be added and federal income tax refunds received from a tax year in which an Iowa return was not required to be filed shall not be subtracted.

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by an adoption service provider according to the provisions of chapter 600. If the taxpayer claims an adoption tax credit under section 422.12A, the taxpayer shall recompute for purposes of this subsection the amount of the deduction by excluding the amount of qualified adoption expenses, as defined in section 422.12A, used in computing the adoption tax credit.

d. Add an additional deduction for mileage incurred by the taxpayer in voluntary work for a charitable organization consisting of the excess of the state employee mileage reimbursement over the amount deductible for federal income tax purposes. The deduction shall be proven by the keeping of a contemporaneous diary by the person throughout the period of the voluntary work in the tax year.

e. Add the amount, not to exceed five thousand dollars, of expenses not otherwise deductible under this section actually incurred in the home of the taxpayer for the care of a person who is the grandchild, child, parent, or grandparent of the taxpayer or the taxpayer's spouse and who is unable, by reason of physical or mental disability, to live independently and is receiving, or would be eligible to receive if living in a health care facility licensed under chapter 135C, medical assistance benefits under chapter 249A. In the event that the person being cared for is receiving assistance benefits under chapter 239B, the expenses not otherwise deductible shall be the net difference between the expenses actually incurred in caring for the person and the assistance benefits received under chapter 239B.

f. Add the amount of the mortgage interest credit allowable for the tax year under section 25 of the Internal Revenue Code to the extent the credit decreased the amount of interest deductible under section 163(g) of the Internal Revenue Code.

g. If the taxpayer has a deduction for medical care expenses under section 213 of the Internal Revenue Code, the taxpayer shall recompute for the purposes of this subsection the amount of the deduction under section 213 by excluding from medical care, as defined in section 213, the amount subtracted under section 422.7, subsection 29.

h. For purposes of calculating the deductions in this subsection that are authorized under the Internal Revenue Code, and to the extent that any of such deductions is determined by an individual's federal adjusted gross income, the individual's federal adjusted gross income is computed in accordance with section 422.7, subsections 39, 39A, 39B, 51, 52, and 53.

i. The deduction for state sales and use taxes is allowable only if the taxpayer elected to deduct the state sales and use taxes in lieu of state income taxes under section 164 of the Internal Revenue Code. A deduction for state sales and use taxes is not allowed if the taxpayer has taken the deduction for state income taxes or claimed the standard deduction under section 63 of the Internal Revenue Code. This paragraph applies to taxable years beginning after December 31, 2018.

j. Subtract charitable contributions under section 170 of the Internal Revenue Code to the extent such contribution was made to an organization for the purpose of deposit in the Iowa education savings plan trust established in chapter 12D, and the taxpayer designated that any part of the contribution be used for the direct benefit of any dependent of the taxpayer or any other single beneficiary designated by the taxpayer.

k. Subtract interest, taxes, and other miscellaneous expenses deductible for federal income tax purposes to the extent such amounts are eligible home costs in connection with a qualified home purchase that were paid or reimbursed from funds in a first-time homebuyer savings account. For purposes of this paragraph, "*eligible home costs*", "*first-time homebuyer savings account*", and "*qualified home purchase*" mean the same as defined in section 541B.2.

l. The limitation on the deduction of certain taxes in section 164(b)(6) of the Internal Revenue Code does not apply in computing taxable income for state tax purposes. A taxpayer is allowed to deduct taxes in computing taxable income as otherwise provided in this subsection without regard to section 164(b)(6), as enacted by Pub. L. No. 115-97, §11042.

2A. *a.* The following percentage of the qualified business income deductions under sections 199A(a) and 199A(g) of the Internal Revenue Code taken and allowable in calculating federal taxable income for the applicable tax year:

(1) For tax years beginning on or after January 1, 2019, but before January 1, 2021, twenty-five percent.

(2) For tax years beginning during the 2021 calendar year, fifty percent.

(3) For tax years beginning on or after January 1, 2022, seventy-five percent.

b. Notwithstanding paragraph "*a*", and section 422.4, subsection 16, paragraph "*e*", for an entity electing or required to file a composite return under section 422.13, subsection 5, the deduction allowed under this subsection for purposes of the composite return shall be an amount equal to the applicable percentage described in paragraph "*a*" of the deductions that would be allowable for federal income tax purposes under sections 199A(a) and 199A(g) of the Internal Revenue Code by an individual taxpayer reporting the same items of income and loss that are included in the composite return.

3. If, after applying all of the adjustments provided for in section 422.7, the allocation provisions of section 422.8, and the deductions allowable in this section subject to the modifications provided in section 172(d) of the Internal Revenue Code, the taxable income results in a net operating loss, the net operating loss shall be deducted as follows:

a. The Iowa net operating loss shall be carried back three taxable years for an individual taxpayer with a casualty or theft property loss or for a net operating loss in a presidentially declared disaster area incurred by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses, the net operating loss shall be carried back two taxable years or to the taxable year in which the taxpayer first earned income in Iowa whichever year is the later.

b. The Iowa net operating loss remaining after being carried back as required in paragraph "*a*" or "*d*" or if not required to be carried back shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. Notwithstanding paragraph "*a*", for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(B) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

4. Where married persons file separately, both must use the optional standard deduction

if either elects to use it, and both must claim itemized deductions if either elects to claim itemized deductions.

5. A taxpayer affected by section 422.8 shall be permitted to deduct only such portion of the total referred to in subsections 2 and 2A as is fairly and equitably allocable to Iowa under the rules prescribed by the director.

[C35, §6943-f9; C39, §**6943.041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.9; 82 Acts, ch 1023, §9, 10, 30, 32, ch 1192, §1, 2, ch 1226, §4, 6]

83 Acts, ch 179, §7, 22; 84 Acts, ch 1305, §31; 87 Acts, ch 233, §493; 87 Acts, 2nd Ex, ch 1, §7 – 9; 88 Acts, ch 1028, §17 – 20; 89 Acts, ch 268, §5; 91 Acts, ch 159, §9; 91 Acts, ch 210, §2; 92 Acts, ch 1222, §4, 6; 94 Acts, ch 1046, §9; 94 Acts, ch 1166, §4 – 6, 12; 95 Acts, ch 5, §2, 14; 96 Acts, ch 1168, §1, 3; 97 Acts, ch 41, §32; 97 Acts, ch 135, §5, 9; 98 Acts, ch 1078, §5, 12; 99 Acts, ch 95, §5, 6, 12, 13; 99 Acts, ch 114, §25; 2001 Acts, ch 132, §22, 24; 2001 Acts, 1st Ex, ch 3, §1, 2; 2002 Acts, ch 1069, §6, 13, 14; 2003 Acts, ch 139, §6, 11, 12; 2003 Acts, ch 142, §7, 11; 2005 Acts, ch 24, §5, 10, 11; 2005 Acts, ch 140, §37 – 39, 73; 2006 Acts, ch 1158, §13; 2008 Acts, ch 1027, §1, 3; 2009 Acts, ch 60, §4, 17; 2011 Acts, ch 41, §3, 5, 20, 23, 24; 2011 Acts, ch 131, §144, 146; 2013 Acts, ch 1, §3, 7, 8; 2013 Acts, ch 70, §3, 9; 2014 Acts, ch 1113, §2, 3; 2015 Acts, ch 1, §3, 7, 8; 2016 Acts, ch 1107, §3, 5, 6; 2017 Acts, ch 113, §1; 2017 Acts, ch 116, §2, 10; 2018 Acts, ch 1161, §59, 65, 67, 78 – 84, 97, 98; 2019 Acts, ch 152, §2, 3, 15

Referred to in §422.4, 422.5, 422.7(21)(d), 422.16, 422.21, 541B.6

For future amendment to this section, effective on or after January 1, 2023, and contingent upon the meeting of certain net general fund revenue criteria, see 2018 Acts, ch 1161, §120, 133, 134

2015 amendment to subsection 2, paragraph i, takes effect February 17, 2015, and applies retroactively to January 1, 2014, for tax years beginning on or after that date; 2015 Acts, ch 1, §7, 8

For provisions relating to the deduction of state sales and use taxes for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §2, 4, 5

For provisions relating to the determination of federal adjusted gross income for purposes of calculating deductions in light of the disallowance of additional first-year depreciation under §168(k) of the Internal Revenue Code for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §3 – 5; 2017 Acts, ch 157, §11 – 13

Subsection 2, paragraph j, takes effect May 25, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1107, §5, 6

Subsection 2, paragraph k, applies to tax years beginning on or after January 1, 2018; 2017 Acts, ch 116, §10

2018 amendment to unnumbered paragraph 1 effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 2, paragraph h, applies retroactively to January 1, 2018, for tax years beginning on or after that date; 2018 Acts, ch 1161, §65, 67

2018 amendment to subsection 2, paragraph i, effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsection 2, paragraph l, effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsection 2A effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 3, paragraph d, effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 5 and strike of subsections 6 and 7 effective January 1, 2019, and apply to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Deduction of sales and use tax in lieu of deduction for state and local income taxes in computing taxable income for tax years beginning during the 2018 calendar year for persons who itemize deductions; 2018 Acts, ch 1161, §61, 66

Teacher expense deduction for tax years beginning during the 2018 calendar year; 2018 Acts, ch 1161, §64, 66

2019 amendments to subsection 2A apply retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §15

Subsection 2A, paragraph a, unnumbered paragraph 1 amended

Subsection 2A, paragraph b amended

422.10 Research activities credit.

1. The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state.

a. An individual shall only be eligible for the credit provided in this section if the business conducting the research meets all of the following requirements:

(1) (a) The business is engaged in the manufacturing, life sciences, agriscience, software engineering, or aviation and aerospace industry.

(b) Persons that shall not be considered to be engaged in the manufacturing, life sciences, agriscience, software engineering, or aviation and aerospace industry, and thus are not eligible for the credit, include but are not limited to all of the following:

(i) A person engaged in agricultural production as defined in section 423.1.

(ii) A person who is a contractor, subcontractor, builder, or a contractor-retailer that engages in commercial and residential repair and installation, including but not limited to heating or cooling installation and repair, plumbing and pipe fitting, security system installation, and electrical installation and repair. For purposes of this subparagraph

subdivision, *"contractor-retailer"* means a business that makes frequent retail sales to the public or to other contractors and that also engages in the performance of construction contracts.

(iii) A finance or investment company.

(iv) A retailer.

(v) A wholesaler.

(vi) A transportation company.

(vii) A publisher.

(viii) An agricultural cooperative association as defined in section 502.102.

(ix) A real estate company.

(x) A collection agency.

(xi) An accountant.

(xii) An architect.

(2) The business claims and is allowed a research credit for such qualified research expenses under section 41 of the Internal Revenue Code for the same taxable year as it is claiming the credit provided in this section.

b. (1) For individuals, the credit equals the sum of the following:

(a) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(b) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

c. In lieu of the credit amount computed in paragraph *"b"*, subparagraph (1), subparagraph division (a), a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

d. For purposes of the alternate credit computation method in paragraph *"c"*, the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

2. For purposes of this section, an individual may claim a research credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, S corporation, limited liability company, estate, or trust.

3. *a.* For purposes of this section, *"base amount"* means the product of the fixed-based percentage times the average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined, but in no event shall the base amount be less than fifty percent of the qualified research expenses for the credit year.

b. For purposes of this section, *"basic research payment"* and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state.

4. Any credit in excess of the tax liability imposed by section 422.5 less the amounts of nonrefundable credits allowed under this division for the taxable year shall be refunded with interest in accordance with section 421.60, subsection 2, paragraph *"e"*. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

5. An individual may claim an additional research activities credit authorized pursuant

to section 15.335 if the eligible business is a partnership, S corporation, limited liability company, or estate or trust which elects to have the income taxed directly to the individual. The amount of the credit shall be as provided in section 15.335.

6. The department shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this section and the portion of the claims issued as refunds, for all claims processed during the previous calendar year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

83 Acts, ch 179, §8, 25; 85 Acts, ch 230, §5; 86 Acts, ch 1007, §22; 87 Acts, 2nd Ex, ch 1, §10; 88 Acts, ch 1028, §21; 90 Acts, ch 1171, §3; 91 Acts, ch 159, §10; 91 Acts, ch 215, §2; 93 Acts, ch 113, §2, 4; 94 Acts, ch 1166, §7, 11; 95 Acts, ch 152, §4, 7; 97 Acts, ch 23, §43; 97 Acts, ch 135, §6, 9; 98 Acts, ch 1078, §6, 10; 99 Acts, ch 95, §7, 12, 13; 2000 Acts, ch 1146, §4, 9, 11; 2000 Acts, ch 1194, §9, 21; 2001 Acts, ch 127, §6, 9, 10; 2002 Acts, ch 1069, §7, 10, 14; 2003 Acts, ch 139, §7, 11, 12; 2004 Acts, ch 1073, §17; 2005 Acts, ch 24, §6, 10, 11; 2006 Acts, ch 1140, §5, 10, 11; 2006 Acts, ch 1158, §14, 15; 2007 Acts, ch 12, §4, 7, 8; 2008 Acts, ch 1011, §5, 9; 2009 Acts, ch 179, §131, 153, 233; 2011 Acts, ch 41, §11, 12, 14, 16; 2012 Acts, ch 1007, §4, 7, 8; 2013 Acts, ch 1, §4, 7, 8; 2014 Acts, ch 1076, §3, 6, 7; 2015 Acts, ch 1, §4, 7, 8; 2017 Acts, ch 157, §5, 12, 14; 2018 Acts, ch 1161, §4, 15, 16, 32 – 34, 43, 45, 85, 97, 98; 2019 Acts, ch 152, §57, 58

Referred to in §2.48, 15.335, 422.5, 422.16

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For provisions relating to the definition of Internal Revenue Code for the period beginning January 1, 2015, and ending December 31, 2015, and for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §1, 4, 5

2017 amendment to former subsection 3, paragraph b, changing a date reference to January 1, 2016, takes effect May 11, 2017, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2017 Acts, ch 157, §12, 14

Subsection 1, paragraph a, applies retroactively to January 1, 2017, for tax years beginning on or after that date; 2018 Acts, ch 1161, §45

Legislative intent regarding 2018 enactment of subsection 3, paragraph a, and amendment of subsection 3, paragraph b; 2018 Acts, ch 1161, §41

2018 strike of former subsection 3, paragraph b, is effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 4 applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

Subsection 1, paragraph a, subparagraph (1), subparagraph division (a) amended

Subsection 1, paragraph a, subparagraph (1), subparagraph division (b), unnumbered paragraph 1 amended

422.10A Geothermal tax credit. Repealed by 2018 Acts, ch 1161, §42, 44, 46.

422.10B Renewable chemical production tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a renewable chemical production tax credit allowed under section 15.319. This section is repealed January 1, 2033.

2016 Acts, ch 1065, §12, 15, 16

Referred to in §422.5, 422.16

For restrictions on the issuance and claiming of renewable chemical production tax credits under §15.319, see 2016 Acts, ch 1065, §14

Section takes effect April 6, 2016, and applies to renewable chemicals produced in the state from biomass feedstock on or after January 1, 2017; 2016 Acts, ch 1065, §15, 16

422.11 Franchise tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code, or is a member of a financial institution organized as a limited liability company under chapter 524 that is taxed as a partnership for federal income tax purposes, shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution and subtracting the credits allowed under section 422.12. This recomputed tax shall be subtracted from the amount of tax computed under this division after the deduction for credits allowed under section 422.12. The resulting amount, which shall not exceed the

taxpayer's pro rata share of the franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

97 Acts, ch 154, §1, 3; 2004 Acts, ch 1141, §46; 2006 Acts, ch 1158, §16; 2007 Acts, ch 161, §2, 22

Referred to in §2.48, 422.5, 422.16

422.11A New jobs tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed under the agreement. An individual may claim the new jobs tax credit allowed a partnership, subchapter S corporation, or estate or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, subchapter S corporation, or estate or trust. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted, whichever is the earlier. For purposes of this section, *"agreement"*, *"industry"*, *"new job"*, and *"project"* mean the same as defined in section 260E.2 and *"base employment level"* means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

85 Acts, ch 32, §80; 89 Acts, ch 251, §14; 91 Acts, ch 159, §11; 2007 Acts, ch 161, §3, 22

Referred to in §2.48, 422.5, 422.16

422.11B Minimum tax credit.

1. *a.* There is allowed as a credit against the tax determined in section 422.5, subsection 1, for a tax year an amount equal to the minimum tax credit for that tax year.

b. The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, over the amount allowable as a credit under this section for those prior tax years.

2. *a.* The allowable credit under subsection 1 for a tax year shall not exceed the excess, if any, of the tax determined in section 422.5, subsection 1, over the state alternative minimum tax as determined in section 422.5, subsection 2.

b. The net minimum tax for a tax year is the excess, if any, of the tax determined in section 422.5, subsection 2, for the tax year over the tax determined in section 422.5, subsection 1, for the tax year.

89 Acts, ch 285, §4; 2006 Acts, ch 1158, §17, 18; 2009 Acts, ch 133, §243; 2018 Acts, ch 1161, §86, 97, 98

Referred to in §2.48, 422.5, 422.16

For future amendment to this section, effective on or after January 1, 2023, contingent upon meeting certain net general fun revenue criteria, see 2018 Acts, ch 1161, §121, 133, 134

2018 amendment effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

422.11C Workforce housing investment tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a workforce housing investment tax credit allowed under section 15.355, subsection 3.

2014 Acts, ch 1130, §19, 24 – 26

Referred to in §422.5, 422.16

422.11D Historic preservation tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a historic preservation tax credit allowed under chapter 404A.

2000 Acts, ch 1194, §10; 2005 Acts, ch 179, §64; 2007 Acts, ch 161, §5, 22; 2007 Acts, ch 165, §4, 9; 2012 Acts, ch 1138, §31; 2014 Acts, ch 1118, §8, 12; 2015 Acts, ch 30, §116; 2017 Acts, ch 29, §119

Referred to in §422.5, 422.16

422.11E Beginning farmer tax credit program.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a beginning farmer tax credit as allowed under chapter 16, subchapter VIII, part 5, subpart B.

2019 Acts, ch 161, §13, 18, 19

Referred to in §16.82, 422.5, 422.16

Section applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 161, §19

NEW section

422.11F Investment tax credits.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business .

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by investment tax credits authorized pursuant to section 15.333 and section 15E.193B, subsection 6, Code 2014.

2002 Acts, ch 1006, §7, 13; 2006 Acts, ch 1158, §19; 2007 Acts, ch 161, §7, 22; 2014 Acts, ch 1130, §36; 2015 Acts, ch 138, §120, 126, 127

Referred to in §422.5, 422.16

422.11G Venture capital fund investment tax credit. Repealed by 2010 Acts, ch 1138, §25, 26.

422.11H Endow Iowa tax credit.

The tax imposed under this division, less the credits allowed under section 422.12, shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §84, 89; 2007 Acts, ch 161, §9, 22

Referred to in §422.5, 422.16

422.11I Geothermal heat pump tax credit. Repealed by 2018 Acts, ch 1161, §42, 44, 46. See §422.12N.

422.11J Tax credits for wind energy production and renewable energy.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

2004 Acts, ch 1175, §404, 418; 2005 Acts, ch 160, §1, 14; 2007 Acts, ch 161, §11, 22

Referred to in §422.5, 422.16

422.11K Economic development region revolving fund contribution tax credit. Repealed by 2010 Acts, ch 1138, §15, 16.

422.11L Solar energy system tax credits.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a solar energy system tax credit equal to the sum of the following:

a. Sixty percent of the federal residential energy efficient property credit related to solar energy provided in section 25D(a)(1) and section 25D(a)(2) of the Internal Revenue Code, not to exceed five thousand dollars.

b. Sixty percent of the federal energy credit related to solar energy systems provided in section 48(a)(2)(A)(i)(II) and section 48(a)(2)(A)(i)(III) of the Internal Revenue Code, not to exceed twenty thousand dollars.

c. Notwithstanding paragraphs *"a"* and *"b"* of this subsection, for installations occurring on or after January 1, 2016, the applicable percentages of the federal residential energy efficiency property tax credit related to solar energy and the federal energy credit related to solar energy systems shall be fifty percent.

2. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following ten years or until depleted, whichever is earlier. The director of revenue shall adopt rules to implement this section.

3. *a.* An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

b. A taxpayer who is eligible to claim a credit under this section shall not be eligible to claim a renewable energy tax credit under chapter 476C.

c. A taxpayer may claim more than one credit under this section, but may claim only one credit per separate and distinct solar installation. The department shall establish criteria, by rule, for determining what constitutes a separate and distinct installation.

d. (1) A taxpayer must submit an application to the department for each separate and distinct solar installation. The application must be approved by the department in order to claim the tax credit. The application must be filed by May 1 following the year of the installation of the solar energy system.

(2) The department shall accept and approve applications on a first-come, first-served basis until the maximum amount of tax credits that may be claimed pursuant to subsection 4 is reached. If for a tax year the aggregate amount of tax credits applied for exceeds the amount specified in subsection 4, the department shall establish a wait list for tax credits. Valid applications filed by the taxpayer by May 1 following the year of the installation but not approved by the department shall be placed on a wait list in the order the applications were received and those applicants shall be given priority for having their applications approved in succeeding years. Placement on a wait list pursuant to this subparagraph shall not constitute a promise binding the state. The availability of a tax credit and approval of a tax credit application pursuant to this section in a future year is contingent upon the availability of tax credits in that particular year.

4. *a.* The cumulative value of tax credits claimed annually by applicants pursuant to this section shall not exceed five million dollars. Of this amount, at least one million dollars shall be reserved for claims associated with or resulting from residential solar energy system installations. In the event that the total amount of claims submitted for residential solar energy system installations in a tax year is an amount less than one million dollars, the remaining unclaimed reserved amount shall be made available for claims associated with or resulting from nonresidential solar energy system installations received for the tax year.

b. If an amount of tax credits available for a tax year pursuant to paragraph *"a"* goes unclaimed, the amount of the unclaimed tax credits shall be made available for the following tax year in addition to, and cumulated with, the amount available pursuant to paragraph *"a"* for the following tax year.

5. On or before January 1, annually, the department shall submit a written report to the governor and the general assembly regarding the number and value of tax credits claimed under this section, and any other information the department may deem relevant and appropriate.

6. For purposes of this section, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on January 1, 2016. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

2012 Acts, ch 1121, §7, 10, 11; 2014 Acts, ch 1121, §1 – 5; 2014 Acts, ch 1141, §77, 79, 80; 2015 Acts, ch 30, §117, 210; 2015 Acts, ch 124, §1, 2, 9, 10; 2016 Acts, ch 1128, §3, 4, 20; 2016 Acts, ch 1138, §40, 41; 2017 Acts, ch 157, §6

Referred to in §422.5, 422.16, 422.33, 422.60, 476C.2, 533.329

2015 amendment to subsection 1, paragraph a, applies retroactively to January 1, 2014, for tax years beginning on or after that date; 2015 Acts, ch 30, §210

2015 amendment to subsection 4, paragraph a, takes effect June 26, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

Subsection 6 applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2016 Acts, ch 1128, §20; 2016 Acts, ch 1138, §41

For provisions relating to the eligibility of tax credit applications filed after the May 1 deadline for solar energy systems installed during the 2014 and 2015 calendar years, see 2016 Acts, ch 1128, §14, 15

422.11M Agricultural assets transfer tax credit. Repealed by 2019 Acts, ch 161, §15, 18, 19.

2019 repeal applies retroactively to January 1, 2019, for tax years beginning on or after that date; for the continuing applicability of tax credit to applications approved or submitted for approval before May 21, 2019, see 2019 Acts, ch 161, §16, 17, 19

422.11N Ethanol promotion tax credit.

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

a. *"E-85 gasoline"*, *"ethanol"*, *"ethanol blended gasoline"*, *"gasoline"*, *"retail dealer"*, and *"retail motor fuel site"* mean the same as defined in section 214A.1.

b. *"Flexible fuel vehicle"* means the same as defined in section 452A.2.

c. *"Motor fuel"* means the same as defined in section 452A.2.

d. *"Motor fuel pump"* means the same as defined in section 214.1.

e. *"Sell"* means to sell on a retail basis.

f. *"Tax credit"* means the ethanol promotion tax credit as provided in this section.

2. The special terms provided in section 452A.31 shall also apply to this section.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this section. In order to be eligible, all of the following must apply:

a. The taxpayer is a retail dealer who sells and dispenses ethanol blended gasoline through a motor fuel pump located at the retail dealer's retail motor fuel site during the determination period or parts of the determination periods for which the tax credit is claimed as provided in this section.

b. The retail dealer complies with requirements of the department to administer this section.

4. *a.* When first claiming the tax credit, the retail dealer shall elect to compute and claim the tax credit on a company-wide basis or site-by-site basis in the same manner as provided in section 452A.33.

(1) In making a company-wide election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for all retail motor fuel sites where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which does not include all such retail motor fuel sites. A retail dealer shall use the company-wide election in order to calculate the retail dealer's biofuel threshold percentage as provided in subsection 5, paragraph *"b"*.

(2) In making a site-by-site election, the retail dealer must compute and claim the tax credit based on calculations as provided in this section for each retail motor fuel site where the retail dealer sells and dispenses motor fuel on a retail basis. The retail dealer shall not claim the tax credit based on a calculation which includes two or more retail motor fuel sites. Nothing in this subparagraph requires the retail dealer to compute or claim a tax credit for a particular retail motor fuel site. The retail dealer shall not use the site-by-site election in

order to calculate the retail dealer's biofuel threshold percentage as provided in subsection 5, paragraph "*b*".

b. Once the retail dealer makes an election as provided in paragraph "*a*", the retail dealer shall not change the election without the written consent of the department.

5. In order to receive the tax credit, the retail dealer must calculate all of the following:

a. The retail dealer's biofuel distribution percentage which is the sum of the retail dealer's total ethanol gallonage plus the retail dealer's total biodiesel gallonage expressed as a percentage of the retail dealer's total gasoline gallonage, in the retail dealer's applicable determination period.

b. The retail dealer's biofuel threshold percentage is as follows:

(1) For a retail dealer who sells and dispenses more than two hundred thousand gallons of motor fuel in an applicable determination period, the retail dealer's biofuel threshold percentage is as follows:

(a) Ten percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Eleven percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Twelve percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Thirteen percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Fourteen percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Fifteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Seventeen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Nineteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Twenty-one percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Twenty-three percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-five percent for each determination period in the period beginning on January 1, 2019, and ending on December 31, 2020.

(2) For a retail dealer who sells and dispenses two hundred thousand gallons of motor fuel or less in an applicable determination period, the biofuel threshold percentages shall be:

(a) Six percent for the determination period beginning on January 1, 2009, and ending December 31, 2009.

(b) Six percent for the determination period beginning on January 1, 2010, and ending December 31, 2010.

(c) Ten percent for the determination period beginning on January 1, 2011, and ending December 31, 2011.

(d) Eleven percent for the determination period beginning on January 1, 2012, and ending December 31, 2012.

(e) Twelve percent for the determination period beginning on January 1, 2013, and ending December 31, 2013.

(f) Thirteen percent for the determination period beginning on January 1, 2014, and ending December 31, 2014.

(g) Fourteen percent for the determination period beginning on January 1, 2015, and ending December 31, 2015.

(h) Fifteen percent for the determination period beginning on January 1, 2016, and ending December 31, 2016.

(i) Seventeen percent for the determination period beginning on January 1, 2017, and ending December 31, 2017.

(j) Nineteen percent for the determination period beginning on January 1, 2018, and ending December 31, 2018.

(k) Twenty-one percent for the determination period beginning on January 1, 2019, and ending December 31, 2019.

(l) Twenty-five percent for the determination period beginning on January 1, 2020, and ending December 31, 2020.

(3) (a) Notwithstanding paragraph *"a"*, the governor may adjust a biofuel threshold percentage for a determination period if the governor finds that exigent circumstances exist. Exigent circumstances exist due to potential substantial economic injury to the state's economy. Exigent circumstances also exist if it is probable that a substantial number of retail dealers cannot comply with a biofuel threshold percentage during a determination period due to any of the following:

(i) Less than the target number of flexible fuel vehicles are registered under chapter 321. The target numbers of flexible fuel vehicles are as follows:

(A) On January 1, 2011, two hundred fifty thousand.

(B) On January 1, 2014, three hundred fifty thousand.

(C) On January 1, 2017, four hundred fifty thousand.

(D) On January 1, 2019, five hundred fifty thousand.

(ii) A shortage in the biofuel feedstock resulting in a dramatic decrease in biofuel inventories.

(b) If the governor finds that exigent circumstances exist, the governor may reduce the applicable biofuel threshold percentage by replacing it with an adjusted biofuel threshold percentage. The governor shall consult with the department of revenue and the office of renewable fuels and coproducts pursuant to section 159A.3. The governor shall make the adjustment by giving notice of intent to issue a proclamation which shall take effect not earlier than thirty-five days after publication in the Iowa administrative bulletin of a notice to issue the proclamation. The governor shall provide a period of notice and comment in the same manner as provided in section 17A.4, subsection 1. The adjusted biofuel threshold percentage shall be effective for the following determination period.

c. The retail dealer's biofuel threshold percentage disparity which is a positive percentage difference obtained by taking the minuend which is the retail dealer's biofuel threshold percentage and subtracting from it the subtrahend which is the retail dealer's biofuel distribution percentage, in the retail dealer's applicable determination period.

6. *a.* For a retail dealer whose tax year is the same as a determination period beginning on January 1 and ending on December 31, the retail dealer's tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by a tax credit rate, which may be adjusted based on the retail dealer's biofuel threshold percentage disparity. The tax credit rate is as follows:

(1) For any tax year in which the retail dealer has attained a biofuel threshold percentage for the determination period, the tax credit rate is eight cents.

(2) For any tax year in which the retail dealer has not attained a biofuel threshold percentage for the determination period, the tax credit rate shall be adjusted based on the retail dealer's biofuel threshold percentage disparity. The amount of the adjusted tax credit rate is as follows:

(a) If the retail dealer's biofuel threshold percentage disparity equals two percent or less, the tax credit rate is six cents.

(b) If the retail dealer's biofuel threshold percentage disparity equals more than two percent but not more than four percent, the tax credit rate is as follows:

(i) For calendar year 2011, two and one-half cents.

(ii) For calendar year 2012 and for each subsequent calendar year, four cents.

(c) A retail dealer is not eligible for a tax credit if the retail dealer's biofuel threshold percentage disparity equals more than four percent.

b. For a retail dealer whose tax year is not the same as a determination period beginning on January 1 and ending on December 31, the retail dealer shall calculate the tax credit as follows:

(1) If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year,

the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in paragraph *"a"*.

(2) (a) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in paragraph *"a"*.

(b) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in paragraph *"a"*.

7. *a.* A retail dealer is eligible to claim an ethanol promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

(1) The E-85 gasoline promotion tax credit pursuant to section 422.11O.

(2) The E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. The retail dealer may claim the ethanol promotion tax credit and one or more of the related tax credits as provided in paragraph *"a"* for the same tax year and for the same ethanol gallonage.

8. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

9. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

10. This section is repealed on January 1, 2021.

2006 Acts, ch 1142, §39, 49; 2006 Acts, ch 1175, §10 – 14, 17, 23; 2007 Acts, ch 126, §66; 2007 Acts, ch 161, §15, 22; 2010 Acts, ch 1031, §248; 2011 Acts, ch 25, §143; 2011 Acts, ch 113, §3 – 9, 13, 14

Referred to in §2.48, 422.5, 422.11O, 422.11Y, 422.16, 422.33

For provisions relating to requirements for claiming an ethanol promotion tax credit in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17; 2011 Acts, ch 113, §11, 13, 14

422.11O E-85 gasoline promotion tax credit.

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

a. *"E-85 gasoline"*, *"ethanol"*, *"gasoline"*, and *"retail dealer"* mean the same as defined in section 214A.1.

b. *"Motor fuel pump"* means the same as defined in section 214.1.

c. *"Sell"* means to sell on a retail basis.

d. *"Tax credit"* means the E-85 gasoline promotion tax credit as provided in this section.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses E-85 gasoline through a motor fuel pump located at the retail dealer's retail motor fuel site during the calendar year or parts of the calendar year for which the tax credit is claimed as provided in this section.

(2) The retail dealer complies with requirements of the department to administer this section.

b. The tax credit shall apply to E-85 gasoline that meets the standards provided in section 214A.2.

3. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate of sixteen cents by the retail dealer's total E-85 gasoline gallonage as provided in sections 452A.31 and 452A.32.

4. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the

retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 3.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 3.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 3.

5. *a.* A retail dealer is eligible to claim an E-85 gasoline promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

(1) The ethanol promotion tax credit pursuant to section 422.11N.

(2) The E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. (1) The retail dealer may claim the E-85 gasoline promotion tax credit and one or more of the related tax credits as provided in paragraph *"a"* for the same tax year.

(2) The retail dealer may claim the ethanol promotion tax credit as provided in paragraph *"a"* for the same ethanol gallonage used to calculate and claim the E-85 gasoline promotion tax credit.

6. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

7. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

8. This section is repealed on January 1, 2025.

2006 Acts, ch 1142, §40, 48, 49; 2006 Acts, ch 1175, §15, 23; 2007 Acts, ch 126, §67; 2007 Acts, ch 161, §16, 22; 2011 Acts, ch 113, §15 – 18, 22, 23; 2011 Acts, ch 131, §62, 78, 79; 2016 Acts, ch 1106, §4

Referred to in §2.48, 422.5, 422.11N, 422.11Y, 422.16, 422.33

For future amendment to subsection 5, effective January 1, 2021, see 2016 Acts, ch 1106, §12, 15

For provisions relating to requirements for claiming an E-85 gasoline promotion tax credit in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §20, 22, 23; 2016 Acts, ch 1106, §6

422.11P Biodiesel blended fuel tax credit.

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

a. *"Biodiesel blended fuel"*, *"diesel fuel"*, and *"retail dealer"* mean the same as defined in section 214A.1.

b. *"Motor fuel pump"* means the same as defined in section 214.1.

c. *"Sell"* means to sell on a retail basis.

d. *"Tax credit"* means a biodiesel blended fuel tax credit as provided in this section.

2. For purposes of this section, biodiesel blended fuel is classified in the same manner as provided in section 214A.2.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim a tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses qualifying biodiesel blended fuel through a motor fuel pump located at the retail dealer's retail motor fuel site during the calendar year or parts of the calendar years for which the tax credit is claimed as provided in this section.

(2) The retail dealer complies with requirements of the department established to administer this section.

b. The tax credit shall apply to biodiesel blended fuel classified as provided in this

section, if the classification meets the standards provided in section 214A.2. In ensuring that biodiesel blended fuel meets the classification requirements of this section, the department shall take into account reasonable variances due to testing and other limitations. The department shall adopt rules to provide that where a blending error occurs and an insufficient amount of biodiesel has inadvertently been blended with petroleum-based diesel fuel so that the mixture fails to qualify as B-11 or higher a one percent tolerance applies when classifying the biodiesel blended fuel.

4. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate by the retail dealer's total biodiesel blended fuel gallonage as provided in section 452A.31 which qualifies under this subsection.

a. In order to qualify for the tax credit, the biodiesel blended fuel must be classified as B-5 or higher as provided in paragraph *"b"*.

b. Beginning January 1, 2018, the designated rate is determined as follows:

(1) For biodiesel blended fuel classified as B-5 or higher but not as high as B-11, the designated rate is three and one-half cents.

(2) For biodiesel blended fuel classified as B-11 or higher, the designated rate is five and one-half cents.

5. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 4.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 4.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 4.

6. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

7. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

8. This section is repealed January 1, 2025.

2006 Acts, ch 1142, §41, 48, 49; 2007 Acts, ch 161, §17, 22; 2008 Acts, ch 1169, §31, 32, 34, 35; 2008 Acts, ch 1191, §137; 2011 Acts, ch 113, §24 – 28, 33, 34; 2011 Acts, ch 131, §94, 104; 2016 Acts, ch 1106, §7, 8

Referred to in §2.48, 422.5, 422.16, 422.33

For provisions relating to requirements for claiming a biodiesel blended fuel tax credit in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §31, 33, 34; 2016 Acts, ch 1106, §10

422.11Q Iowa fund of funds tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

2006 Acts, ch 1158, §20; 2007 Acts, ch 161, §18, 22

Referred to in §422.5, 422.16

422.11R From farm to food donation tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a from farm to food donation tax credit as allowed under chapter 190B.

2013 Acts, ch 140, §145, 147

Referred to in §422.5, 422.16

422.11S School tuition organization tax credit.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a school tuition organization tax credit equal to sixty-five percent of the amount of the voluntary cash or noncash contributions made by the taxpayer during the tax year to a school tuition organization, subject to the total dollar value of the organization's tax credit certificates as computed in subsection 8. The tax credit shall be claimed by use of a tax credit certificate as provided in subsection 7.

2. To be eligible for this credit, all of the following shall apply:

a. A deduction pursuant to section 170 of the Internal Revenue Code for any amount of the contribution is not taken for state tax purposes.

b. The contribution does not designate that any part of the contribution be used for the direct benefit of any dependent of the taxpayer or any other student designated by the taxpayer.

c. The value of a noncash contribution shall be appraised pursuant to rules of the director.

3. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following five tax years or until depleted, whichever is the earlier.

4. Married taxpayers who file separate returns or file separately on a combined return form must determine the tax credit under subsection 1 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine their tax credit in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the tax credit between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

5. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

6. For purposes of this section:

a. *"Eligible student"* means a student who is a member of a household whose total annual income during the calendar year before the student receives a tuition grant for purposes of this section does not exceed an amount equal to four times the most recently published federal poverty guidelines in the federal register by the United States department of health and human services.

b. *"Qualified school"* means a nonpublic elementary or secondary school in this state which is accredited under section 256.11 and adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216.

c. "*School tuition organization*" means a charitable organization in this state that is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code and that does all of the following:

(1) Allocates at least ninety percent of its annual revenue in tuition grants for children to allow them to attend a qualified school of their parents' choice.

(2) Only awards tuition grants to children who reside in Iowa.

(3) Provides tuition grants to students without limiting availability to only students of one school.

(4) Only provides tuition grants to eligible students.

(5) Prepares an annual reviewed financial statement certified by a public accounting firm.

7. *a.* In order for the taxpayer to claim the school tuition organization tax credit under

subsection 1, a tax credit certificate issued by the school tuition organization to which the contribution was made shall be included with the person's tax return. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the amount of the contribution, the amount of the credit, and other information required by the department.

b. The department shall authorize a school tuition organization to issue tax credit certificates for contributions made to the school tuition organization. The aggregate amount of tax credit certificates that the department shall authorize for a school tuition organization for a calendar year shall be determined for that organization pursuant to subsection 8. However, a school tuition organization shall not be authorized to issue tax credit certificates unless the organization is controlled by a board of directors consisting of at least seven members. The names and addresses of the members shall be provided to the department and shall be made available by the department to the public, notwithstanding any state confidentiality restrictions.

c. Pursuant to rules of the department, a school tuition organization shall initially register with the department. The organization's registration shall include proof of section 501(c)(3) status and provide a list of the schools the school tuition organization serves. Once the school tuition organization has registered, it is not required to subsequently register unless the schools it serves changes.

d. Each school that is served by a school tuition organization shall submit a participation form annually to the department by November 1 providing the following information:

(1) Certified enrollment as of October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday.

(2) The school tuition organization that represents the school. A school shall only be represented by one school tuition organization.

8. *a.* For purposes of this subsection:

(1) *"Certified enrollment"* means the enrollment at schools served by school tuition organizations as indicated by participation forms provided to the department each October.

(2) *"Total approved tax credits"* means for the 2006 calendar year, two million five hundred thousand dollars, for the 2007 calendar year, five million dollars, for calendar years beginning on or after January 1, 2008, but before January 1, 2012, seven million five hundred thousand dollars, for calendar years beginning on or after January 1, 2012, but before January 1, 2014, eight million seven hundred fifty thousand dollars, for calendar years beginning on or after January 1, 2014, but before January 1, 2019, twelve million dollars, and for calendar years beginning on or after January 1, 2019, but before January 1, 2020, thirteen million dollars, and for calendar years beginning on or after January 1, 2020, fifteen million dollars.

(3) *"Tuition grant"* means grants to students to cover all or part of the tuition at a qualified school.

b. Each year by December 1, the department shall authorize school tuition organizations to issue tax credit certificates for the following calendar year. However, for the 2006 calendar year only, the department, by September 1, 2006, shall authorize school tuition organizations to issue tax credit certificates for the 2006 calendar year. For the 2006 calendar year only, each school served by a school tuition organization shall submit a participation form to the department by August 1, 2006, providing the certified enrollment as of the third Friday of September 2005, along with the school tuition organization that represents the school. Tax credit certificates available for issue by each school tuition organization shall be determined in the following manner:

(1) Total the certified enrollment of each participating qualified school to arrive at the total participating certified enrollment.

(2) Determine the per student tax credit available by dividing the total approved tax credits by the total participating certified enrollment.

(3) Multiply the per student tax credit by the total participating certified enrollment of each school tuition organization.

9. A school tuition organization that receives a voluntary cash or noncash contribution pursuant to this section shall report to the department, on a form prescribed by the department, by January 12 of each calendar year all of the following information:

a. The name and address of the members and the chairperson of the governing board of the school tuition organization.

b. The total number and dollar value of contributions received and the total number and dollar value of the tax credits approved during the previous calendar year.

c. A list of the individual donors for the previous calendar year that includes the dollar value of each donation and the dollar value of each approved tax credit.

d. The total number of children utilizing tuition grants for the school year in progress and the total dollar value of the grants.

e. The name and address of each represented school at which tuition grants are currently being utilized, detailing the number of tuition grant students and the total dollar value of grants being utilized at each school served by the school tuition organization.

2006 Acts, ch 1163, §1, 2; 2007 Acts, ch 161, §20, 22; 2007 Acts, ch 186, §9 – 13, 31; 2007 Acts, ch 215, §111; 2011 Acts, ch 131, §95, 158; 2012 Acts, ch 1021, §74; 2013 Acts, ch 122, §4 – 7; 2014 Acts, ch 1026, §85; 2014 Acts, ch 1093, §14; 2018 Acts, ch 1161, §35, 36, 44; 2019 Acts, ch 152, §4 – 8, 46, 47

Referred to in §2.48, 422.5, 422.16, 422.33

For future amendment to subsection 4, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §122, 133, 134

For the legislative intent of 2019 amendments by 2019 Acts, ch 152, §4 – 8, see 2019 Acts, ch 152, §13

See Code editor's note on simple harmonization at the end of Vol VI

Code editor directive applied

Subsection 7, paragraph b amended

Subsection 8, paragraph a, subparagraph (2) amended

Subsection 8, paragraph b, unnumbered paragraph 1 amended

Subsection 9, unnumbered paragraph 1 amended

Subsection 9, paragraphs b and c amended

422.11T Film qualified expenditure tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.

422.11U Film investment tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.

422.11V Redevelopment tax credit.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

2008 Acts, ch 1173, §8; 2009 Acts, ch 41, §124

Referred to in §422.5, 422.16

422.11W Charitable conservation contribution tax credit.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a charitable conservation contribution tax credit equal to fifty percent of the fair market value of a qualified real property interest located in the state that is conveyed as an unconditional charitable donation in perpetuity by the taxpayer to a qualified organization exclusively for conservation purposes. The maximum amount of tax credit is one hundred thousand dollars. The amount of the contribution for which the tax credit is claimed shall not be deductible in determining taxable income for state tax purposes.

2. For purposes of this section, "*conservation purpose*", "*qualified organization*", and "*qualified real property interest*" mean the same as defined for the qualified conservation contribution under section 170(h) of the Internal Revenue Code, except that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conveyance for a conservation purpose.

3. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following twenty tax years or until depleted, whichever is the earlier.

4. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of the partnership, limited liability company, S corporation, estate, or trust.

2008 Acts, ch 1191, §62, 107

Referred to in §2.48, 422.5, 422.16

422.11X Disaster recovery housing project tax credit. Repealed by 2014 Acts, ch 1080, §111, 114.

422.11Y E-15 plus gasoline promotion tax credit.

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

a. *"E-85 gasoline"*, *"ethanol"*, *"gasoline"*, *"retail dealer"*, and *"retail motor fuel site"* mean the same as defined in section 214A.1.

b. *"Motor fuel pump"* means the same as defined in section 214.1.

c. *"Sell"* means to sell on a retail basis.

d. *"Tax credit"* means the E-15 plus gasoline promotion tax credit as provided in this section.

2. For purposes of this section, ethanol blended gasoline is classified in the same manner as provided in section 214A.2.

3. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by the amount of the E-15 plus gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim a tax credit under this subsection.

a. In order to be eligible, all of the following must apply:

(1) The taxpayer is a retail dealer who sells and dispenses qualifying ethanol blended gasoline through a motor fuel pump located at the retail dealer's retail motor fuel site during the calendar year or parts of the calendar years for which the tax credit is claimed as provided in this section.

(2) The retail dealer complies with requirements of the department established to administer this section.

b. The tax credit shall apply to ethanol blended gasoline classified as provided in this section, if the classification meets the standards provided in section 214A.2.

4. For a retail dealer whose tax year is on a calendar year basis, the retail dealer shall calculate the amount of the tax credit by multiplying a designated rate by the retail dealer's total ethanol blended gasoline gallonage as provided in section 452A.31 which qualifies under this subsection.

a. In order to qualify for the tax credit, the ethanol blended gasoline must be classified as E-15 or higher but not classified as E-85.

b. The designated rate of the tax credit for the following three periods within each calendar year is as follows:

(1) For the first period beginning January 1 and ending May 31, three cents.

(2) For the second period beginning June 1 and ending September 15, ten cents.

(3) For the third period beginning September 16 and ending December 31, three cents.

5. For a retail dealer whose tax year is not on a calendar year basis, the retail dealer shall calculate the tax credit as follows:

a. If a retail dealer has not claimed a tax credit in the retail dealer's previous tax year, the retail dealer may claim the tax credit in the retail dealer's current tax year for that period beginning on January 1 of the retail dealer's previous tax year to the last day of the retail dealer's previous tax year. For that period the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on December 31 of that calendar year as provided in subsection 4.

b. (1) For the period beginning on the first day of the retail dealer's tax year until December 31, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who calculates the tax credit on that same December 31 as provided in subsection 4.

(2) For the period beginning on January 1 to the end of the retail dealer's tax year, the retail dealer shall calculate the tax credit in the same manner as a retail dealer who will calculate the tax credit on the following December 31 as provided in subsection 4.

6. *a.* A retail dealer is eligible to claim an E-15 plus gasoline promotion tax credit as provided in this section even though the retail dealer claims one or all of the following related tax credits:

(1) The ethanol promotion tax credit pursuant to section 422.11N.

(2) The E-85 gasoline promotion tax credit pursuant to section 422.11O.

b. (1) The retail dealer may claim the E-15 plus gasoline promotion tax credit and one or more of the related tax credits as provided in paragraph "*a*" for the same tax year.

(2) The retail dealer may claim the ethanol promotion tax credit as provided in paragraph "*a*" for the same ethanol gallonage used to calculate and claim the E-15 plus gasoline promotion tax credit.

7. Any credit in excess of the retail dealer's tax liability shall be refunded. In lieu of claiming a refund, the retail dealer may elect to have the overpayment shown on the retail dealer's final, completed return credited to the tax liability for the following tax year.

8. An individual may claim the tax credit allowed a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings of a partnership, limited liability company, S corporation, estate, or trust.

9. This section is repealed on January 1, 2025.

2011 Acts, ch 113, §35, 39, 40; 2011 Acts, ch 131, §63 – 65, 79, 158; 2014 Acts, ch 1104, §15 – 17; 2016 Acts, ch 1106, §1

Referred to in §422.5, 422.11N, 422.11O, 422.16, 422.33

For future amendment to subsection 6, effective January 1, 2021, see 2016 Acts, ch 1106, §13, 15

For provisions relating to requirements for claiming an E-15 plus gasoline promotion tax credit in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2011 Acts, ch 113, §37, 39, 40; 2016 Acts, ch 1106, §3

422.11Z Innovation fund investment tax credits.

The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

2011 Acts, ch 130, §41, 47, 71

Referred to in §422.5, 422.16

422.12 Deductions from computed tax.

1. As used in this section:

a. "*Dependent*" has the same meaning as provided by the Internal Revenue Code.

b. "*Emergency medical services personnel member*" means an emergency medical care provider, as defined in section 147A.1, who is certified as a first responder pursuant to chapter 147A.

c. "*Reserve peace officer*" means a reserve peace officer as defined in section 80D.1A who has met the minimum training standards established by the Iowa law enforcement academy pursuant to chapter 80D.

d. "*Textbooks*" means books and other instructional materials and equipment used in elementary and secondary schools in teaching only those subjects legally and commonly taught in public elementary and secondary schools in this state and does not include instructional books and materials used in the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. "*Textbooks*" includes books or materials used for extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

e. "*Tuition*" means any charges for the expenses of personnel, buildings, equipment, and materials other than textbooks, and other expenses of elementary or secondary schools which relate to the teaching only of those subjects legally and commonly taught in public elementary and secondary schools in this state and which do not relate to the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship. "*Tuition*" includes those expenses which relate to extracurricular activities including sporting events, musical or dramatic events, speech activities, driver's education, or programs of a similar nature.

f. "*Volunteer fire fighter*" means an individual that meets both of the following requirements:

(1) The individual is an active member of an organized volunteer fire department in this state or is performing services as a volunteer fire fighter for a municipality, township, or benefited fire district at the request of the chief or other person in command of the fire department of the municipality, township, or benefited fire district, or of any other officer

of the municipality, township, or benefited fire district having authority to demand such service. A person performing such services shall not be classified as a casual employee.

(2) The individual has met the minimum training standards established by the fire service training bureau pursuant to chapter 100B.

2. There shall be deducted from but not to exceed the tax, after the same shall have been computed as provided in this division, the following:

a. A personal exemption credit in the following amounts:

(1) For an estate or trust, a single individual, or a married person filing a separate return, forty dollars.

(2) For a head of household, or a husband and wife filing a joint return, eighty dollars.

(3) For each dependent, an additional forty dollars.

(4) For a single individual, husband, wife, or head of household, an additional exemption of twenty dollars for each of said individuals who has attained the age of sixty-five years before the close of the tax year or on the first day following the end of the tax year.

(5) For a single individual, husband, wife, or head of household, an additional exemption of twenty dollars for each of said individuals who is blind at the close of the tax year. For the purposes of this subparagraph, an individual is blind only if the individual's central visual acuity does not exceed twenty-two hundredths in the better eye with correcting lenses, or if the individual's visual acuity is greater than twenty-two hundredths but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees.

b. A tuition credit equal to twenty-five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent in grades kindergarten through twelve, for tuition and textbooks of each dependent in attending an elementary or secondary school situated in Iowa, which school is accredited or approved under section 256.11, which is not operated for profit, and which adheres to the provisions of the federal Civil Rights Act of 1964 and chapter 216. Notwithstanding any other provision, all other credits allowed under this subsection shall be deducted before the tuition credit under this paragraph. The department, when conducting an audit of a taxpayer's return, shall also audit the tuition tax credit portion of the tax return.

c. (1) A volunteer fire fighter and volunteer emergency medical services personnel member credit equal to one hundred dollars to compensate the taxpayer for the voluntary services if the volunteer served for the entire tax year. A taxpayer who is a paid employee of an emergency medical services program or a fire department and who is also a volunteer emergency medical services personnel member or volunteer fire fighter in a city, county, or area governed by an agreement pursuant to chapter 28E where the emergency medical services program or fire department performs services, shall qualify for the credit provided under this paragraph "*c*".

(2) If the taxpayer is not a volunteer fire fighter or volunteer emergency medical services personnel member for the entire tax year, the maximum amount of the credit shall be prorated and the amount of credit for the taxpayer shall equal the maximum amount of credit for the tax year, divided by twelve, multiplied by the number of months in the tax year the taxpayer was a volunteer. The credit shall be rounded to the nearest dollar. If the taxpayer is a volunteer during any part of a month, the taxpayer shall be considered a volunteer for the entire month. If the taxpayer is a volunteer fire fighter and a volunteer emergency medical services personnel member during the same month, a credit may be claimed for only one volunteer position for that month.

(3) The taxpayer is required to have a written statement from the fire chief or other appropriate supervisor verifying that the taxpayer was a volunteer fire fighter or volunteer emergency medical services personnel member for the months for which the credit under this paragraph "*c*" is claimed.

d. (1) A reserve peace officer credit equal to one hundred dollars to compensate the taxpayer for services as a reserve peace officer if the reserve peace officer served for the entire tax year.

(2) If the taxpayer is not a reserve peace officer for the entire tax year, the maximum amount of the credit shall be prorated and the amount of credit for the taxpayer shall equal

the maximum amount of credit for the tax year, divided by twelve, multiplied by the number of months in the tax year the taxpayer was a reserve peace officer. The credit shall be rounded to the nearest dollar. If the taxpayer is a reserve peace officer any part of a month, the taxpayer shall be considered a reserve peace officer for the entire month.

(3) If the taxpayer is a reserve peace officer during the same month as the taxpayer is a volunteer fire fighter or volunteer emergency medical services personnel member, as defined in this section, a credit may be claimed for only one position for that month under either paragraph *"c"* or this paragraph *"d"*.

(4) The taxpayer is required to have a written statement from the chief of police, sheriff, commissioner of public safety, or other appropriate supervisor verifying that the taxpayer was a reserve peace officer for the months for which the credit under this paragraph *"d"* is claimed.

3. For the purpose of this section, the determination of whether an individual is married shall be made in accordance with section 7703 of the Internal Revenue Code.

[C35, §6943-f12; C39, §**6943.044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.12]

83 Acts, ch 179, §9, 10, 22; 84 Acts, ch 1305, §32; 86 Acts, ch 1236, §6, 7; 86 Acts, ch 1241, §15; 87 Acts, ch 233, §494; 88 Acts, ch 1028, §22, 23; 89 Acts, ch 296, §42; 90 Acts, ch 1248, §9; 91 Acts, ch 159, §13; 95 Acts, ch 206, §2, 4; 96 Acts, ch 1168, §2, 3; 98 Acts, ch 1177, §7 – 10; 2006 Acts, ch 1158, §21; 2007 Acts, ch 161, §21, 22; 2009 Acts, ch 133, §140; 2012 Acts, ch 1103, §1 – 4; 2014 Acts, ch 1103, §1 – 5; 2015 Acts, ch 29, §50 – 52

Referred to in §2.48, 96.3, 216B.3, 422.5, 422.10B, 422.11, 422.11A, 422.11C, 422.11D, 422.11E, 422.11F, 422.11H, 422.11J, 422.11L, 422.11N, 422.11O, 422.11P, 422.11Q, 422.11R, 422.11S, 422.11V, 422.11W, 422.11Y, 422.11Z, 422.12A, 422.12B, 422.12N, 422.16

422.12A Adoption tax credit.

1. For purposes of this section, unless the context otherwise requires:

a. *"Adoption"* means the permanent placement in this state of a child by the department of human services, by an adoption service provider as defined in section 600A.2, or by an agency that meets the provisions of the interstate compact in section 232.158.

b. *"Child"* means an individual who is under the age of eighteen years.

c. *"Qualified adoption expenses"* means unreimbursed expenses paid or incurred in connection with the adoption of a child, including medical and hospital expenses of the biological mother which are incident to the child's birth, welfare agency fees, legal fees, and all other fees and costs which relate to the adoption of a child. *"Qualified adoption expenses"* does not include expenses paid or incurred in violation of state or federal law.

2. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by an adoption tax credit equal to the amount of qualified adoption expenses paid or incurred by the taxpayer in connection with the adoption of a child by the taxpayer, not to exceed five thousand dollars per adoption.

3. Any credit in excess of the tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year.

4. The credit under this section with respect to any qualified adoption expense shall be allowed during a tax year as follows:

a. For any qualified adoption expense paid or incurred prior to or during the tax year in which the adoption becomes final, the tax year in which the adoption becomes final.

b. For any qualified adoption expense paid or incurred after the tax year in which the adoption becomes final, the tax year in which an adoption expense is paid or incurred.

5. The department of revenue and the department of human services shall each adopt rules to jointly administer this section.

2014 Acts, ch 1113, §1, 3; 2016 Acts, ch 1128, §5, 17, 26; 2017 Acts, ch 113, §2; 2019 Acts, ch 152, §61 – 63

Referred to in §422.9, 422.16

2016 amendment to subsection 2 takes effect January 1, 2017, and applies to tax years beginning on or after that date; 2016 Acts, ch 1128, §17, 26

2019 amendments to section apply retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §63

Subsection 2 amended

NEW subsection 4 and former subsection 4 renumbered as 5

422.12B Earned income tax credit.

1. *a.* The taxes imposed under this division less the credits allowed under section 422.12 shall be reduced by an earned income credit equal to the following percentage of the federal earned income credit provided in section 32 of the Internal Revenue Code:

(1) For the tax year beginning in the 2013 calendar year, fourteen percent.

(2) For tax years beginning on or after January 1, 2014, fifteen percent.

b. Any credit in excess of the tax liability is refundable.

2. Married taxpayers electing to file separate returns or filing separately on a combined return may avail themselves of the earned income credit by allocating the earned income credit to each spouse in the proportion that each spouse's respective earned income bears to the total combined earned income. Taxpayers affected by the allocation provisions of section 422.8 shall be permitted a deduction for the credit only in the amount fairly and equitably allocable to Iowa under rules prescribed by the director.

89 Acts, ch 268, §6; 90 Acts, ch 1171, §4; 91 Acts, ch 159, §14; 91 Acts, ch 215, §3; 2000 Acts, ch 1146, §5, 9, 11; 2007 Acts, ch 161, §1, 22; 2013 Acts, ch 123, §70, 71

Referred to in §2.48, 422.16

For future amendment to subsection 2, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §123, 133, 134

Meaning of "Internal Revenue Code" for tax years beginning during the 2018 calendar year; 2018 Acts, ch 1161, §62, 66

422.12C Child and dependent care or early childhood development tax credits.

1. The taxes imposed under this division, less the amounts of nonrefundable credits allowed under this division, shall be reduced by a child and dependent care credit equal to the following percentages of the federal child and dependent care credit provided in section 21 of the Internal Revenue Code, without regard to whether or not the federal credit was limited by the taxpayer's federal tax liability:

a. For a taxpayer with net income of less than ten thousand dollars, seventy-five percent.

b. For a taxpayer with net income of ten thousand dollars or more but less than twenty thousand dollars, sixty-five percent.

c. For a taxpayer with net income of twenty thousand dollars or more but less than twenty-five thousand dollars, fifty-five percent.

d. For a taxpayer with net income of twenty-five thousand dollars or more but less than thirty-five thousand dollars, fifty percent.

e. For a taxpayer with net income of thirty-five thousand dollars or more but less than forty thousand dollars, forty percent.

f. For a taxpayer with net income of forty thousand dollars or more but less than forty-five thousand dollars, thirty percent.

g. For a taxpayer with net income of forty-five thousand dollars or more, zero percent.

2. *a.* The taxes imposed under this division, less the amounts of nonrefundable credits allowed under this division, may be reduced by an early childhood development tax credit equal to twenty-five percent of the first one thousand dollars which the taxpayer has paid to others for each dependent, as defined in the Internal Revenue Code, ages three through five for early childhood development expenses. In determining the amount of early childhood development expenses for the tax year beginning in the 2006 calendar year only, such expenses paid during November and December of the previous tax year shall be considered paid in the tax year for which the tax credit is claimed. This credit is available to a taxpayer whose net income is less than forty-five thousand dollars. If the early childhood development tax credit is claimed for a tax year, the taxpayer and the taxpayer's spouse shall not claim the child and dependent care credit under subsection 1.

b. As used in this subsection:

(1) *"Early childhood development expenses"* means services provided to the dependent by a preschool, as defined in section 237A.1, materials, and other activities as follows:

(a) Books that improve child development, including textbooks, music books, art books, teacher's editions, and reading books.

(b) Instructional materials required to be used in a child development or educational lesson activity, including but not limited to paper, notebooks, pencils, and art supplies.

(c) Lesson plans and curricula.

(d) Child development and educational activities outside the home, including drama, art, music, and museum activities, and the entrance fees for such activities, but not including food or lodging, membership fees, or other nonacademic expenses.

(2) *"Early childhood development expenses"* does not include services, materials, or activities for the teaching of religious tenets, doctrines, or worship, the purpose of which is to inculcate those tenets, doctrines, or worship.

3. Any credit in excess of the tax liability shall be refunded. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following taxable year.

4. Married taxpayers who have filed joint federal returns electing to file separate returns or to file separately on a combined return form must determine the child and dependent care credit under subsection 1 or the early childhood development tax credit under subsection 2 based upon their combined net income and allocate the total credit amount to each spouse in the proportion that each spouse's respective net income bears to the total combined net income. Nonresidents or part-year residents of Iowa must determine their Iowa child and dependent care credit under subsection 1 or the early childhood development tax credit under subsection 2 in the ratio of their Iowa source net income to their all source net income. Nonresidents or part-year residents who are married and elect to file separate returns or to file separately on a combined return form must allocate the Iowa child and dependent care credit under subsection 1 or the early childhood development tax credit under subsection 2 between the spouses in the ratio of each spouse's Iowa source net income to the combined Iowa source net income of the taxpayers.

90 Acts, ch 1248, §10; 91 Acts, ch 159, §15; 93 Acts, ch 172, §44, 56; 97 Acts, ch 23, §44; 2005 Acts, ch 148, §23 – 27; 2006 Acts, ch 1158, §23 – 25, 69; 2014 Acts, ch 1026, §86; 2014 Acts, ch 1120, §1 – 3; 2019 Acts, ch 152, §9, 14, 15

Referred to in §2.48, 422.16

For future amendment to subsection 4, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §124, 133, 134

2019 amendment to subsection 4 applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §15

For refunds of the early childhood development tax credit requested on or after May 16, 2019, see 2019 Acts, ch 152, §12, 14

Subsection 4 amended

422.12D Income tax checkoff for the Iowa state fair foundation fund. Repealed by its own terms; 2014 Acts, ch 1141, §59, 61, 62. See §422.12I.

422.12E Income tax return checkoffs limited — notification of repeal.

1. There shall be allowed no more than four income tax return checkoffs on each income tax return. For tax years beginning on or after January 1, 2017, when the same four income tax return checkoffs have been provided on the income tax return for two consecutive tax years, the two checkoffs for which the least amount has been contributed, in the aggregate for the first tax year and through March 15 after the end of the second tax year, are repealed on December 31 after the end of the second tax year and shall be removed from the return form.

2. If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual tax return form, the checkoffs with the earliest date of enactment as determined pursuant to section 3.7 for which there is space for inclusion on the return form shall be included on the return form, and all other checkoffs enacted during that session of the general assembly are repealed on December 31 of the year of enactment. If more checkoffs are enacted in the same session of the general assembly than there is space for inclusion on the individual income tax form and it is indeterminable which checkoffs have the earliest date of enactment pursuant to section 3.7, the director shall determine which checkoffs shall be included on the return form, and all other checkoffs not included on the return form shall be repealed on December 31 of the year of enactment and shall not be included on the return form.

3. *a.* By July 1 of the year in which two checkoffs are repealed pursuant to subsection 1, the department shall notify the Iowa Code editor which two checkoffs received the least amount of contributions and are repealed.

b. By September 1 of any applicable year, the department shall notify the Iowa Code editor of any repeal pursuant to subsection 2.

93 Acts, ch 144, §4, 6; 94 Acts, ch 1199, §3 – 6; 2004 Acts, ch 1175, §437, 439; 2007 Acts, ch 186, §14; 2016 Acts, ch 1138, §34, 35; 2017 Acts, ch 144, §6, 14; 2019 Acts, ch 152, §49

Referred to in §422.12G, 422.12H, 422.12I, 422.12K, 422.16
Joint checkoff for veterans trust fund and volunteer fire fighter preparedness fund; §422.12G
Checkoff for fish and game protection fund; §422.12H
Checkoff for Iowa state fair foundation; §422.12I
Checkoff for child abuse prevention program fund; §422.12K
For checkoffs allowed for tax years beginning January 1, 2016, January 1, 2017, and January 1, 2018, see 2016 Acts, ch 1138, §33
Section amended

422.12F Income tax checkoff for child abuse prevention program fund. Repealed by its own terms; 2010 Acts, ch 1193, §159, 163.

422.12G Joint income tax checkoff for veterans trust fund and volunteer fire fighter preparedness fund.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid jointly to the veterans trust fund created in section 35A.13 and to the volunteer fire fighter preparedness fund created in section 100B.13. 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, the amount designated shall be reduced to the remaining amount of refund or the remaining amount remitted with the return. The designation of a contribution under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the veterans trust fund and to the volunteer fire fighter preparedness fund as one checkoff on the tax return. The department of revenue, on or before January 31, shall transfer one-half of the total amount designated on the tax return forms due in the preceding calendar year to the veterans trust fund and the remaining one-half to the volunteer fire fighter preparedness fund. 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 shall be satisfied.

3. The department of revenue shall adopt rules to administer this section.

4. This section is subject to repeal under section 422.12E.

2019 Acts, ch 152, §50

Referred to in §422.16
NEW section

422.12H Income tax checkoff for fish and game protection fund.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate a contribution to the state fish and game protection fund authorized pursuant to section 456A.16.

2. This section is subject to repeal under section 422.12E.

2006 Acts, ch 1158, §28; 2019 Acts, ch 152, §51

Referred to in §422.16
Section amended

422.12I Income tax checkoff for the Iowa state fair foundation fund.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the foundation fund of the Iowa state fair foundation as established in section 173.22. If the refund due on the return or the payment remitted with the return is insufficient to pay the amount designated by the taxpayer to the foundation fund, the amount designated shall be reduced to the remaining amount of the refund or the remaining amount remitted with the return. The designation of a contribution to the foundation fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the foundation fund on the tax return. The department, on or before January 31, shall transfer the total amount designated on the tax form due in the preceding year to the foundation fund. 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 shall be satisfied.

3. The Iowa state fair board may authorize payment from the foundation fund for purposes of supporting foundation activities.

4. The department of revenue shall adopt rules to implement this section.

5. This section is subject to repeal under section 422.12E.

2019 Acts, ch 152, §52
Referred to in §173.22, 422.16
NEW section

422.12J Income tax checkoff for Iowa election campaign fund. Repealed by 2017 Acts, ch 144, §13, 14.

422.12K Income tax checkoff for child abuse prevention program fund.

1. A person who files an individual or a joint income tax return with the department of revenue under section 422.13 may designate one dollar or more to be paid to the child abuse prevention program fund created in section 235A.2. 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 child abuse prevention program fund, the amount designated shall be reduced to the remaining amount remitted with the return. The designation of a contribution to the child abuse prevention program fund under this section is irrevocable.

2. The director of revenue shall draft the income tax form to allow the designation of contributions to the child abuse prevention program fund on the tax return. The department of revenue, on or before January 31, shall transfer the total amount designated on the tax return forms due in the preceding calendar year to the child abuse prevention program fund. 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 shall be satisfied.

3. The department of human services may authorize payment of moneys from the child abuse prevention program fund in accordance with section 235A.2.

4. The department of revenue shall adopt rules to administer this section.

5. This section is subject to repeal under section 422.12E.

2012 Acts, ch 1097, §4, 6; 2017 Acts, ch 144, §7, 14
Referred to in §422.16

422.12L Joint income tax checkoff for veterans trust fund and volunteer fire fighter preparedness fund. Repealed by its own terms; 2014 Acts, ch 1141, §60 – 62. See §422.12G.

422.12M Income tax form — indication of dependent child health care coverage. Repealed by 2017 Acts, ch 161, §1 – 3.
Section repeal takes effect May 11, 2017, and applies retroactively to January 1, 2017, for tax years beginning on or after that date; 2017 Acts, ch 161, §2, 3

422.12N Geothermal heat pump tax credit.

1. The taxes imposed under this division, less the credits allowed under section 422.12, shall be reduced by a geothermal heat pump tax credit equal to twenty percent of the federal residential energy efficient property tax credit allowed for geothermal heat pumps provided in section 25D(a)(5) of the Internal Revenue Code for residential property located in Iowa.

2. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following ten years or until depleted, whichever is earlier.

3. The department shall accept and approve applications on a first-come, first-served basis until the maximum amount of tax credits that may be claimed pursuant to subsection 4 is reached. If for a tax year the aggregate amount of tax credits applied for exceeds the amount specified in subsection 4, the department shall establish a wait list for tax credits. Valid applications filed by the taxpayer by May 1 following the year of the installation but not approved by the department shall be placed on a wait list in the order the applications were received and those applicants shall be given priority for having their applications approved

in succeeding years. Placement on a wait list pursuant to this subsection shall not constitute a promise binding the state. The availability of a tax credit and approval of a tax credit application pursuant to this section in a future year is contingent upon the availability of tax credits in that particular year.

4. *a.* The cumulative value of tax credits claimed annually by applicants pursuant to this section shall not exceed one million dollars.

b. If an amount of tax credits available for a tax year pursuant to paragraph "*a*" goes unclaimed, the amount of the unclaimed tax credits shall be made available for the following tax year in addition to, and cumulated with, the amount available pursuant to paragraph "*a*" for the following tax year.

5. The director of revenue shall adopt rules to implement this section.

2019 Acts, ch 152, §67 – 69
Referred to in §422.16
Section applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §69
NEW section

422.13 Return by individual.

1. A resident or nonresident of this state shall make a return, signed in accordance with forms and rules prescribed by the director, if any of the following are applicable:

a. The individual is claimed as a dependent on another person's return and has net income of five thousand dollars or more for the tax year from sources taxable under this division.

b. The net income of a nonresident which is allocated to Iowa pursuant to section 422.8, subsection 2, is one thousand dollars or more for the tax year from sources taxable under this division, unless the nonresident's total net income, as determined under section 422.5, subsection 3 or 3B, does not exceed the appropriate dollar amount listed in section 422.5, subsection 3 or 3B, upon which tax is not imposed. The portion of a lump sum distribution that is allocable to Iowa is included in net income for purposes of determining if the nonresident's net income allocable to Iowa is one thousand dollars or more.

c. A nonresident is subject to the state alternative minimum tax imposed pursuant to section 422.5, subsection 2.

d. The total net income, as determined under section 422.5, subsection 3 or 3B, of a resident of this state is more than the appropriate dollar amount listed in section 422.5, subsection 3 or 3B, upon which tax is not imposed.

2. For purposes of determining the requirement for filing a return under subsection 1, the combined net income of a husband and wife from sources taxable under this division shall be considered.

3. If the taxpayer is unable to make the return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

4. A nonresident taxpayer shall file a copy of the taxpayer's federal income tax return for the current tax year with the return required by this section.

5. *a.* Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, a partnership, a limited liability company whose members are taxed on the company's income under provisions of the Internal Revenue Code, trust, or corporation whose stockholders are taxed on the corporation's income under the provisions of the Internal Revenue Code may, not later than the due date for filing its return for the taxable year, including any extension thereof, elect to file a composite return for the nonresident partners, members, beneficiaries, or shareholders. Nonresident trusts or estates which are partners, members, beneficiaries, or shareholders in partnerships, limited liability companies, trusts, or S corporations may also be included on a composite return. The director may require that a composite return be filed under the conditions deemed appropriate by the director. A partnership, limited liability company, trust, or corporation filing a composite return is liable for tax required to be shown due on the return.

b. Notwithstanding subsections 1 through 4 and sections 422.15 and 422.36, if the director determines that it is necessary for the efficient administration of this chapter, the director may require that a composite return be filed for nonresidents other than nonresident partners,

members, beneficiaries or shareholders in partnerships, limited liability companies, trusts, or S corporations.

c. All powers of the director and requirements of the director apply to returns filed under this subsection including but not limited to the provisions of this division and division VI of this chapter.

6. Notwithstanding subsections 1 through 5 and sections 422.14 and 422.15, a return is not required by a taxpayer as provided in section 29C.24.

[C35, §6943-f13; C39, §**6943.045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.13; 82 Acts, ch 1226, §5, 6]

87 Acts, ch 214, §3; 87 Acts, 1st Ex, ch 1, §4; 87 Acts, ch 196, §1; 88 Acts, ch 1028, §24; 89 Acts, ch 251, §15; 92 Acts, 2nd Ex, ch 1001, §219, 224, 227; 93 Acts, ch 123, §1 – 4; 99 Acts, ch 151, §5, 89; 2000 Acts, ch 1146, §6, 10, 11; 2001 Acts, ch 127, §7, 9, 10; 2007 Acts, ch 186, §15; 2009 Acts, ch 133, §244, 245; 2009 Acts, ch 179, §132; 2012 Acts, ch 1110, §8; 2014 Acts, ch 1093, §20, 21; 2016 Acts, ch 1095, §4, 14, 15; 2017 Acts, ch 157, §7

Referred to in §29C.24, 422.8, 422.9, 422.12G, 422.12H, 422.12I, 422.12K, 422.16, 456A.16

For future strike of subsection 1, paragraph c, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §125, 133, 134

Subsection 6 takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

422.14 Return by fiduciary.

1. A fiduciary subject to taxation under this division, as provided in section 422.6, shall make a return, signed in accordance with forms and rules prescribed by the director, for the individual, estate, or trust for whom or for which the fiduciary acts, if the taxable income thereof amounts to six hundred dollars or more. A nonresident fiduciary shall file a copy of the federal income tax return for the current tax year with the return required by this section.

2. Under such regulations as the director may prescribe, a return may be made by one of two or more joint fiduciaries.

3. Fiduciaries required to make returns under this division shall be subject to all the provisions of this division which apply to individuals.

[C35, §6943-f14; C39, §**6943.046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.14]

89 Acts, ch 251, §16

Referred to in §29C.24, 421.60, 422.13, 422.16

422.15 Information at source.

1. Every person or corporation being a resident of or having a place of business in this state, including lessees or mortgagors of real or personal property, fiduciaries, employers and all officers and employees of the state or of any political subdivision of the state, or agent of the person or corporation, having the control, receipt, custody, disposal or payment of interest other than interest coupons payable to bearer, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, unemployment compensation, royalties, patronage dividends, or other fixed or determinable annual or periodical gains, profits and income, in an amount sufficient to require that an information return be filed under the Internal Revenue Code if the income is subject to federal tax, paid or payable during any year to any individual, whether a resident of this state or not, shall make a complete information return under such regulations and in such form and manner and to such extent as may be prescribed by the director. However, the person or corporation shall not be required to file an information return if the information is available to the department from the internal revenue service.

2. Every partnership, including limited partnerships, doing business in this state, or deriving income from sources within this state as defined in section 422.32, subsection 1, paragraph "*g*", shall make a return, stating specifically the net income and capital gains or losses reported on the federal partnership return, the names and addresses of the partners, and their respective shares in said amounts.

3. Every fiduciary shall make a return for the individual, estate, or trust for whom or for which the fiduciary acts, and shall set forth in such return the taxable income, the names and addresses of the beneficiaries, and the amounts distributed or distributable to each as

reported on the federal fiduciary income tax return. Such return may be made by one or two or more joint fiduciaries.

4. Notwithstanding subsections 1, 2, and 3, or any other provision of this chapter, withholding of income tax and any reporting requirement shall not be imposed upon a person, corporation, or withholding agent or any payor of deferred compensation, pensions, or annuities with regard to such payments made to a nonresident of the state.

[C35, §6943-f15; C39, §**6943.047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.15; 82 Acts, ch 1103, §1110]

92 Acts, ch 1224, §3, 4; 92 Acts, 2nd Ex, ch 1001, §237, 250; 2004 Acts, ch 1021, §110, 117, 118; 2013 Acts, ch 140, §122 – 124; 2014 Acts, ch 1092, §160; 2017 Acts, ch 29, §120

Referred to in §15.107, 29C.24, 422.13, 422.16, 422.38

422.16 Withholding of income tax at source — penalties — interest — declaration of estimated tax — bond.

1. *a.* Every withholding agent and every employer as defined in this chapter and further defined in the Internal Revenue Code, with respect to income tax collected at source, making payment of wages to a nonresident employee working in Iowa, or to a resident employee, shall deduct and withhold from the wages an amount which will approximate the employee's annual tax liability on a calendar year basis, calculated on the basis of tables to be prepared by the department and schedules or percentage rates, based on the wages, to be prescribed by the department. Every employee or other person shall declare to the employer or withholding agent the number of the employee's or other person's personal allowances to be used in applying the tables and schedules or percentage rates. However, no greater number of allowances may be declared by the employee or other person than the number to which the employee or other person is entitled except as allowed under sections 3402(m)(1) and 3402(m)(3) of the Internal Revenue Code and as allowed for the child and dependent care credit provided in section 422.12C. The claiming of allowances in excess of entitlement is a serious misdemeanor.

b. Nonresidents engaged in any facet of feature film, television, or educational production using the film or videotape disciplines in the state are not subject to Iowa withholding if the employer has applied to the department for exemption from the withholding requirement and the department has determined that any nonresident receiving wages would be entitled to a credit against Iowa income taxes paid.

c. For the purposes of this subsection, state income tax shall be withheld from pensions, annuities, other similar periodic payments, and other income payments of those persons whose primary residence is in Iowa in those circumstances in which those persons have federal income tax withheld from pensions, annuities, other similar periodic payments, and other income payments under sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code at a rate to be specified by the department.

d. For the purposes of this subsection, state income tax shall be withheld on winnings in excess of six hundred dollars derived from gambling activities authorized under chapter 99B or 99G. State income tax shall be withheld on winnings in excess of one thousand dollars from gambling activities authorized under chapter 99D. State income tax shall be withheld on winnings in excess of twelve hundred dollars derived from slot machines authorized under chapter 99F.

e. For the purposes of this subsection, state income tax at the rate of six percent shall be withheld from supplemental wages of employees in those circumstances in which the employer treats the supplemental wages as wholly separate from regular wages for purposes of withholding and federal income tax is withheld from the supplemental wages under section 3402(g) of the Internal Revenue Code.

f. Nonresidents engaged in emergency response work or training meeting the requirements of section 422.7, subsection 57, are not subject to withholding by the applicable electric utility for which such emergency response work or training is being performed if the electric utility has applied to the department for exemption from the withholding requirement and the department has determined that the payments received by the nonresidents would be exempt from taxation pursuant to section 422.7, subsection 57.

g. Individuals described in section 29C.24 are not subject to withholding, as provided in that section.

2. *a.* A withholding agent required to deduct and withhold tax under subsections 1 and 12 shall file a return and remit to the department the amount of tax on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five hundred dollars in any one month and not more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a monthly deposit form as prescribed by the director. The monthly deposit form is due on or before the fifteenth day of the month following the month of withholding, except that a deposit is not required for the third month of the calendar quarter. The total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly return due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director. However, a withholding agent who withholds more than five thousand dollars in a semimonthly period shall deposit with the department the amount withheld, with a semimonthly deposit form as prescribed by the director. The first semimonthly deposit form for the period from the first of the month through the fifteenth of the month is due on the twenty-fifth day of the month in which the withholding occurs. The second semimonthly deposit form for the period from the sixteenth of the month through the end of the month is due on the tenth day of the month following the month in which the withholding occurs. A withholding agent must also file a quarterly return which reconciles the amount of tax withheld for the quarter with the amount of semimonthly deposits. The quarterly return is due on or before the last day of the month following the close of the quarterly period on forms prescribed by the director.

b. Every withholding agent on or before the end of the second month following the close of the calendar year in which the withholding occurs shall make an annual reporting of taxes withheld and other information prescribed by the director and send to the department copies of wage and tax statements with the return. At the discretion of the director, the withholding agent shall not be required to send wage statements and tax statements with the annual reporting return form if the information is available from the internal revenue service or other state or federal agencies.

c. If the director has reason to believe that the collection of the tax provided for in subsections 1 and 12 is in jeopardy, the director may require the employer or withholding agent to make the report and pay the tax at any time, in accordance with section 422.30. The director may authorize incorporated banks, trust companies, or other depositories authorized by law which are depositories or financial agents of the United States or of this state, to receive any tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall also prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

d. The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interest of the state and the taxpayer.

3. Every withholding agent employing not more than two persons who expects to employ either or both of such persons for the full calendar year may, with respect to such persons, pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes required to be withheld from the wages of such persons for the full calendar year. The amount to be paid shall be computed as if the employee were employed for the full calendar year for the same wages and with the same pay periods as prevailed during the first quarter of the year with respect to such employee. No such lump sum payment of withheld income tax shall be made without the written consent of all employees involved. The withholding agent shall be entitled to recover from the employee any part of such lump sum payment that represents an advance to the employee. If a withholding agent pays a lump sum with the first quarterly return the withholding agent shall be excused from filing further quarterly returns for the calendar year involved unless the withholding agent hires other or additional employees.

4. Every withholding agent who fails to withhold or pay to the department any sums

required by this chapter to be withheld and paid, shall be personally, individually, and corporately liable therefor to the state of Iowa, and any sum or sums withheld in accordance with the provisions of subsections 1 and 12, shall be deemed to be held in trust for the state of Iowa. Notwithstanding section 489.304, this subsection applies to a member or manager of a limited liability company.

5. In the event a withholding agent fails to withhold and pay over to the department any amount required to be withheld under subsections 1 and 12 of this section, such amount may be assessed against such employer or withholding agent in the same manner as prescribed for the assessment of income tax under the provisions of divisions II and VI of this chapter.

6. Whenever the director determines that any employer or withholding agent has failed to withhold or pay over to the department sums required to be withheld under subsections 1 and 12 of this section the unpaid amount thereof shall be a lien as defined in section 422.26, shall attach to the property of said employer or withholding agent as therein provided, and in all other respects the procedure with respect to such lien shall apply as set forth in said section 422.26.

7. *a.* Every withholding agent required to deduct and withhold a tax under subsections 1 and 12 of this section shall furnish to such employee, nonresident, or other person in respect of the remuneration paid by such employer or withholding agent to such employee, nonresident, or other person during the calendar year, on or before January 31 of the succeeding year, or, in the case of employees, if the employee's employment is terminated before the close of such calendar year, within thirty days from the day on which the last payment of wages is made, if requested by such employee, but not later than January 31 of the following year, a written statement showing the following:

(1) The name and address of such employer or withholding agent, and the identification number of such employer or withholding agent.

(2) The name of the employee, nonresident, or other person and that person's federal social security account number, together with the last known address of such employee, nonresident, or other person to whom wages have been paid during such period.

(3) The gross amount of wages, or other taxable income, paid to the employee, nonresident, or other person.

(4) The total amount deducted and withheld as tax under the provisions of subsections 1 and 12 of this section.

(5) The total amount of federal income tax withheld.

b. The statements required to be furnished by this subsection in respect of any wages or other taxable Iowa income shall be in such form or forms as the director may, by regulation, prescribe.

8. An employer or withholding agent shall be liable for the payment of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, under subsections 1 and 12 of this section; and any amount deducted and withheld as tax under subsections 1 and 12 of this section during any calendar year upon the wages of any employee, nonresident, or other person shall be allowed as a credit to the employee, nonresident, or other person against the tax imposed by section 422.5, irrespective of whether or not such tax has been, or will be, paid over by the employer or withholding agent to the department as provided by this chapter.

9. The amount of any overpayment of the individual income tax liability of the employee taxpayer, nonresident, or other person which may result from the withholding and payment of withheld tax by the employer or withholding agent to the department under subsections 1 and 12, as compared to the individual income tax liability of the employee taxpayer, nonresident, or other person properly and correctly determined under the provisions of section 422.4, to and including section 422.25, may be credited against any income tax or installment thereof then due the state of Iowa and any balance of one dollar or more shall be refunded to the employee taxpayer, nonresident, or other person with interest in accordance with section 421.60, subsection 2, paragraph "*e*". Amounts less than one dollar shall be refunded to the taxpayer, nonresident, or other person only upon written application, in accordance with section 422.73, and only if the application is filed within twelve months after the due date of the return. Refunds in the amount of one dollar or more provided for by this subsection

shall be paid by the treasurer of state by warrants drawn by the director of the department of administrative services, or an authorized employee of the department, and the taxpayer's return of income shall constitute a claim for refund for this purpose, except in respect to amounts of less than one dollar. There is appropriated, out of any funds in the state treasury not otherwise appropriated, a sum sufficient to carry out the provisions of this subsection.

10. *a.* An employer or withholding agent required under this chapter to furnish a statement required by this chapter who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish the statement is, for each failure, subject to a civil penalty of five hundred dollars, the penalty to be in addition to any criminal penalty otherwise provided by the Code.

b. In addition to the tax or additional tax, any person or withholding agent shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7, for each month counting each fraction of a month as an entire month, computed from the date the semimonthly, monthly, or quarterly deposit form was required to be filed. The penalty and interest become a part of the tax due from the withholding agent.

c. If any withholding agent, being a domestic or foreign corporation, required under the provisions of this section to withhold on wages or other taxable Iowa income subject to this chapter, fails to withhold the amounts required to be withheld, make the required returns or remit to the department the amounts withheld, the director may, having exhausted all other means of enforcement of the provisions of this chapter, certify such fact or facts to the secretary of state, who shall thereupon cancel the articles of incorporation or certificate of authority, as the case may be, of such corporation, and the rights of such corporation to carry on business in the state of Iowa shall thereupon cease. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state. The provisions of section 422.40, subsection 3, shall be applicable.

d. The department shall upon request of any fiduciary furnish said fiduciary with a certificate of acquittance showing that no liability as a withholding agent exists with respect to the estate or trust for which said fiduciary acts, provided the department has determined that there is no such liability.

11. *a.* A person or married couple filing a return shall make estimated tax payments if the person's or couple's Iowa income tax attributable to income other than wages subject to withholding can reasonably be expected to amount to two hundred dollars or more for the taxable year, except that, in the cases of farmers and fishermen, the exceptions provided in the Internal Revenue Code with respect to making estimated payments apply. The estimated tax shall be paid in quarterly installments. The first installment shall be paid on or before the last day of the fourth month of the taxpayer's tax year for which the estimated payments apply. The other installments shall be paid on or before the last day of the sixth month of the tax year, the last day of the ninth month of the tax year, and the last day of the first month after the tax year. However, at the election of the person or married couple, an installment of the estimated tax may be paid prior to the date prescribed for its payment. If a person or married couple filing a return has reason to believe that the person's or couple's Iowa income tax may increase or decrease, either for purposes of meeting the requirement to make estimated tax payments or for the purpose of increasing or decreasing estimated tax payments, the person or married couple shall increase or decrease any subsequent estimated tax payments accordingly.

b. In the case of persons or married couples filing jointly, the total balance of the tax payable after credits for taxes paid through withholding, as provided in subsection 1 of this section, or through payment of estimated tax, or a combination of withholding and estimated tax payments is due and payable on or before April 30 following the close of the calendar year, or if the return is to be made on the basis of a fiscal year, then on or before the last day of the fourth month following the close of the fiscal year.

c. If a taxpayer is unable to make the taxpayer's estimated tax payments, the payments may be made by a duly authorized agent, or by the guardian or other person charged with the care of the person or property of the taxpayer.

d. Any amount of estimated tax paid is a credit against the amount of tax found payable

on a final, completed return, as provided in subsection 9, relating to the credit for the tax withheld against the tax found payable on a return properly and correctly prepared under sections 422.5 through 422.25, and any overpayment of one dollar or more shall be refunded to the taxpayer and the return constitutes a claim for refund for this purpose. Amounts less than one dollar shall not be refunded. The method provided by the Internal Revenue Code for determining what is applicable to the addition to tax for underpayment of the tax payable applies to persons required to make payments of estimated tax under this section except the amount to be added to the tax for underpayment of estimated tax is an amount determined at the rate in effect under section 421.7. This addition to tax specified for underpayment of the tax payable is not subject to waiver provisions relating to reasonable cause, except as provided in the Internal Revenue Code. Underpayment of estimated tax shall be determined in the same manner as provided under the Internal Revenue Code and the exceptions in the Internal Revenue Code also apply.

e. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return for the taxable year credited to the taxpayer's tax liability for the following taxable year.

12. *a.* In the case of nonresidents having income subject to taxation by Iowa, but not subject to withholding of such tax under subsection 1 hereof, withholding agents shall withhold from such income at the same rate as provided in subsection 1 hereof, and such withholding agents and such nonresidents shall be subject to the provisions of this section, according to the context, except that such withholding agents may be absolved of such requirement to withhold taxes from such nonresident's income upon receipt of a certificate from the department issued in accordance with the provisions of section 422.17, as hereby amended. In the case of nonresidents having income from a trade or business carried on by them in whole or in part within the state of Iowa, such nonresident shall be considered to be subject to the provisions of this subsection unless such trade or business is of such nature that the business entity itself, as a withholding agent, is required to and does withhold Iowa income tax from the distributions made to such nonresident from such trade or business.

b. Notwithstanding this subsection, withholding agents are not required to withhold state income tax from payments subject to taxation made to nonresidents for commodity credit certificates, grain, livestock, domestic fowl, or other agricultural commodities or products sold to the withholding agents by the nonresidents or their representatives, if the withholding agents provide on forms prescribed by the department information relating to the sales required by the department to determine the state income tax liabilities of the nonresidents. However, the withholding agents may elect to make estimated tax payments on behalf of the nonresidents on the basis of the net incomes of the nonresidents from the agricultural commodities or products, if the estimated tax payments are made on or before the last day of the first month after the end of the tax years of the nonresidents.

c. Notwithstanding this subsection, withholding agents are not required to withhold state income tax from a partner's pro rata share of income from a publicly traded partnership, as defined in section 7704(b) of the Internal Revenue Code, provided that the publicly traded partnership files with the department an information return that reports the name, address, taxpayer identification number, and any other information requested by the department for each unit holder with an income in this state from the publicly traded partnership in excess of five hundred dollars.

13. The director shall enter into an agreement with the secretary of the treasury of the United States with respect to withholding of income tax as provided by this chapter, pursuant to an Act of Congress, section 1207 of the Tax Reform Act of 1976, Pub. L. No. 94-455, amending 5 U.S.C. §5517.

14. *a.* The director may, when necessary and advisable in order to secure the collection of the tax required to be deducted and withheld or the amount actually deducted, whichever is greater, require an employer or withholding agent to file with the director a bond, issued by a surety company authorized to conduct business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of the tax and penalty due or which may become due. In lieu of the bond, securities shall be kept in the custody of the department and may be sold by the director

at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax and penalty due. Upon a sale, any surplus above the amounts due under this section shall be returned to the employer or withholding agent who deposited the securities.

b. If the withholding agent fails to file the bond as requested by the director to secure collection of the tax, the withholding agent is subject to penalty for failure to file the bond. The penalty is equal to fifteen percent of the tax the withholding agent is required to withhold on an annual basis. However, the penalty shall not exceed five thousand dollars.

[C39, §**6943.048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.16; 81 Acts, ch 131, §4 – 6, ch 133, §1, 4; 82 Acts, ch 1022, §1, 2, 8, ch 1023, §29, ch 1180, §2, 8]

83 Acts, ch 160, §3, 4; 83 Acts, ch 179, §11; 84 Acts, ch 1173, §4; 86 Acts, ch 1007, §23 – 25; 86 Acts, ch 1208, §1; 86 Acts, ch 1241, §16; 87 Acts, ch 115, §55; 87 Acts, ch 214, §4; 87 Acts, 1st Ex, ch 1, §26; 88 Acts, ch 1028, §25, 26; 88 Acts, ch 1157, §1; 89 Acts, ch 6, §4, 5; 89 Acts, ch 251, §17, 18; 90 Acts, ch 1172, §8; 90 Acts, ch 1248, §11

[Unnumbered paragraph 2 of subsection 1 was inadvertently deleted in the 1991 Code and 1991 Code Supplement]

91 Acts, ch 215, §4, 8; 92 Acts, 2nd Ex, ch 1001, §238; 94 Acts, ch 1165, §13 – 15, 45, 47, 48; 99 Acts, ch 151, §6, 89; 2002 Acts, ch 1151, §6; 2003 Acts, ch 145, §286; 2003 Acts, ch 178, §111, 121; 2003 Acts, ch 179, §142; 2004 Acts, ch 1101, §46; 2005 Acts, ch 140, §40, 73; 2006 Acts, ch 1010, §101; 2007 Acts, ch 185, §3; 2007 Acts, ch 186, §16; 2008 Acts, ch 1162, §135, 154, 155; 2008 Acts, ch 1184, §54; 2013 Acts, ch 30, §86; 2015 Acts, ch 116, §28 – 30; 2016 Acts, ch 1095, §5, 14, 15; 2018 Acts, ch 1161, §5, 15, 16

Referred to in §15A.7, 29C.24, 99B.8, 99D.16, 99F.18, 99G.31, 260E.5, 260G.4A, 403.19A, 422.4, 422.17, 422.38, 904.809

For future strike of subsection 1, paragraph f, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §126, 133, 134

Subsection 1, paragraph f takes effect June 18, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 116, §29, 30

Subsection 1, paragraph g takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

422.16A Job training withholding — certification and transfer.

Upon the completion by a business of its repayment obligation for a training project funded under chapter 260E, including a job training project funded under section 15A.8 or repaid in whole or in part by the supplemental new jobs credit from withholding under section 15A.7 or section 15E.197, Code 2014, the sponsoring community college shall report to the economic development authority the amount of withholding paid by the business to the community college during the final twelve months of withholding payments. The economic development authority shall notify the department of revenue of that amount. The department shall credit to the workforce development fund account established in section 15.342A twenty-five percent of that amount each quarter for a period of ten years. If the amount of withholding from the business or employer is insufficient, the department shall prorate the quarterly amount credited to the workforce development fund account. The maximum amount from all employers which shall be transferred to the workforce development fund account in any year is six million dollars.

95 Acts, ch 184, §9; 96 Acts, ch 1180, §17; 97 Acts, ch 98, §1, 3; 98 Acts, ch 1225, §26; 2000 Acts, ch 1196, §9, 10; 2000 Acts, ch 1230, §23, 35; 2001 Acts, ch 188, §26; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §61, 69; 2011 Acts, ch 118, §85, 89; 2014 Acts, ch 1130, §37; 2014 Acts, ch 1132, §14

Referred to in §15.342A, 422.16, 422.38

422.17 Certificate issued by department to make payments without withholding.

Any nonresident whose Iowa income is not subject to section 422.16, subsection 1, in whole or in part, and who elects to be governed by section 422.16, subsection 12, to the extent that the nonresident pays the entire amount of tax properly estimated on or before the last day of the fourth month of the nonresident's tax year, for the year, may for the year of the election and payment, be granted a certificate from the department authorizing each withholding agent, the income from whom the nonresident has considered in the payment of estimated tax and to the extent the income is included in the estimate, to make payments of income to the

nonresident without withholding tax from those payments. Withholding agents, if payments exceed the tax liability estimated by the nonresident as indicated upon the certificate, shall withhold tax in accordance with section 422.16, subsection 12.

[C39, §**6943.049;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.17]

86 Acts, ch 1241, §17; 2015 Acts, ch 29, §53

Referred to in §422.16, 422.38

422.18 Reserved.

422.19 Scope of nonresidents tax.

The tax herein imposed upon certain income of nonresidents shall apply to all such income actually received by such nonresident regardless of when such income was earned. If the nonresident is reporting on the accrual basis it shall apply to all such income which first became available to the nonresident so that the nonresident might demand payment thereof regardless of when such income was earned. The duty to withhold herein imposed upon withholding agents shall apply only to amounts paid after June 30, 1937.

[C39, §**6943.051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.19]

Referred to in §422.16, 422.38

422.20 Information confidential — penalty.

1. It shall be unlawful for any present or former officer or employee of the state to divulge or to make known in any manner whatever not provided by law to any person the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any income return, or to permit any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; and it shall be unlawful for any person to print or publish in any manner whatever not provided by law any income return, or any part thereof or source of income, profits, losses, or expenditures appearing in any income return; and any person committing an offense against the foregoing provision shall be guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person shall also be dismissed from office or discharged from employment. Nothing herein shall prohibit turning over to duly authorized officers of the United States or tax officials of other states state information and income returns pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

2. It is unlawful for an officer, employee, or agent, or former officer, employee, or agent of the state to disclose to any person, except as authorized in subsection 1 of this section, any federal tax return or return information as defined in section 6103(b) of the Internal Revenue Code. It is unlawful for a person to whom any federal tax return or return information, as defined in section 6103(b) of the Internal Revenue Code, is disclosed in a manner unauthorized by subsection 1 of this section to thereafter print or publish in any manner not provided by law any such return or return information. A person violating this provision is guilty of a serious misdemeanor.

3. *a.* Unless otherwise expressly permitted by section 8A.504, section 8G.4, section 11.41, section 96.11, subsection 6, section 421.17, subsections 22, 23, and 26, section 421.17, subsection 27, paragraph "*k*", section 421.17, subsection 31, section 252B.9, section 321.40, subsection 6, sections 321.120, 421.19, 421.28, 422.72, and 452A.63, this section, or another provision of law, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

b. This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

5. The department may permit, by rule, the disclosure of state tax information to a person a taxpayer has authorized to receive such state tax information, in the manner prescribed by the department.

[C62, 66, 71, 73, 75, 77, 79, 81, §422.20]

87 Acts, ch 199, §6; 88 Acts, ch 1028, §27; 91 Acts, ch 159, §16; 97 Acts, ch 158, §12; 2003 Acts, ch 145, §256; 2008 Acts, ch 1113, §9, 11; 2010 Acts, ch 1146, §14, 26; 2010 Acts, ch 1193, §147, 149; 2011 Acts, ch 122, §51; 2013 Acts, ch 30, §87; 2013 Acts, ch 70, §4, 9; 2019 Acts, ch 152, §17

Referred to in §257.22, 421.17, 421.19, 421.28, 422.16, 422.38, 422.72, 422D.3, 425.28

NEW subsection 5

422.21 Form and time of return.

1. Returns shall be in the form the director prescribes, and shall be filed with the department on or before the last day of the fourth month after the expiration of the tax year. However, cooperative associations as defined in section 6072(d) of the Internal Revenue Code shall file their returns on or before the fifteenth day of the ninth month following the close of the taxable year and nonprofit corporations subject to the unrelated business income tax imposed by section 422.33, subsection 1A, shall file their returns on or before the fifteenth day of the fifth month following the close of the taxable year. If, under the Internal Revenue Code, a corporation is required to file a return covering a tax period of less than twelve months, the state return shall be for the same period and is due forty-five days after the due date of the federal tax return, excluding any extension of time to file. In case of sickness, absence, or other disability, or if good cause exists, the director may allow further time for filing returns. The director shall cause to be prepared blank forms for the returns and shall cause them to be distributed throughout the state and to be furnished upon application, but failure to receive or secure the form does not relieve the taxpayer from the obligation of making a return that is required. The department may as far as consistent with the Code draft income tax forms to conform to the income tax forms of the internal revenue department of the United States government. Each return by a taxpayer upon whom a tax is imposed by section 422.5 shall show the county of the residence of the taxpayer.

2. An individual in the armed forces of the United States serving in an area designated by the president of the United States or the United States Congress as a combat zone or as a qualified hazardous duty area, or deployed outside the United States away from the individual's permanent duty station while participating in an operation designated by the United States secretary of defense as a contingency operation as defined in 10 U.S.C. §101(a)(13), or which became such a contingency operation by the operation of law, or an individual serving in support of those forces, is allowed the same additional time period after leaving the combat zone or the qualified hazardous duty area, or ceasing to participate in such contingency operation, or after a period of continuous hospitalization, to file a state income tax return or perform other acts related to the department, as would constitute timely filing of the return or timely performance of other acts described in section 7508(a) of the Internal Revenue Code. An individual on active duty federal military service in the armed forces, armed forces military reserve, or national guard who is deployed outside the United States in other than a combat zone, qualified hazardous duty area, or contingency operation is allowed the same additional period of time described in section 7508(a) of the Internal Revenue Code to file a state income tax return or perform other acts related to the department. For the purposes of this subsection, *"other acts related to the department"* includes filing claims for refund for any tax administered by the department, making tax payments other than withholding payments, filing appeals on the tax matters, filing other tax returns, and performing other acts described in the department's rules. The additional time period allowed applies to the spouse of the individual described in this subsection to the extent the spouse files jointly or separately on the combined return form with the individual or when the spouse is a party with the individual to any matter for which the additional time period is allowed.

3. The department shall make available to persons required to make personal income tax returns under the provisions of this chapter, and when such income is derived mainly from

salaries and wages or from the operation of a business or profession, a form which shall take into consideration the normal deductions and credits allowable to any such taxpayer, and which will permit the computation of the tax payable without requiring the listing of specific deductions and credits. In arriving at schedules for payment of taxation under such forms the department shall as nearly as possible base such schedules upon a total of deductions and credits which will result in substantially the same payment as would have been made by such taxpayer were the taxpayer to specifically list the taxpayer's allowable deductions and credits. In lieu of such return any taxpayer may elect to list permissible deductions and credits as provided by law. It is the intent and purpose of this provision to simplify the procedure of collection of personal income tax, and the director shall have the power in any case when deemed necessary or advisable to require any taxpayer, who has made a return in accordance with the schedule herein provided for, to make an additional return in which all deductions and credits are specifically listed. The department may revise the schedules adopted in connection with such simplified form whenever such revision is necessitated by changes in federal income tax laws, or to maintain the collection of substantially the same amounts from taxpayers as would be received were the specific listing of deductions and credits required.

4. The department shall provide space on the prescribed income tax form, wherein the taxpayer shall enter the name of the school district of the taxpayer's residence. Such place shall be indicated by prominent type. A nonresident taxpayer shall so indicate. If such information is not supplied on the tax return it shall be deemed an incompleted return.

5. The director shall determine for the 1989 and each subsequent calendar year the annual and cumulative inflation factors for each calendar year to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts as specified to be adjusted in section 422.5 by the latest cumulative inflation factor and round off the result to the nearest one dollar. The annual and cumulative inflation factors determined by the director are not rules as defined in section 17A.2, subsection 11. The director shall determine for the 1990 calendar year and each subsequent calendar year the annual and cumulative standard deduction factors to be applied to tax years beginning on or after January 1 of that calendar year. The director shall compute the new dollar amounts of the standard deductions specified in section 422.9, subsection 1, by the latest cumulative standard deduction factor and round off the result to the nearest ten dollars. The annual and cumulative standard deduction factors determined by the director are not rules as defined in section 17A.2, subsection 11.

6. The department shall provide on income tax forms or in the instruction booklets in a manner that will be noticeable to the taxpayers a statement that, even though the taxpayer may not have any federal or state income tax liability, the taxpayer may be eligible for the federal earned income tax credit or state child and dependent care credit. The statement shall also contain notice of where the taxpayer may check on the taxpayer's eligibility for these credits.

7. If married taxpayers file a joint return or file separately on a combined return in accordance with rules prescribed by the director, both spouses are jointly and severally liable for the total tax due on the return, except when one spouse is considered to be an innocent spouse under criteria established pursuant to section 6015 of the Internal Revenue Code.

[C35, §6943-f17; C39, §**6943.053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.21]

85 Acts, ch 230, §6; 87 Acts, ch 115, §56; 87 Acts, 2nd Ex, ch 1, §11; 88 Acts, ch 1028, §28; 89 Acts, ch 268, §7, 8; 90 Acts, ch 1248, §13; 91 Acts, ch 159, §17; 91 Acts, ch 196, §3; 94 Acts, ch 1165, §16, 48; 2000 Acts, ch 1146, §9, 11; 2002 Acts, ch 1069, §8, 11, 14; 2003 Acts, ch 142, §8, 11; 2009 Acts, ch 47, §1, 2

Referred to in §257.23, 422.7(32)(a), 422.16, 422.38, 422D.3

For future amendments to subsections 2, 5, and 7, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §127, 133, 134

422.22 Supplementary returns.

If the director shall be of the opinion that any taxpayer required under this division to file a return has failed to file such a return or to include in a return filed, either intentionally or through error, items of taxable income, the director may require from such taxpayer a return

or supplementary return in such form as the director shall prescribe, of all the items of income which the taxpayer received during the year for which the return is made, whether or not taxable under the provisions of this division. If from a supplementary return, or otherwise, the director finds that any items of income, taxable under this division, have been omitted from the original return, the director may require the items so omitted to be added to the original return. Such supplementary return and the correction of the original return shall not relieve the taxpayer from any of the penalties to which the taxpayer may be liable under any provisions of this division, whether or not the director required a return or a supplementary return under this section.

[C35, §6943-f18; C39, §**6943.054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.22]

Referred to in §257.22, 422.16, 422.38, 422D.3

422.23 Return by administrator.

The return by an individual, who, while living, was subject to income tax in the state during the tax year, and who has died before making the return, shall be made in the individual's name and behalf by the administrator or executor of the estate and the tax shall be levied upon and collected from the individual's estate. In the making of said return, the executor or administrator shall use the same method of computation, either cash or accrual, as was last used by the deceased taxpayer.

[C35, §6943-f19; C39, §**6943.055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.23]

86 Acts, ch 1241, §18; 99 Acts, ch 151, §7, 89

Referred to in §257.22, 422.16, 422D.3

422.24 Payment — interest.

1. For all taxpayers the total tax due shall be paid in full at the time of filing the return.

2. When, at the request of the taxpayer, the time for filing the return is extended, interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, on the total tax due, from the time when the return was required to be filed to the time of payment, shall be added and paid.

[C35, §6943-f20; C39, §**6943.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.24; 81 Acts, ch 131, §7]

Referred to in §257.22, 422.16, 422.39, 422.66, 422D.3

422.24A Start-up business tax deferment. Repealed by 2008 Acts, ch 1184, §66, 67.

422.25 Computation of tax, interest, and penalties — limitation.

1. *a.* Within three years after the return is filed or within three years after the return became due, including any extensions of time for filing, whichever time is the later, the department shall examine the return and determine the tax. However, if the taxpayer omits from income an amount which will, under the Internal Revenue Code, extend the statute of limitations for assessment of federal tax to six years under the federal law, the period for examination and determination is six years. In addition to the applicable period of limitation for examination and determination, the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the particular tax year. In order to begin the running of the six-month period, the notice shall be in writing in any form sufficient to inform the department of the final disposition with respect to that year, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

b. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return. In lieu of the period of limitation for any prior year for which an overpayment of tax or an elimination or reduction of an underpayment of tax due for that prior year results from the carryback to that prior year of a net operating loss or net capital loss, the period is the period of limitation for the taxable year of the net operating loss or net capital loss which results in the carryback. If the tax found due is greater than

the amount paid, the department shall compute the amount due, together with interest and penalties as provided in subsection 2, and shall mail a notice of assessment to the taxpayer and, if applicable, to the taxpayer's authorized representative of the total, which shall be computed as a sum certain, with interest computed to the last day of the month in which the notice is dated.

2. In addition to the tax or additional tax determined by the department under subsection 1, the taxpayer shall pay interest on the tax or additional tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the return was required to be filed. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27.

3. *a.* If the amount of the tax as determined by the department is less than the amount paid, the excess shall be refunded with interest in accordance with section 421.60, subsection 2, paragraph "*e*".

b. Notwithstanding section 421.60, subsection 2, paragraph "*e*", and paragraph "*a*" of this subsection, when the net operating loss or net capital loss carryback to a prior year eliminates or reduces an underpayment of tax due for an earlier year, the full amount of the underpayment of tax shall bear interest at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month from the due date of the tax for the earlier year to the last day of the taxable year in which the net operating loss or net capital loss occurred.

4. All payments received must be credited first, to the penalty and interest accrued, and then to the tax due. For purposes of this subsection, the department shall not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments, except that the taxpayer and the department may agree to apply payments in accordance with rules adopted by the director when there are both agreed and unagreed to items as a result of an examination.

5. A person or withholding agent required to supply information, to pay tax, or to make, sign, or file a deposit form or return required by this division, who willfully makes a false or fraudulent deposit form or return, or willfully fails to pay the tax, supply the information, or make, sign, or file the deposit form or return, at the time or times required by law, is guilty of a fraudulent practice.

6. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required under the provisions of this division shall be prima facie evidence thereof except as otherwise provided in this section.

7. The periods of limitation provided by this section may be extended by the taxpayer by signing a waiver agreement to be provided by the department. The agreement shall stipulate the period of extension and the year or years to which the extension applies. It shall provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

8. A person or withholding agent who willfully attempts in any manner to defeat or evade a tax imposed by this division or the payment of the tax, upon conviction for each offense is guilty of a class "D" felony.

9. A prosecution for any offense defined in this section must be commenced within six years after the commission thereof, and not after.

10. If a taxpayer files an amended return within sixty days prior to the expiration of the applicable period of limitations described in subsection 1, the department has sixty days from the date of receipt of the amended return to issue an assessment for any applicable tax, interest, or penalty.

[C35, §6943-f21; C39, §**6943.057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.25; 81 Acts, ch 131, §8, ch 133, §2, 4, ch 134, §1, 2; 82 Acts, ch 1180, §3, 8]

83 Acts, ch 160, §5; 84 Acts, ch 1025, §1; 84 Acts, ch 1173, §5; 86 Acts, ch 1007, §26; 86 Acts, ch 1241, §19; 88 Acts, ch 1028, §29; 89 Acts, ch 251, §19; 90 Acts, ch 1172, §9; 94 Acts,

ch 1133, §3, 4, 16; 95 Acts, ch 83, §3, 34; 99 Acts, ch 151, §8, 9, 89; 99 Acts, ch 152, §3, 40; 2002 Acts, ch 1150, §5; 2013 Acts, ch 110, §1; 2018 Acts, ch 1161, §6, 15, 16

Referred to in §99G.30A, 257.22, 321.105A, 422.16, 422.39, 422.66, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 428A.8, 452A.66

2018 amendment to subsection 3 applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

422.26 Lien of tax — collection — action authorized.

1. Whenever any taxpayer liable to pay a tax and penalty imposed refuses or neglects to pay the same, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue in addition thereto, shall be a lien in favor of the state upon all property and rights to property, whether real or personal, belonging to said taxpayer.

2. The lien shall attach at the time the tax becomes due and payable and shall continue for ten years from the date an assessment is issued unless sooner released or otherwise discharged. The lien may, within ten years from the date an assessment is issued, be extended by filing for record a notice with the appropriate county official of any county and from the time of such filing, the lien shall be extended to the property in such county for ten years, unless sooner released or otherwise discharged, with no limit on the number of extensions. The director shall charge off any account whose lien is allowed to lapse and may charge off any account and release the corresponding lien before the lien has lapsed if the director determines under uniform rules prescribed by the director that the account is uncollectible or collection costs involved would not warrant collection of the amount due.

3. In order to preserve the aforesaid lien against subsequent mortgagees, purchasers or judgment creditors, for value and without notice of the lien, on any property situated in a county, the director shall file with the recorder of the county, in which said property is located, a notice of said lien.

4. *a.* The county recorder of each county shall keep in the recorder's office an index containing the applicable entries in sections 558.49 and 558.52 and showing the following data, under the names of taxpayers, arranged alphabetically:

(1) The name of the taxpayer.
(2) The name "State of Iowa" as claimant.
(3) Time notice of lien was filed for recording.
(4) Date of notice.
(5) Amount of lien then due.
(6) Date of assessment.
(7) When satisfied.

b. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve the same, and shall index the notice in the index and shall record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

5. The department shall pay recording fees as provided in section 331.604, for the recording of the lien, or for its satisfaction.

6. Upon the payment of a tax as to which the director has filed notice with a county recorder, the director shall forthwith file with said recorder a satisfaction of said tax and the recorder shall enter said satisfaction on the notice on file in the recorder's office and indicate said fact on the index aforesaid.

7. *a.* The department shall, substantially as provided in this chapter and chapter 626, proceed to collect all taxes and penalties as soon as practicable after they become delinquent, except that no property of the taxpayer is exempt from payment of the tax. If service has not been made on a distress warrant by the officer to whom addressed within five days from the date the distress warrant was received by the officer, the authorized revenue agents of the department may serve and make return of the warrant to the clerk of the district court of the county named in the distress warrant, and all subsequent procedure shall be in compliance with chapter 626.

b. The distress warrant shall be in a form as prescribed by the director. It shall be directed to the sheriff of the appropriate county and it shall identify the taxpayer, the tax type, and the delinquent amount. It shall direct the sheriff to distrain, seize, garnish, or levy upon, and

sell, as provided by law, any real or personal property belonging to the taxpayer to satisfy the amount of the delinquency plus costs. It shall also direct the sheriff to make due and prompt return to the department or to the district court under chapters 626 and 642 of all amounts collected.

8. The attorney general shall, upon the request of the director, bring an action at law or in equity, as the facts may justify, without bond, to enforce payment of any taxes and penalties, and in such action the attorney general shall have the assistance of the county attorney of the county in which the action is pending.

9. It is expressly provided that the foregoing remedies of the state shall be cumulative and that no action taken by the director or attorney general shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy provided by law.

10. For purposes of this section, "*assessment issued*" means the most recent assessment against the taxpayer for the tax type and tax period.

[C35, §6943-f22; C39, §**6943.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §422.26; 81 Acts, ch 117, §1220]

90 Acts, ch 1232, §8 – 10; 91 Acts, ch 191, §18, 124; 91 Acts, ch 267, §522; 92 Acts, ch 1016, §12; 97 Acts, ch 23, §45; 2001 Acts, ch 44, §18; 2006 Acts, ch 1177, §30; 2009 Acts, ch 27, §14

Referred to in §257.22, 331.602, 331.607, 421.9, 422.16, 422.39, 422.66, 422D.3, 423.4, 423.42, 425.27, 426C.7, 428A.8, 437A.22, 437B.18, 450.55, 452A.66, 453B.11, 453B.14, 558.41

422.27 Final report of fiduciary — conditions.

1. A final account of a personal representative, as defined in section 450.1, shall not be allowed by any court unless the account shows, and the judge of the court finds, that all taxes imposed by this division upon the personal representative, which have become payable, have been paid, and that all taxes which may become due are secured by bond or deposit, or are otherwise secured. The certificate of acquittances of the department of revenue is conclusive as to the payment of the tax to the extent of the acquittance. This subsection does not apply if all property in the estate of a decedent is held in joint tenancy with right of survivorship by husband and wife alone.

2. For the purpose of facilitating the settlement and distribution of estates held by fiduciaries, the director may, on behalf of the state, agree upon the amount of taxes at any time due or to become due from such fiduciaries under the provisions of this division, and payment in accordance with such agreement shall be full satisfaction of the taxes to which the agreement relates.

[C35, §6943-f23; C39, §**6943.059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.27]

85 Acts, ch 148, §1; 86 Acts, ch 1054, §1; 86 Acts, ch 1238, §19; 86 Acts, ch 1241, §20; 90 Acts, ch 1232, §11; 2003 Acts, ch 145, §286

Referred to in §257.22, 422.39, 422D.3, 633.479, 635.7

Fiduciaries' reports, §636.33

Similar provision, §450.58

422.28 Revision of tax.

A taxpayer may appeal to the director for revision of the tax, interest, or penalties assessed at any time within sixty days from the date of the notice of the assessment of tax, additional tax, interest, or penalties. The director shall grant a hearing and if, upon the hearing, the director determines that the tax, interest, or penalties are excessive or incorrect, the director shall revise them according to the law and the facts and adjust the computation of the tax, interest, or penalties accordingly. The director shall notify the taxpayer by mail of the result of the hearing and shall refund to the taxpayer the amount, if any, paid in excess of the tax,

interest, or penalties found by the director to be due, with interest accruing in accordance with section 421.60, subsection 2, paragraph *"e"*.

[C35, §6943-f24; C39, §**6943.060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.28; 81 Acts, ch 131, §9]

86 Acts, ch 1007, §27; 86 Acts, ch 1241, §21; 94 Acts, ch 1133, §5, 16; 2012 Acts, ch 1110, §9; 2018 Acts, ch 1161, §7, 15, 16

Referred to in §257.22, 421.10, 422.29, 422.41, 422.66, 422D.3, 428A.8, 453B.14

2018 amendment applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

422.29 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the petitioner resides, or in which the petitioner's principal place of business is located, or in the case of a nonresident not maintaining a place of business in this state either in any county in which the income involved was earned or derived or in Polk county, within sixty days after the petitioner shall have received notice of a determination by the director as provided for in section 422.28.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

[C35, §6943-f25; C39, §**6943.061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.29]

94 Acts, ch 1133, §6, 16; 2003 Acts, ch 44, §114

Referred to in §257.22, 422.41, 422.66, 422D.3, 428A.8, 453A.29, 453A.46, 453B.14, 602.8102(60)

422.30 Jeopardy assessments — posting of bond.

1. If the director believes that the assessment or collection of taxes will be jeopardized by delay, the director may immediately make an assessment of the estimated amount of tax due, together with all interest, additional amounts, or penalties, as provided by law. The director shall serve the taxpayer by regular mail at the taxpayer's last known address or in person, with a written notice of the amount of tax, interest, and penalty due, which notice may include a demand for immediate payment. Service of the notice by regular mail is complete upon mailing. A distress warrant may be issued or a lien filed against the taxpayer immediately.

2. The director shall be permitted to accept a bond from the taxpayer to satisfy collection until the amount of tax legally due shall be determined. Such bond to be in an amount deemed necessary, but not more than double the amount of the tax involved, and with securities satisfactory to the director.

[C35, §6943-f26; C39, §**6943.062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.30]

94 Acts, ch 1165, §17; 2018 Acts, ch 1041, §91, 127

Referred to in §99G.30A, 257.22, 321.105A, 422.16, 422.41, 422.66, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 425.27, 426C.7, 428A.8, 450.55, 453B.9

422.31 Statute applicable to personal tax.

All the provisions of section 422.36, subsection 3, shall be applicable to persons taxable under this division.

[C35, §6943-f27; C39, §**6943.063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.31]

Referred to in §257.22, 422D.3

DIVISION III

BUSINESS TAX ON CORPORATIONS

Referred to in §15.293A, 15.319, 15.333, 15.355, 15E.43, 15E.44, 15E.52, 15E.62, 15E.305, 16.64, 16.82, 16.82A, 28A.24, 29C.24, 190B.103, 404A.2, 422.1, 422.73, 422.85, 422.110, 428A.8, 476B.2, 476B.6, 476B.7, 476C.4, 476C.6

422.32 Definitions.

1. For the purpose of this division and unless otherwise required by the context:

a. *"Affiliated group"* means a group of corporations as defined in section 1504(a) of the Internal Revenue Code.

b. *"Business income"* means income arising from transactions and activity in the regular course of the taxpayer's trade or business; or income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations; or gain or loss resulting from the sale, exchange, or other disposition of real property or of tangible or intangible personal property, if the property while owned by the taxpayer was operationally related to the taxpayer's trade or business carried on in Iowa or operationally related to sources within Iowa, or the property was operationally related to sources outside this state and to the taxpayer's trade or business carried on in Iowa; or gain or loss resulting from the sale, exchange, or other disposition of stock in another corporation if the activities of the other corporation were operationally related to the taxpayer's trade or business carried on in Iowa while the stock was owned by the taxpayer. A taxpayer may have more than one regular trade or business in determining whether income is business income.

(1) It is the intent of the general assembly to treat as apportionable business income all income that may be treated as apportionable business income under the Constitution of the United States.

(2) The filing of an Iowa income tax return on a combined report basis is neither allowed nor required by this paragraph *"b"*.

c. *"Commercial domicile"* means the principal place from which the trade or business of the taxpayer is directed or managed.

d. *"Corporation"* includes joint stock companies, and associations organized for pecuniary profit, and partnerships and limited liability companies taxed as corporations under the Internal Revenue Code.

e. *"Domestic corporation"* means any corporation organized under the laws of this state.

f. *"Foreign corporation"* means any corporation other than a domestic corporation.

g. *"Income from sources within this state"* means income from real, tangible, or intangible property located or having a situs in this state.

h. *"Internal Revenue Code"* means one of the following:

(1) For tax years beginning during the 2019 calendar year, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on March 24, 2018. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

(2) For tax years beginning on or after January 1, 2020, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986, as amended.

i. *"Nonbusiness income"* means all income other than business income.

j. *"State"* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

k. *"Taxable in another state"*. For purposes of allocation and apportionment of income under this division, a taxpayer is *"taxable in another state"* if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

l. *"Unitary business"* means a business carried on partly within and partly without a state where the portion of the business carried on within the state depends on or contributes to the business outside the state.

2. The words, terms, and phrases defined in section 422.4, subsections 4, 5, 6, 8, 9, 13, 15, 16, and 17, when used in this division, shall have the meanings ascribed to them in section 422.4, except where the context clearly indicates a different meaning.

[C35, §6943-f28; C39, §**6943.064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.32; 81 Acts, ch 132, §7, 9; 82 Acts, ch 1023, §11, 30, ch 1103, §1111, ch 1203, §1]

83 Acts, ch 179, §12, 13, 21, 23; 84 Acts, ch 1305, §33, 34; 87 Acts, 1st Ex, ch 1, §5; 88 Acts, ch 1028, §30 – 32, 55; 92 Acts, ch 1151, §7; 94 Acts, ch 1165, §18; 95 Acts, ch 141, §1 – 3; 97 Acts, ch 158, §13, 49; 99 Acts, ch 152, §4, 40; 2003 Acts, ch 139, §8, 11, 12; 2004 Acts, 1st Ex, ch 1001, §39, 41, 42; 2005 Acts, ch 24, §7, 10, 11; 2006 Acts, ch 1140, §6, 10, 11; 2007 Acts, ch 12, §5, 7, 8; 2008 Acts, ch 1011, §6, 9; 2009 Acts, ch 60, §6; 2011 Acts, ch 25, §40; 2011 Acts, ch 41, §4 – 6; 2012 Acts, ch 1007, §5, 7, 8; 2013 Acts, ch 1, §5, 7, 8; 2013 Acts, ch 30, §88; 2014 Acts, ch 1076, §4, 6, 7; 2014 Acts, ch 1092, §89; 2015 Acts, ch 1, §5, 7, 8; 2017 Acts, ch 157, §8; 2018 Acts, ch 1026, §130; 2018 Acts, ch 1161, §87, 97, 98; 2019 Acts, ch 24, §50

Referred to in §422.7(21)(e), 422.15

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For provisions relating to the definition of Internal Revenue Code for the period beginning January 1, 2015, and ending December 31, 2015, and for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §1, 4, 5

2018 amendment to subsection 1, paragraph h, effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsection 2 amended

422.33 Corporate tax imposed — credit.

1. A tax is imposed annually upon each corporation doing business in this state, or deriving income from sources within this state, in an amount computed by applying the following rates of taxation to the net income received by the corporation during the income year:

a. On the first twenty-five thousand dollars of taxable income, or any part thereof, the rate of six percent for tax years beginning prior to January 1, 2021, and the rate of five and one-half percent for tax years beginning on or after January 1, 2021.

b. On taxable income between twenty-five thousand dollars and one hundred thousand dollars or any part thereof, the rate of eight percent for tax years beginning prior to January 1, 2021, and the rate of five and one-half percent for tax years beginning on or after January 1, 2021.

c. On taxable income between one hundred thousand dollars and two hundred fifty thousand dollars or any part thereof, the rate of ten percent for tax years beginning prior to January 1, 2021, and the rate of nine percent for tax years beginning on or after January 1, 2021.

d. On taxable income of two hundred fifty thousand dollars or more, the rate of twelve percent for tax years beginning prior to January 1, 2021, and the rate of nine and eight-tenths percent for tax years beginning on or after January 1, 2021.

1A. There is imposed upon each corporation exempt from the general business tax on corporations by section 422.34, subsection 2, a tax at the rates in subsection 1 upon the state's apportioned share computed in accordance with subsections 2 and 3 of the unrelated business income computed in accordance with the Internal Revenue Code and with the adjustments set forth in section 422.35.

2. *a.* If the trade or business of the corporation is carried on entirely within the state, the tax shall be imposed on the entire net income, but if the trade or business is carried on partly within and partly without the state or if income is derived from sources partly within and partly without the state, or if income is derived from trade or business and sources, all of which are not entirely in the state, the tax shall be imposed only on the portion of the net

income reasonably attributable to the trade or business or sources within the state, with the net income attributable to the state to be determined as follows:

(1) Nonbusiness interest, dividends, rents and royalties, less related expenses, shall be allocated within and without the state in the following manner:

(a) Nonbusiness interest, dividends, and royalties from patents and copyrights shall be allocable to this state if the taxpayer's commercial domicile is in this state.

(b) Nonbusiness rents and royalties received from real property located in this state are allocable to this state.

(c) Nonbusiness rents and royalties received from tangible personal property are allocable to this state to the extent that the property is utilized in this state; or in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property is utilized. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payor obtained possession.

(d) Nonbusiness capital gains and losses from the sale or other disposition of assets shall be allocated as follows:

(i) Gains and losses from the sale or other disposition of real property located in this state are allocable to this state.

(ii) Gains and losses from the sale or other disposition of tangible personal property are allocable to this state if the property had a situs in this state at the time of the sale or disposition or if the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(iii) Gains and losses from the sale or disposition of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(2) Net nonbusiness income of the above class having been separately allocated and deducted as above provided, the remaining net business income of the taxpayer shall be allocated and apportioned as follows:

(a) Business interest, dividends, rents, and royalties shall be reasonably apportioned within and without the state under rules adopted by the director.

(b) Capital gains and losses from the sale or other disposition of assets shall be apportioned to the state based upon the business activity ratio applicable to the year the gain or loss is determined if the corporation determines Iowa taxable income by a sales, gross receipts or other business activity ratio. If the corporation has only allocable income, capital gains and losses from the sale or other disposition of assets shall be allocated in accordance with subparagraph (1), subparagraph division (d).

(c) Where income is derived from business other than the manufacture or sale of tangible personal property, the income shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

(d) Where income is derived from the manufacture or sale of tangible personal property, the part attributable to business within the state shall be in that proportion which the gross sales made within the state bear to the total gross sales.

(e) (i) Notwithstanding subparagraph division (c), where income is derived by a broadcaster from broadcasting, the part attributable to business within the state shall be in the proportion that the gross receipts from broadcasting derived from customers whose commercial domicile is in this state bears to the total gross receipts from broadcasting.

(ii) Notwithstanding subparagraph subdivision (i) or subparagraph division (c), where income is derived by a broadcaster from national or local political advertising that is directed exclusively at one or more markets in this state, all gross receipts from such advertising shall be attributable to business within the state.

(iii) For purposes of this subparagraph division:

(A) "*Broadcaster*" means a taxpayer who is engaged in the business of broadcasting.

"*Broadcaster*" includes a television network, a cable program network, and a television distribution company. "*Broadcaster*" does not include a cable system operator, a direct broadcast satellite system operator, or a television or radio station licensed by the federal communications commission.

(B) "*Broadcasting*" means the transmission of film programming by an electronic or other signal conducted by microwaves, wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions, or through any other means of communication directly or indirectly to viewers and listeners.

(C) "*Customer*" means a person who has a direct contractual relationship with a broadcaster from whom the broadcaster derives gross receipts. "*Customer*" includes but is not limited to an advertiser or licensee.

(D) "*Gross receipts from broadcasting*" means gross receipts of a broadcaster from transactions and activities in the regular course of its business, including but not limited to advertising, licensing, and distribution, but excluding gross receipts from the sale of real property or tangible personal property.

(f) Notwithstanding subparagraph division (c), income described in section 29C.24, subsection 3, paragraph "*a*", subparagraph (3), shall not be allocated and apportioned to the state, as provided in section 29C.24.

(g) Where income consists of more than one class of income as provided in subparagraph divisions (a) through (e) of this subparagraph, it shall be reasonably apportioned by the business activity ratio provided in rules adopted by the director.

(h) The gross sales of the corporation within the state shall be taken to be the gross sales from goods delivered or shipped to a purchaser within the state regardless of the F.O.B. point or other conditions of the sale, excluding deliveries for transportation out of the state.

b. For the purpose of this subsection:

(1) "*Manufacture*" shall include the extraction and recovery of natural resources and all processes of fabricating and curing.

(2) "*Sale*" shall include exchange.

(3) "*Tangible personal property*" shall be taken to mean corporeal personal property, such as machinery, tools, implements, goods, wares, and merchandise, and shall not be taken to mean money deposits in banks, shares of stock, bonds, notes, credits, or evidence of an interest in property and evidences of debt.

3. If any taxpayer believes that the method of allocation and apportionment hereinbefore prescribed, as administered by the director and applied to the taxpayer's business, has operated or will so operate as to subject the taxpayer to taxation on a greater portion of the taxpayer's net income than is reasonably attributable to business or sources within the state, the taxpayer shall be entitled to file with the director a statement of the taxpayer's objections and of such alternative method of allocation and apportionment as the taxpayer believes to be proper under the circumstances with such detail and proof and within such time as the director may reasonably prescribe; and if the director shall conclude that the method of allocation and apportionment theretofore employed is in fact inapplicable and inequitable, the director shall redetermine the taxable income by such other method of allocation and apportionment as seems best calculated to assign to the state for taxation the portion of the income reasonably attributable to business and sources within the state, not exceeding, however, the amount which would be arrived at by application of the statutory rules for apportionment.

4. *a*. In addition to all taxes imposed under this division, there is imposed upon each corporation doing business within the state the greater of the tax determined in subsection 1, paragraphs "*a*" through "*d*" or the state alternative minimum tax equal to sixty percent of the maximum state corporate income tax rate for the tax year, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

b. The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.35 and with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income

under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4) and (d), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code. In making the adjustment under section 56(c)(1) of the Internal Revenue Code, interest and dividends from federal securities and interest and dividends from state and other political subdivisions and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, net of amortization of any discount or premium, shall be subtracted. For purposes of this subparagraph, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on December 21, 2017. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

(2) Apply the allocation and apportionment provisions of subsection 2.

(3) Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds one hundred fifty thousand dollars.

(4) In the case of a net operating loss computed for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which is taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

c. This subsection is repealed January 1, 2021, for tax years beginning on or after that date.

5. *a.* The taxes imposed under this division shall be reduced by a state tax credit for increasing research activities in this state equal to the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

b. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to the total qualified research expenditures.

c. In lieu of the credit amount computed in paragraph "*a*", subparagraph (1), a corporation may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in section 41(c)(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used for the taxpayer's federal income tax. The election made under this paragraph is for the tax year and the taxpayer may use another or the same method for any subsequent year.

d. For purposes of the alternate credit computation method in paragraph "*c*", the credit percentages applicable to qualified research expenses described in section 41(c)(5)(A) and clause (ii) of section 41(c)(5)(B) of the Internal Revenue Code are four and fifty-five hundredths percent and one and ninety-five hundredths percent, respectively.

e. A corporation shall only be eligible for the credit provided in this subsection if the business conducting the research meets all of the following requirements:

(1) (a) The business is engaged in the manufacturing, life sciences, agriscience, software engineering, or aviation and aerospace industry.

(b) Persons that shall not be considered to be engaged in the manufacturing, life sciences,

agriscience, software engineering, or aviation and aerospace industry, and thus are not eligible for the credit, include but are not limited to all of the following:

(i) A person engaged in agricultural production as defined in section 423.1.

(ii) A person who is a contractor, subcontractor, builder, or a contractor-retailer that engages in commercial and residential repair and installation, including but not limited to heating or cooling installation and repair, plumbing and pipe fitting, security system installation, and electrical installation and repair. For purposes of this subparagraph subdivision, *"contractor-retailer"* means a business that makes frequent retail sales to the public or to other contractors and that also engages in the performance of construction contracts.

(iii) A finance or investment company.

(iv) A retailer.

(v) A wholesaler.

(vi) A transportation company.

(vii) A publisher.

(viii) An agricultural cooperative association as defined in section 502.102.

(ix) A real estate company.

(x) A collection agency.

(xi) An accountant.

(xii) An architect.

(2) The business claims and is allowed a research credit for such qualified research expenses under section 41 of the Internal Revenue Code for the same taxable year as it is claiming the credit provided in this subsection.

f. (1) For purposes of this subsection, *"base amount"* means the product of the fixed-based percentage times the average annual gross receipts of the taxpayer for the four taxable years preceding the taxable year for which the credit is being determined, but in no event shall the base amount be less than fifty percent of the qualified research expenses for the credit year.

(2) For purposes of this subsection, *"basic research payment"* and *"qualified research expense"* mean the same as defined for the federal credit for increasing research activities under section 41 of the Internal Revenue Code, except that for the alternative simplified credit such amounts are for research conducted within this state.

g. Any credit in excess of the tax liability for the taxable year shall be refunded with interest in accordance with section 421.60, subsection 2, paragraph *"e"*. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on its final, completed return credited to the tax liability for the following taxable year.

h. A corporation which is an eligible business may claim an additional research activities credit authorized pursuant to section 15.335.

i. The department shall by February 15 of each year issue an annual report to the general assembly containing the total amount of all claims made by employers under this subsection and the portion of the claims issued as refunds, for all claims processed during the previous calendar year. The report shall contain the name of each claimant for whom a tax credit in excess of five hundred thousand dollars was issued and the amount of the credit received.

6. The taxes imposed under this division shall be reduced by a new jobs tax credit. An industry which has entered into an agreement under chapter 260E and which has increased its base employment level by at least ten percent within the time set in the agreement or, in the case of an industry without a base employment level, adds new jobs within the time set in the agreement is entitled to this new jobs tax credit for the tax year selected by the industry. In determining if the industry has increased its base employment level by ten percent or added new jobs, only those new jobs directly resulting from the project covered by the agreement and those directly related to those new jobs shall be counted. The amount of this credit is equal to the product of six percent of the taxable wages upon which an employer is required to contribute to the state unemployment compensation fund, as defined in section 96.19, subsection 37, times the number of new jobs existing in the tax year that directly result from the project covered by the agreement or new jobs that directly result from those new jobs. The tax year chosen by the industry shall either begin or end during the period beginning with the date of the agreement and ending with the date by which the project is to be completed

under the agreement. Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten tax years or until depleted in less than the ten years. For purposes of this section, *"agreement"*, *"industry"*, *"new job"* and *"project"* mean the same as defined in section 260E.2 and *"base employment level"* means the number of full-time jobs an industry employs at the plant site which is covered by an agreement under chapter 260E on the date of that agreement.

7. *a.* (1) For tax years beginning before January 1, 2022, there is allowed as a credit against the tax determined in subsection 1 for a tax year an amount equal to the minimum tax credit for that tax year.

(2) The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, but before January 1, 2021, over the amount allowable as a credit under this subsection for those prior tax years.

b. (1) The allowable credit under paragraph *"a"* for a tax year beginning before January 1, 2021, shall not exceed the excess, if any, of the tax determined in subsection 1 over the state alternative minimum tax as determined in subsection 4. The allowable credit under paragraph *"a"* for a tax year beginning in the 2021 calendar year shall not exceed the tax determined in subsection 1.

(2) The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 4 for the tax year over the tax determined in subsection 1 for the tax year.

c. This subsection is repealed January 1, 2022, for tax years beginning on or after that date.

8. The taxes imposed under this division shall be reduced by a franchise tax credit. A taxpayer who is a shareholder in a financial institution, as defined in section 581 of the Internal Revenue Code, which has in effect for the tax year an election under subchapter S of the Internal Revenue Code shall compute the amount of the tax credit by recomputing the amount of tax under this division by reducing the taxable income of the taxpayer by the taxpayer's pro rata share of the items of income and expense of the financial institution. This recomputed tax shall be subtracted from the tax computed under this division and the resulting amount, which shall not exceed the taxpayer's pro rata share of franchise tax paid by the financial institution, is the amount of the franchise tax credit allowed.

9. *a.* The taxes imposed under this division shall be reduced by an assistive device tax credit. A small business purchasing, renting, or modifying an assistive device or making workplace modifications for an individual with a disability who is employed or will be employed by the small business is eligible, subject to availability of credits, to receive this assistive device tax credit which is equal to fifty percent of the first five thousand dollars paid during the tax year for the purchase, rental, or modification of the assistive device or for making the workplace modifications. Any credit in excess of the tax liability shall be refunded with interest in accordance with section 421.60, subsection 2, paragraph *"e"*. In lieu of claiming a refund, a taxpayer may elect to have the overpayment shown on the taxpayer's final, completed return credited to the tax liability for the following tax year. If the small business elects to take the assistive device tax credit, the small business shall not deduct for Iowa tax purposes any amount of the cost of an assistive device or workplace modifications which is deductible for federal income tax purposes.

b. To receive the assistive device tax credit, the eligible small business must submit an application to the economic development authority. If the taxpayer meets the criteria for eligibility, the economic development authority shall issue to the taxpayer a certification of entitlement for the assistive device tax credit. However, the combined amount of tax credits that may be approved for a fiscal year under this subsection shall not exceed five hundred thousand dollars. Tax credit certificates shall be issued on an earliest filed basis. The certification shall contain the taxpayer's name, address, tax identification number, the amount of the credit, and tax year for which the certificate applies. The taxpayer must file the tax credit certificate with the taxpayer's corporate income tax return in order to claim the tax credit. The economic development authority and department of revenue shall each adopt rules to jointly administer this subsection and shall provide by rule for the method to be used to determine for which fiscal year the tax credits are approved.

c. For purposes of this subsection:

(1) *"Assistive device"* means any item, piece of equipment, or product system which is used to increase, maintain, or improve the functional capabilities of an individual with a disability in the workplace or on the job. *"Assistive device"* does not mean any medical device, surgical device, or organ implanted or transplanted into or attached directly to an individual. *"Assistive device"* does not include any device for which a certificate of title is issued by the state department of transportation, but does include any item, piece of equipment, or product system otherwise meeting the definition of *"assistive device"* that is incorporated, attached, or included as a modification in or to such a device issued a certificate of title.

(2) *"Disability"* means the same as defined in section 15.102, except that it does not include alcoholism.

(3) *"Small business"* means a business that either had gross receipts for its preceding tax year of three million dollars or less or employed not more than fourteen full-time employees during its preceding tax year.

(4) *"Workplace modifications"* means physical alterations to the work environment.

10. The taxes imposed under this division shall be reduced by a historic preservation tax credit allowed under chapter 404A.

11. Reserved.

11A. The taxes imposed under this division shall be reduced by an ethanol promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11N. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the ethanol promotion tax credit pursuant to section 422.11N.

b. Any ethanol promotion tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11N.

c. This subsection is repealed on January 1, 2021.

11B. The taxes imposed under this division shall be reduced by an E-85 gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11O. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the E-85 gasoline promotion tax credit pursuant to section 422.11O.

b. Any E-85 gasoline promotion tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11O.

c. This subsection is repealed on January 1, 2025.

11C. The taxes imposed under this division shall be reduced by a biodiesel blended fuel tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer may claim the biodiesel blended fuel tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the biodiesel blended fuel tax credit pursuant to section 422.11P.

b. Any biodiesel blended fuel tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11P.

c. This subsection is repealed on January 1, 2025.

11D. The taxes imposed under this division shall be reduced by an E-15 plus gasoline promotion tax credit for each tax year that the taxpayer is eligible to claim the tax credit under this subsection.

a. The taxpayer shall claim the tax credit in the same manner as provided in section 422.11Y. The taxpayer may claim the tax credit according to the same requirements, for the same amount, and calculated in the same manner, as provided for the E-15 plus gasoline promotion tax credit pursuant to section 422.11Y.

b. Any E-15 plus gasoline promotion tax credit which is in excess of the taxpayer's tax liability shall be refunded or may be shown on the taxpayer's final, completed return credited to the tax liability for the following tax year in the same manner as provided in section 422.11Y.

c. This subsection is repealed on January 1, 2025.

12. *a.* The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to section 15.333 and section 15E.193B, subsection 6, Code 2014.

13. The taxes imposed under this division shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

14. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

15. The taxes imposed under this division shall be reduced by a workforce housing investment tax credit allowed under section 15.355, subsection 3.

16. The taxes imposed under this division shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

17. Reserved.

18. Reserved.

19. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

20. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

21. The taxes imposed under this division shall be reduced by a beginning farmer tax credit as allowed under chapter 16, subchapter VIII, part 5, subpart B.

22. The taxes imposed under this division shall be reduced by a renewable chemical production tax credit allowed under section 15.319. This subsection is repealed January 1, 2033.

23. Reserved.

24. Reserved.

25. *a.* The taxes imposed under this division shall be reduced by a charitable conservation contribution tax credit equal to fifty percent of the fair market value of a qualified real property interest located in the state that is conveyed as an unconditional charitable donation in perpetuity by the taxpayer to a qualified organization exclusively for conservation purposes. The maximum amount of tax credit is one hundred thousand dollars. The amount of the contribution for which the tax credit is claimed shall not be deductible in determining taxable income for state tax purposes.

b. For purposes of this section, "*conservation purpose*", "*qualified organization*", and "*qualified real property interest*" mean the same as defined for the qualified conservation contribution under section 170(h) of the Internal Revenue Code, except that a conveyance of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits shall not be considered a conveyance for a conservation purpose.

c. Any credit in excess of the tax liability is not refundable but the excess for the tax year may be credited to the tax liability for the following twenty tax years or until depleted, whichever is the earlier.

26. The taxes imposed under this division shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

27. Reserved.

28. The taxes imposed under this division shall be reduced by a school tuition organization tax credit allowed under section 422.11S. The maximum amount of tax credits that may be approved under this subsection for a tax year equals twenty-five percent of the school tuition organization's tax credits that may be approved pursuant to section 422.11S, subsection 8, for a tax year.

29. *a.* The taxes imposed under this division shall be reduced by a solar energy system tax credit equal to sixty percent of the federal energy credit related to solar energy systems

provided in section 48(a)(2)(A)(i)(II) and section 48(a)(2)(A)(i)(III) of the Internal Revenue Code, not to exceed twenty thousand dollars. For installations occurring on or after January 1, 2016, the applicable percentage of the federal energy credit related to solar energy systems shall be fifty percent.

b. The taxpayer may claim the credit pursuant to this subsection according to the same requirements, conditions, and limitations as provided pursuant to section 422.11L.

30. The taxes imposed under this division shall be reduced by a from farm to food donation tax credit as allowed under chapter 190B.

[C35, §6943-f29; C39, §**6943.065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.33; 81 Acts, ch 135, §1 – 3; 82 Acts, ch 1023, §12, 13, 30, 31, ch 1234, §1]

83 Acts, ch 179, §14, 15, 22, 25; 83 Acts, ch 207, §90, 93; 85 Acts, ch 32, §81; 85 Acts, ch 230, §7; 86 Acts, ch 1007, §28; 86 Acts, ch 1194, §1; 86 Acts, ch 1236, §8; 86 Acts, ch 1241, §22; 87 Acts, ch 22, §11; 87 Acts, 1st Ex, ch 1, §6, 7; 88 Acts, ch 1028, §33; 88 Acts, ch 1099, §1; 89 Acts, ch 251, §20 – 22; 89 Acts, ch 285, §5; 90 Acts, ch 1171, §5; 90 Acts, ch 1196, §2; 91 Acts, ch 215, §5; 92 Acts, ch 1200, §1, 4; 93 Acts, ch 113, §3; 94 Acts, ch 1165, §19; 94 Acts, ch 1166, §8, 11; 95 Acts, ch 83, §4, 35; 95 Acts, ch 152, §5, 7; 97 Acts, ch 135, §7, 9; 98 Acts, ch 1078, §7, 10; 99 Acts, ch 95, §8, 9, 12, 13; 99 Acts, ch 151, §10, 11, 89; 2000 Acts, ch 1146, §8, 9, 11; 2000 Acts, ch 1194, §12 – 14, 21; 2001 Acts, ch 123, §3, 6; 2001 Acts, ch 127, §8 – 10; 2002 Acts, ch 1006, §8, 13; 2002 Acts, ch 1069, §9, 10, 14; 2002 Acts, ch 1156, §3, 8; 2003 Acts, ch 139, §9, 11, 12; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 1, §113, 133; 2003 Acts, 1st Ex, ch 2, §85, 89

[2003 Acts, 1st Ex, ch 1, §113, 133 amendment adding new subsection 15 stricken pursuant to *Rants v. Vilsack*, 684 N.W.2d 193]

2004 Acts, ch 1073, §18; 2004 Acts, ch 1175, §405, 418; 2005 Acts, ch 24, §8, 10, 11; 2005 Acts, ch 146, §2, 3; 2005 Acts, ch 150, §14, 62, 69; 2005 Acts, ch 160, §2, 14; 2006 Acts, ch 1136, §2; 2006 Acts, ch 1140, §7, 10, 11; 2006 Acts, ch 1142, §42 – 49; 2006 Acts, ch 1158, §29 – 33; 2006 Acts, ch 1159, §26; 2006 Acts, ch 1161, §4, 7; 2006 Acts, ch 1175, §16, 17, 23; 2007 Acts, ch 12, §6 – 8; 2007 Acts, ch 162, §7, 13; 2007 Acts, ch 165, §5, 9; 2008 Acts, ch 1004, §2, 7; 2008 Acts, ch 1011, §7, 9; 2008 Acts, ch 1169, §33 – 35; 2008 Acts, ch 1173, §9; 2008 Acts, ch 1191, §63, 107, 137, 163, 168; 2009 Acts, ch 41, §125; 2009 Acts, ch 100, §34, 35; 2009 Acts, ch 177, §44; 2009 Acts, ch 179, §133, 153, 234; 2010 Acts, ch 1061, §84, 182; 2010 Acts, ch 1138, §12, 16, 22, 26; 2011 Acts, ch 34, §98; 2011 Acts, ch 41, §13, 14, 16; 2011 Acts, ch 113, §19, 22, 23, 29, 33, 34, 36, 39, 40; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 130, §42, 47; 2012 Acts, ch 1007, §6 – 8; 2012 Acts, ch 1110, §10, 11; 2012 Acts, ch 1121, §8, 10, 11; 2012 Acts, ch 1136, §34, 39 – 41; 2013 Acts, ch 1, §6 – 8; 2013 Acts, ch 30, §89; 2013 Acts, ch 125, §21, 23, 24; 2013 Acts, ch 140, §146, 147; 2014 Acts, ch 1026, §87; 2014 Acts, ch 1076, §5 – 7; 2014 Acts, ch 1080, §87, 88, 98, 119, 125; 2014 Acts, ch 1092, §90; 2014 Acts, ch 1118, §9, 12; 2014 Acts, ch 1130, §20, 24 – 26, 38; 2014 Acts, ch 1141, §21, 76, 79, 80; 2015 Acts, ch 1, §6 – 8; 2015 Acts, ch 30, §118; 2015 Acts, ch 86, §1 – 3; 2015 Acts, ch 124, §3, 9; 2015 Acts, ch 138, §121, 126, 127; 2016 Acts, ch 1065, §13, 15, 16; 2016 Acts, ch 1095, §6, 14, 15; 2016 Acts, ch 1106, §2, 5, 9; 2017 Acts, ch 29, §121, 166; 2017 Acts, ch 157, §9, 10, 12, 14; 2018 Acts, ch 1161, §8, 9, 15, 16, 37 – 39, 43, 45, 88 – 93, 97, 98; 2019 Acts, ch 59, §123; 2019 Acts, ch 152, §59, 60; 2019 Acts, ch 161, §14, 18, 19

Referred to in §2.48, 15.119, 15.335, 16.82, 29C.24, 422.8, 422.21, 422.34A, 422.35, 422.36, 422.37, 422.85, 441.21, 476C.2

Internal Revenue Code definition is updated regularly; for applicable definition in a prior tax year, refer to Iowa Acts and Code for that year

For provisions relating to requirements for claiming an ethanol promotion tax credit under subsection 11A in calendar year 2020 for a retail dealer whose tax year ends prior to December 31, 2020, see 2006 Acts, ch 1142, §49; 2006 Acts, ch 1175, §17; 2011 Acts, ch 113, §11, 13, 14

For provisions relating to requirements for claiming an E-85 gasoline promotion tax credit under subsection 11B in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §20, 22, 23; 2016 Acts, ch 1106, §6

For provisions relating to requirements for claiming a biodiesel blended fuel tax credit under subsection 11C in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2006 Acts, ch 1142, §49; 2011 Acts, ch 113, §31, 33, 34; 2016 Acts, ch 1106, §10

For provisions relating to requirements for claiming an E-15 plus gasoline promotion tax credit under subsection 11D in calendar year 2024 for a retail dealer whose tax year ends prior to December 31, 2024, see 2011 Acts, ch 113, §37, 39, 40; 2016 Acts, ch 1106, §3

2015 amendments to subsection 2, paragraph a, apply retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 86, §3

2015 amendment to subsection 12, paragraph a, takes effect July 2, 2015, and applies to equity investments in a qualifying business made on or after that date; 2015 Acts, ch 138, §126, 127

Subsection 2, paragraph a, subparagraph (2), subparagraph division (f), takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

Subsection 22 takes effect April 6, 2016, and applies to renewable chemicals produced in the state from biomass feedstock on or after January 1, 2017; 2016 Acts, ch 1065, §15, 16

For restrictions on the issuance and claiming of renewable chemical production tax credits under §15.319, see 2016 Acts, ch 1065, §14

For provisions relating to the definition of Internal Revenue Code for the period beginning January 1, 2015, and ending December 31, 2015, and for tax years beginning during the 2015 calendar year, see 2016 Acts, ch 1007, §1, 4, 5

2018 amendment to subsection 1, paragraphs a, b, c, and d, takes effect January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 4, paragraph a, takes effect January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 4, paragraph b, subparagraph (1), takes effect January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsection 4, paragraph c, takes effect January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsection 5, paragraph e, applies retroactively to January 1, 2017, for tax years beginning on or after that date; 2018 Acts, ch 1161, §45

2018 strike of subsection 5, former paragraph e, subparagraph (2), takes effect on January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 5, paragraph g, applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

Legislative intent regarding enactment of subsection 5, NEW paragraph f, subparagraph (1), and amendment of subsection 5, paragraph f, former subparagraph (1); 2018 Acts, ch 1161, §41

2018 amendment to subsection 7 takes effect January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 9, paragraph a, applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

2019 amendment to subsection 21 applies retroactively to January 1, 2019, for tax years beginning on or after that date; for provisions relating to tax credit applications under prior law, approved prior to May 21, 2019, and the carryforward period for those tax credits; see 2019 Acts, ch 161, §16, 17, 19

Subsection 5, paragraph e, subparagraph (1), subparagraph division (a) amended

Subsection 5, paragraph e, subparagraph (1), subparagraph division (b), unnumbered paragraph 1 amended

Subsection 5, paragraph f, subparagraph (1) amended

Subsection 21 amended

422.34 Exempted corporations and organizations.

The following organizations and corporations shall be exempt from taxation under this division:

1. All state, national, private, cooperative, and savings banks, credit unions, title insurance and trust companies, federally chartered savings and loan associations, production credit associations, insurance companies or insurance associations, reciprocal or inter-insurance exchanges, and fraternal beneficiary associations.

2. *a.* An organization described in section 501 of the Internal Revenue Code unless the exemption is denied under section 501, 502, 503, or 504 of the Internal Revenue Code.

b. An organization that would have qualified as an organization exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code but for the fact that the requirement that substantially all of the members who are not past or present members of the United States armed forces is not met because such members include ancestors or lineal descendants, shall be considered for purposes of the exemption from taxation under this division as an organization exempt from federal income tax under section 501(c)(19) of the Internal Revenue Code.

[C35, §6943-f30; C39, §**6943.066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.34]

92 Acts, 2nd Ex, ch 1001, §239, 251; 94 Acts, ch 1165, §20; 2003 Acts, ch 142, §9; 2010 Acts, ch 1061, §56; 2012 Acts, ch 1017, §82

Referred to in §422.33, 422.37

422.34A Exempt activities of foreign corporations.

A foreign corporation shall not be considered doing business in this state or deriving income from sources within this state for the purposes of this division by reason of carrying on in this state one or more of the following activities:

1. Holding meetings of the board of directors or shareholders or holiday parties or employee appreciation dinners.

2. Maintaining bank accounts.

3. Borrowing money, with or without security.

4. Utilizing Iowa courts for litigation.

5. Owning and controlling a subsidiary corporation which is incorporated in or which is transacting business within this state where the holding or parent company has no physical presence in the state as that presence relates to the ownership or control of the subsidiary.

6. Recruiting personnel where hiring occurs outside the state.

7. Training employees or educating employees, or using facilities in Iowa for this purpose.

8. Utilizing a distribution facility within this state, owning or leasing property at a distribution facility within this state that is used at or distributed from the distribution facility, or selling property shipped or distributed from a distribution facility. For purposes of this subsection, "*distribution facility*" means an establishment where shipments of tangible personal property are processed for delivery to customers. "*Distribution facility*" does not include an establishment where retail sales of tangible personal property or returns of such property are undertaken with respect to retail customers on more than twelve days a year except for a distribution facility which processes customer sales orders by mail, telephone, or electronic means, if the distribution facility also processes shipments of tangible personal property to customers provided that not more than ten percent of the dollar amount of goods are delivered and shipped so as to be included in the gross sales of the corporation within this state as provided in section 422.33, subsection 2, paragraph "*a*", subparagraph (2), subparagraph division (h).

96 Acts, ch 1123, §1, 2; 97 Acts, ch 46, §1, 2; 2006 Acts, ch 1179, §58, 66; 2014 Acts, ch 1026, §140

422.35 Net income of corporation — how computed.

The term "*net income*" means the taxable income before the net operating loss deduction, as properly computed for federal income tax purposes under the Internal Revenue Code, with the following adjustments:

1. Subtract interest and dividends from federal securities.

2. Add interest and dividends from foreign securities, from securities of state and other political subdivisions, and from regulated investment companies exempt from federal income tax under the Internal Revenue Code, except for those securities the interest and dividends from which are exempt from taxation by the state of Iowa as otherwise provided by law, including those set forth in section 422.7, subsection 2.

3. Where the net income includes capital gains or losses, or gains or losses from property other than capital assets, and such gains or losses have been determined by using a basis established prior to January 1, 1934, an adjustment may be made, under rules and regulations prescribed by the director, to reflect the difference resulting from the use of a basis of cost or January 1, 1934, fair market value, less depreciation allowed or allowable, whichever is higher. Provided that the basis shall be fair market value as of January 1, 1955, less depreciation allowed or allowable, in the case of property acquired prior to that date if use of a prior basis is declared to be invalid.

4. *a.* For tax years beginning before January 1, 2022, subtract fifty percent of the federal income taxes paid during the tax year to the extent payment is for a tax year beginning prior to January 1, 2021, adjusted by any federal income tax refunds to the extent the tax was deducted for a tax year beginning prior to January 1, 2021.

b. Add the Iowa income tax deducted in computing federal taxable income.

5. Subtract the amount of the work opportunity tax credit allowable for the tax year under section 51 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

6. *a.* If the taxpayer is a small business corporation, subtract an amount equal to sixty-five percent of the wages paid to individuals, but not to exceed twenty thousand dollars per individual, named in subparagraphs (1), (2), and (3) who were hired for the first time by the taxpayer during the tax year for work done in this state:

(1) An individual with a disability domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has a physical or mental impairment which substantially limits one or more major life activities.

(b) Has a record of that impairment.

(c) Is regarded as having that impairment.

(2) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, subchapter IX.

(3) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraph *"a"*, subparagraphs (1), (2), and (3) during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

c. For purposes of this subsection:

(1) *"Physical or mental impairment"* means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the body systems or any mental or psychological disorder, including intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) (a) *"Small business"* means a profit or nonprofit business, including but not limited to an individual, partnership, corporation, joint venture, association, or cooperative, to which the following apply:

(i) It is not an affiliate or subsidiary of a business dominant in its field of operation.

(ii) It has either twenty or fewer full-time equivalent positions or not more than the equivalent of three million dollars in annual gross revenues as computed for the preceding fiscal year or as the average of the three preceding fiscal years.

(iii) It does not include the practice of a profession.

(b) *"Small business"* includes an employee-owned business which has been an employee-owned business for less than three years or which meets the conditions of subparagraph division (a), subparagraph subdivisions (i) through (iii).

(c) For purposes of this definition, *"dominant in its field of operation"* means having more than twenty full-time equivalent positions and more than three million dollars in annual gross revenues, and *"affiliate or subsidiary of a business dominant in its field of operation"* means a business which is at least twenty percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalents, of a business dominant in that field of operation.

6A. *a.* If the taxpayer is a business corporation and does not qualify for the adjustment under subsection 6, subtract an amount equal to sixty-five percent of the wages paid to individuals, but shall not exceed twenty thousand dollars per individual, named in subparagraphs (1) and (2) who were hired for the first time by the taxpayer during the tax year for work done in this state:

(1) An individual domiciled in this state at the time of the hiring who meets any of the following conditions:

(a) Has been convicted of a felony in this or any other state or the District of Columbia.

(b) Is on parole pursuant to chapter 906.

(c) Is on probation pursuant to chapter 907, for an offense other than a simple misdemeanor.

(d) Is in a work release program pursuant to chapter 904, subchapter IX.

(2) An individual, whether or not domiciled in this state at the time of the hiring, who is on parole or probation and to whom the interstate probation and parole compact under section 907A.1, Code 2001, applies, or to whom the interstate compact for adult offender supervision under chapter 907B applies.

b. This deduction is allowed for the wages paid to the individuals successfully completing a probationary period named in paragraph "*a*", subparagraphs (1) and (2) during the twelve months following the date of first employment by the taxpayer and shall be deducted in the tax years when paid.

c. The department shall develop and distribute information concerning the deduction

available for businesses employing persons named in paragraph *"a"*, subparagraphs (1) and (2).

7. Subtract the amount of the alcohol and cellulosic biofuel fuels credit allowable for the tax year under section 40 of the Internal Revenue Code to the extent that the credit increased federal taxable income.

8. Add the amounts deducted and subtract the amounts included in income as a result of the treatment provided sale-leaseback agreements under section 168(f)(8) of the Internal Revenue Code for property placed in service by the transferee prior to January 1, 1986, to the extent that the amounts deducted and the amounts included in income are not otherwise deductible or included in income under the other provisions of the Internal Revenue Code as amended to and including December 31, 1985. Entitlement to depreciation on any property involved in a sale-leaseback agreement which is placed in service by the transferee prior to January 1, 1986, shall be determined under the Internal Revenue Code as amended to and including December 31, 1985, excluding section 168(f)(8) in making the determination.

9. Reserved.

10. Add the percentage depletion amount determined with respect to an oil, gas, or geothermal well using methods in section 613 of the Internal Revenue Code that is in excess of the cost depletion amount determined under section 611 of the Internal Revenue Code.

11. If after applying all of the adjustments provided for in this section and the allocation and apportionment provisions of section 422.33, the Iowa taxable income results in a net operating loss, such net operating loss shall be deducted as follows:

a. For tax years beginning prior to January 1, 2009, the Iowa net operating loss shall be carried back three taxable years for a net operating loss incurred in a presidentially declared disaster area by a taxpayer engaged in a small business or in the trade or business of farming. For all other Iowa net operating losses for tax years beginning prior to January 1, 2009, the net operating loss shall be carried back two taxable years or to the taxable year in which the corporation first commenced doing business in this state, whichever is later.

b. An Iowa net operating loss for a tax year beginning on or after January 1, 2009, or an Iowa net operating loss remaining after being carried back as required in paragraph *"a"* or *"f"* shall be carried forward twenty taxable years.

c. If the election under section 172(b)(3) of the Internal Revenue Code is made, the Iowa net operating loss shall be carried forward twenty taxable years.

d. No portion of a net operating loss which was sustained from that portion of the trade or business carried on outside the state of Iowa shall be deducted.

e. The limitations on net operating loss carryback and carryforward under sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code shall apply.

f. Notwithstanding paragraph *"a"*, for a taxpayer who is engaged in the trade or business of farming as defined in section 263A(e)(4) of the Internal Revenue Code and has a loss from farming as defined in section 172(b)(1)(F) of the Internal Revenue Code including modifications prescribed by rule by the director, the Iowa loss from the trade or business of farming, for tax years beginning prior to January 1, 2009, is a net operating loss which may be carried back five taxable years prior to the taxable year of the loss.

g. The deductions described in paragraphs *"a"* through *"f"* of this subsection are allowed subject to the requirement that a corporation affected by the allocation provisions of section 422.33 shall be permitted to deduct only that portion of the deductions for net operating loss and federal income taxes that is fairly and equitably allocable to Iowa, under rules prescribed by the director.

12. Subtract the loss on the sale or exchange of a share of a regulated investment company held for six months or less to the extent the loss was disallowed under section 852(b)(4)(B) of the Internal Revenue Code.

13. Add, to the extent it reduced federal taxable income, any amount contributed under section 170 of the Internal Revenue Code to the extent such contribution was made to an organization for the purpose of deposit in the Iowa education savings plan trust established in chapter 12D, and the taxpayer designated that any part of the contribution be used for the direct benefit of any dependent of a shareholder of the taxpayer or any other single beneficiary designated by the taxpayer.

14. *a.* Notwithstanding any other provision of the law to the contrary, the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, applies in computing net income for state tax purposes for tax years beginning on or after January 1, 2018, subject to the limitations in this subsection for tax years beginning prior to January 1, 2020.

b. If the taxpayer has taken the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, for purposes of computing federal taxable income for tax years beginning on or after January 1, 2018, but before January 1, 2020, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes for the same tax year:

(1) Add the total amount of expense deduction taken on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) (a) For tax years beginning on or after January 1, 2018, but before January 1, 2019, subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, not to exceed seventy thousand dollars. The subtraction in this subparagraph division shall be reduced, but not below zero, by the amount by which the total cost of section 179 property placed in service by the taxpayer during the tax year exceeds two hundred eighty thousand dollars.

(b) For the tax years beginning on or after January 1, 2019, but before January 1, 2020, subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, not to exceed one hundred thousand dollars. The subtraction in this subparagraph shall be reduced, but not below zero, by the amount by which the total cost of section 179 property placed in service by the taxpayer during the tax year exceeds four hundred thousand dollars.

(3) Any other adjustments to gains or losses necessary to reflect adjustments made in subparagraphs (1) and (2).

c. The director shall adopt rules pursuant to chapter 17A to administer this subsection.

15. *a.* For tax years beginning on or after January 1, 2018, but before January 1, 2020, a taxpayer may elect to take advantage of this subsection in lieu of subsection 14, but only if the taxpayer's total expensing allowance deduction for federal tax purposes under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, that is allocated to the taxpayer from one or more partnerships or limited liability companies electing to have the income taxed directly to the owners exceeds seventy thousand dollars for a tax year beginning during the 2018 calendar year, or exceeds one hundred thousand dollars for the tax year beginning during the 2019 calendar year, and would, except as provided in this subsection, be limited for purposes of computing net income for state tax purposes pursuant to subsection 14.

b. A taxpayer who elects to take advantage of this subsection shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

(1) Add the total amount of section 179 expense deduction allocated to the taxpayer from all partnerships or limited liability companies electing to have the income taxed directly to the owners, to the extent the allocated amount was allowed as a deduction to the taxpayer for federal tax purposes for the tax year under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) From the amount added in subparagraph (1), do the following:

(a) For tax years beginning on or after January 1, 2018, but before January 1, 2019, subtract the first seventy thousand dollars of expensing allowance deduction on section 179 property.

(b) For tax years beginning on or after January 1, 2019, but before January 1, 2020, subtract the first one hundred thousand dollars of expensing allowance deduction on section 179 property.

(3) The remaining amount, equal to the difference between the amount added in subparagraph (1), and the amount subtracted in subparagraph (2), may be deducted by the

taxpayer but such deduction shall be amortized equally over five tax years beginning in the following tax year.

(4) Any other adjustments to gains or losses necessary to reflect adjustments made in subparagraphs (1) through (3).

c. A taxpayer who elects to take advantage of this subsection shall not take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101, for any section 179 property placed in service by the taxpayer in computing taxable income for state tax purposes. If the taxpayer has taken any such deduction for purposes of computing federal taxable income, the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

(1) Add the total amount of expense deduction for federal tax purposes taken on section 179 property placed in service by the taxpayer under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 115-97, §13101.

(2) Subtract the amount of depreciation allowable on such property under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code, without regard to section 168(k) of the Internal Revenue Code. The taxpayer shall continue to take depreciation on the applicable property in future tax years to the extent allowed under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code, without regard to section 168(k) of the Internal Revenue Code.

(3) Any other adjustments to gains or losses necessary to reflect the adjustments made in subparagraphs (1) and (2).

d. The election made under this subsection is for one tax year and the taxpayer may elect or not elect to take advantage of this subsection in any subsequent tax year. However, not electing to take advantage of this subsection in a subsequent tax year shall not affect the taxpayer's ability to claim the tax deduction under paragraph *"b"*, subparagraph (3), that originated from a previous tax year.

e. The director shall adopt rules pursuant to chapter 17A to administer this subsection.

16. Add depreciation taken for federal income tax purposes on a speculative shell building defined in section 427.1, subsection 27, which is owned by a for-profit entity and the for-profit entity is receiving the proper tax exemption. Subtract depreciation computed as if the speculative shell building were classified as fifteen-year property during the period during which it is owned by the taxpayer and is receiving the property tax exemption. However, this subsection does not apply to a speculative shell building which is used by the taxpayer, subsidiary of the taxpayer, or majority owners of the taxpayer, for other than as a speculative shell building, as defined in section 427.1, subsection 27.

17. Subtract the amount of the employer social security credit allowable for the tax year under section 45B of the Internal Revenue Code to the extent that the credit increases federal taxable income.

18. Add, to the extent not already included, income from the sale of obligations of the state and its political subdivisions. Income from the sale of these obligations is exempt from the taxes imposed by this division only if the law authorizing these obligations specifically exempts the income from the sale from the state corporate income tax.

19. *a.* The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code, as enacted by Pub. L. No. 107-147, §101, does not apply in computing net income for state tax purposes. If the taxpayer has taken such deduction in computing taxable income, the following adjustments shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

b. A taxpayer may elect to apply the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code, as enacted by Pub. L. No.

108-27, in computing net income for state tax purposes, for qualified property acquired after May 5, 2003, and before January 1, 2005. If the taxpayer elects to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the deduction may be taken on amended state tax returns, if necessary. If the taxpayer does not elect to take the additional first-year depreciation allowance authorized in section 168(k)(4) of the Internal Revenue Code for state tax purposes, the following adjustment shall be made:

(1) Add the total amount of depreciation taken on all property for which the election under section 168(k)(4) of the Internal Revenue Code was made for the tax year.

(2) Subtract an amount equal to depreciation allowed on such property for the tax year using the modified accelerated cost recovery system depreciation method applicable under section 168 of the Internal Revenue Code without regard to section 168(k)(4).

(3) Any other adjustments to gains or losses to reflect the adjustments made in subparagraphs (1) and (2) pursuant to rules adopted by the director.

19A. The additional first-year depreciation allowance authorized in section 168(k) of the Internal Revenue Code does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(k) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(k).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

19B. The additional first-year depreciation allowance authorized in section 168(n) of the Internal Revenue Code, as enacted by Pub. L. No. 110-343, §710, does not apply in computing net income for state tax purposes. If the taxpayer has taken the additional first-year depreciation allowance for purposes of computing federal taxable income, then the taxpayer shall make the following adjustments to federal taxable income when computing net income for state tax purposes:

a. Add the total amount of depreciation taken under section 168(n) of the Internal Revenue Code for the tax year.

b. Subtract the amount of depreciation allowable under the modified accelerated cost recovery system described in section 168 of the Internal Revenue Code and calculated without regard to section 168(n).

c. Any other adjustments to gains or losses necessary to reflect the adjustments made in paragraphs "*a*" and "*b*". The director shall adopt rules for the administration of this paragraph.

20. A taxpayer may elect not to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 108-27, §202, in computing taxable income for state tax purposes. If the taxpayer does not take the increased expensing allowance under section 179 of the Internal Revenue Code for state tax purposes, the following adjustments shall be made:

a. Add the total amount of expense deduction taken on section 179 property for federal tax purposes under section 179 of the Internal Revenue Code.

b. Subtract the amount of expense deduction on section 179 property allowable for federal tax purposes under section 179 of the Internal Revenue Code prior to enactment of Pub. L. No. 108-27, §202.

c. Any other adjustments to gains and losses to the adjustments made in paragraphs "*a*" and "*b*" pursuant to rules adopted by the director.

21. Subtract the amount of foreign dividend income, including subpart F income as defined in section 952 of the Internal Revenue Code, based upon the percentage of ownership as set forth in section 243 of the Internal Revenue Code.

22. Subtract, to the extent included, the amount of ordinary or capital gain realized by the taxpayer as a result of the involuntary conversion of property due to eminent domain. However, if the total amount of such realized ordinary or capital gain is not recognized because the converted property is replaced with property that is similar to, or related in use to, the converted property, the amount of such realized ordinary or capital gain shall not be subtracted under this subsection until the remaining realized ordinary or capital gain is subject to federal taxation or until the time of disposition of the replacement property as provided under rules of the director. The subtraction allowed under this subsection shall not alter the basis as established for federal tax purposes of any property owned by the taxpayer.

23. Reserved.

24. A taxpayer is not allowed to take the increased expensing allowance under section 179 of the Internal Revenue Code, as amended by Pub. L. No. 111-5, §1202, in computing taxable income for state tax purposes.

25. Subtract, to the extent included, the amount of any biodiesel production refund provided pursuant to section 423.4.

[C35, §6943-f31; C39, §**6943.067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.35; 81 Acts, ch 132, §8, 9; 82 Acts, ch 1023, §14, 15, 30, 31, ch 1203, §2, ch 1206, §1]

83 Acts, ch 174, §2, 3; 83 Acts, ch 179, §16, 24; 86 Acts, ch 1236, §9; 86 Acts, ch 1238, §20; 86 Acts, ch 1241, §23; 87 Acts, 1st Ex, ch 1, §8 – 11; 89 Acts, ch 175, §3; 89 Acts, ch 225, §20, 21; 90 Acts, ch 1168, §46; 90 Acts, ch 1171, §6; 90 Acts, ch 1195, §2; 90 Acts, ch 1251, §53; 91 Acts, ch 210, §3; 92 Acts, ch 1222, §5, 6; 92 Acts, ch 1225, §2, 5; 94 Acts, ch 1107, §26; 94 Acts, ch 1166, §9, 10, 12; 95 Acts, ch 152, §6, 7; 96 Acts, ch 1129, §113; 97 Acts, ch 135, §8, 9; 98 Acts, ch 1078, §8, 12; 98 Acts, ch 1172, §13, 14; 99 Acts, ch 95, §10 – 13; 2001 Acts, ch 15, §3, 4; 2001 Acts, ch 116, §7, 28; 2001 Acts, 2nd Ex, ch 6, §23 – 26, 37; 2003 Acts, ch 139, §10 – 12; 2004 Acts, ch 1101, §47; 2004 Acts, 1st Ex, ch 1001, §40 – 42; 2005 Acts, ch 2, §3, 4, 6; 2005 Acts, ch 19, §54; 2005 Acts, ch 24, §9 – 11; 2005 Acts, ch 140, §41, 73; 2006 Acts, 1st Ex, ch 1001, §42, 49; 2007 Acts, ch 54, §36; 2007 Acts, ch 162, §8, 13; 2007 Acts, ch 186, §17; 2008 Acts, ch 1011, §8, 9; 2009 Acts, ch 133, §141 – 143; 2009 Acts, ch 135, §4, 5; 2011 Acts, ch 41, §21 – 25; 2011 Acts, ch 113, §58, 60; 2012 Acts, ch 1019, §130; 2012 Acts, ch 1110, §12; 2012 Acts, ch 1136, §35, 39 – 41; 2013 Acts, ch 1, §10 – 12; 2013 Acts, ch 70, §5, 6; 2013 Acts, ch 100, §24, 27; 2015 Acts, ch 1, §10 – 12; 2016 Acts, ch 1107, §4 – 6; 2018 Acts, ch 1161, §94 – 98; 2019 Acts, ch 4, §1 – 3

Referred to in §422.33, 422.60, 422.61

For future amendment to unnumbered paragraph 1, and subsections 3, 4, 5, 7, 8, 10, 11, 16, 17, 18, 19, 19B, 20, 22, and 24, effective on or after January 1, 2023, contingent upon meeting certain net general fund revenue criteria, see 2018 Acts, ch 1161, §128 – 130, 133, 134

2015 amendment to subsection 19A takes effect February 17, 2015, and applies retroactively to January 1, 2014, for tax years ending on or after that date; 2015 Acts, ch 1, §11, 12

For provisions relating to the disallowance of additional first-year depreciation under §168(k) of the Internal Revenue Code for tax years ending on or after January 1, 2015, see 2016 Acts, ch 1007, §3 – 5; 2017 Acts, ch 157, §11 – 13

Subsection 13 takes effect May 25, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1107, §5, 6

2018 amendment to subsection 4, effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

Subsections 14 and 15 effective January 1, 2019, and apply to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2018 amendment to subsection 19A effective January 1, 2019, and applies to tax years beginning on or after that date; 2018 Acts, ch 1161, §97, 98

2019 amendment to subsections 14 and 15 takes effect March 15, 2019, and applies retroactively to January 1, 2018, for tax years beginning on or after that date; 2019 Acts, ch 4, §2, 3

For exchanges under section 1031 of the Internal Revenue Code of personal property for the 2019 calendar year, see 2019 Acts, ch 152, §11, 16

Subsections 14 and 15 amended

422.36 Returns.

1. A corporation shall make a return and the return shall be signed by the president or other duly authorized officer in accordance with forms and rules prescribed by the director. Before a corporation is dissolved and its assets distributed it shall make a return for settlement of the tax for income earned in the income year up to its final date of dissolution.

2. When any corporation, liable to taxation under this division, conducts its business in such a manner as either directly or indirectly to benefit the members or stockholders thereof or any person interested in such business by selling its products or the goods or commodities in which it deals at less than the fair price which might be obtained therefor, or where a corporation, a substantial portion of whose capital stock is owned either directly or indirectly

by another corporation, acquires and disposes of the products, goods or commodities of the corporation so owning a substantial portion of its stock in such a manner as to create a loss or improper net income for either of said corporations, or where a corporation, owning directly or indirectly a substantial portion of the stock of another corporation, acquires and disposes of the products, goods, or commodities, of the corporation of which it so owns a substantial portion of the stock, in such a manner as to create a loss or improper net income for either of said corporations, the department may determine the amount of taxable income of either or any of such corporations for the calendar or fiscal year, having due regard to the reasonable profits which, but for such arrangement or understanding, might or could have been obtained, by the corporation or corporations liable to taxation under this division, from dealing in such products, goods, or commodities.

3. Where the director has reason to believe that any person or corporation so conducts a trade or business as either directly or indirectly to distort the person's or corporation's true net income and the net income properly attributable to the state, whether by the arbitrary shifting of income, through price fixing, charges for services, or otherwise, whereby the net income is arbitrarily assigned to one or another unit in a group of taxpayers carrying on business under a substantially common control, the director may require such facts as are necessary for the proper computation of the entire net income and the net income properly attributable to the state, and shall determine the same, and in the determination thereof the director shall have regard to the fair profits which would normally arise from the conduct of the trade or business.

4. Foreign and domestic corporations shall file a copy of their federal income tax return for the current tax year with the return required by this section.

5. Where a corporation is not subject to income tax and the stockholders of such corporation are taxed on the corporation's income under the provisions of the Internal Revenue Code, the same tax treatment shall apply to such corporation and such stockholders for Iowa income tax purposes.

6. A foreign corporation is not required to file a return if its only activities in Iowa are the storage of goods for a period of sixty consecutive days or less in a warehouse for hire located in this state whereby the foreign corporation transports or causes a carrier to transport such goods to that warehouse and provided that none of the goods are delivered or shipped so as to be included in the gross sales of the corporation within this state as provided in section 422.33, subsection 2, paragraph *"a"*, subparagraph (2), subparagraph division (h).

7. Notwithstanding subsection 1, a return is not required by a taxpayer as provided in section 29C.24.

[C35, §6943-f32; C39, §**6943.068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.36]

87 Acts, 1st Ex, ch 1, §12; 89 Acts, ch 251, §23; 2001 Acts, ch 97, §1, 2; 2012 Acts, ch 1110, §13; 2014 Acts, ch 1026, §141; 2016 Acts, ch 1095, §7, 14, 15

Referred to in §29C.24, 422.13, 422.31

Subsection 7 takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

422.37 Consolidated returns.

Any affiliated group of corporations may, not later than the due date for filing its return for the taxable year, including any extensions thereof, under rules to be prescribed by the director, elect, and upon demand of the director shall be required, to make a consolidated return showing the consolidated net income of all such corporations and other information as the director may require, subject to the following:

1. The affiliated group filing under this section shall file a consolidated return for federal income tax purposes for the same taxable year.

2. All members of the affiliated group shall join in the filing of an Iowa consolidated return to the extent they are subject to the tax imposed by section 422.33, except as otherwise provided in section 29C.24.

3. Members of the affiliated group exempt from taxation by section 422.34 of the Code shall not be included in a consolidated return.

4. All members of the affiliated group shall use the statutory method of allocation and

apportionment unless the director has granted permission to all members to use an alternative method of allocation and apportionment.

5. Each member of the affiliated group shall consent to the rules governing a consolidated return prescribed by the director at the time the consolidated return is filed, unless the director requires the filing of a consolidated return. The filing of a consolidated return shall be considered the affiliated group's consent.

6. The filing of a consolidated return for any taxable year shall require the filing of consolidated returns for all subsequent taxable years so long as the filing taxpayers remain members of the affiliated group unless the director determines that the filing of separate returns will more clearly disclose the taxable incomes of each member of the affiliated group. This determination shall be made after specific request by the taxpayer for the filing of separate returns.

7. The computation of consolidated taxable income for the members of an affiliated group of corporations subject to tax shall be made in the same manner and under the same procedures, including all intercompany adjustments and eliminations, as are required for consolidating the incomes of affiliated corporations for the taxable year for federal income tax purposes in accordance with section 1502 of the Internal Revenue Code.

[C35, §6943-f33; C39, §**6943.069;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.37]

86 Acts, ch 1213, §10; 87 Acts, 1st Ex, ch 1, §13; 92 Acts, 2nd Ex, ch 1001, §240, 252; 2016 Acts, ch 1095, §8, 14, 15

Referred to in §29C.24

2016 amendment to subsection 2 takes effect April 21, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1095, §14, 15

422.38 Statutes governing corporations.

All the provisions of sections 422.15 to 422.22 of division II, insofar as the same are applicable, shall apply to corporations taxable under this division.

[C35, §6943-f34; C39, §**6943.070;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.38]

422.39 Statutes applicable to corporation tax.

All the provisions of sections 422.24 to 422.27 of division II, respecting payment and collection, shall apply in respect to the tax due and payable by a corporation taxable under this division.

[C35, §6943-f35; C39, §**6943.071;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.39]

422.40 Cancellation of authority — penalty — offenses.

1. If a corporation required by the provisions of this division to file any report or return or to pay any tax or fee, either as a corporation organized under the laws of this state, or as a foreign corporation doing business in this state for profit, or owning and using a part or all of its capital or plant in this state, fails or neglects to make any such report or return or to pay any such tax or fee for ninety days after the time prescribed in this division for making such report or return, or for paying such tax or fee, the director may certify such fact to the secretary of state. The secretary of state shall thereupon cancel the articles of incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof, or cancel the certificate of authority of any such foreign corporation to do business in this state by proper entry. Thereupon all the powers, privileges, and franchises conferred upon such corporation by such articles of incorporation or by such certificate of authority shall cease and determine. The secretary of state shall immediately notify by registered mail such domestic or foreign corporation of the action taken by the secretary of state.

2. Any person or persons who shall exercise or attempt to exercise any powers, privileges, or franchises under articles of incorporation or certificate of authority after the same are canceled, as provided in any section of this division, shall pay a penalty of not less than one hundred dollars nor more than one thousand dollars, to be recovered by an action to be brought by the director.

3. Any corporation whose articles of incorporation or certificate of authority to do business in this state have been canceled by the secretary of state, as provided in subsection

1, or similar provisions of prior revenue laws, upon the filing, within ten years after such cancellation, with the secretary of state, of a certificate from the department that it has complied with all the requirements of this division and paid all state taxes, fees, or penalties due from it, and upon the payment to the secretary of state of an additional penalty of fifty dollars, shall be entitled again to exercise its rights, privileges, and franchises in this state; and the secretary of state shall cancel the entry made by the secretary under the provisions of subsection 1 or similar provisions of prior revenue laws, and shall issue a certificate entitling such corporation to exercise its rights, privileges and franchises.

4. A person, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade a requirement of this division or a lawful requirement of the director, fails to pay tax or fails to make, sign, or verify a return or fails to supply information required under this division, is guilty of a fraudulent practice. A person, corporation, officer or employee of a corporation, or member or employee of a partnership, who, with intent to evade any of the requirements of this division, or any lawful requirements of the director, makes, renders, signs, or verifies a false or fraudulent return or statement, or supplies false or fraudulent information, or who aids, abets, directs, causes, or procures anyone so to do, is guilty of a class "D" felony. The penalty is in addition to all other penalties in this division.

[C35, §6943-f36; C39, §**6943.072;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.40]
83 Acts, ch 160, §6
Referred to in §422.16

422.41 Corporations.

All the provisions of sections 422.28, 422.29, and 422.30 of division II in respect to revision, appeal, and jeopardy assessments shall be applicable to corporations taxable under this division.

[C35, §6943-f37; C39, §**6943.073;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §422.41]

DIVISION IV

RETAIL SALES TAX

422.42 through 422.47 Repealed by 2003 Acts, 1st Ex, ch 2, §151, 205. See chapter 423.

422.47A through 422.47C Repealed by 96 Acts, ch 1034, §70.

422.48 through 422.59 Repealed by 2003 Acts, 1st Ex, ch 2, §151, 205. See chapter 423.

DIVISION V

TAXATION OF FINANCIAL INSTITUTIONS

Referred to in §15.293A, 15.333, 15.355, 15E.43, 15E.44, 15E.52, 15E.62, 15E.305, 404A.2, 422.1, 422.73, 422.85, 476B.2, 476B.6, 476B.7, 476C.4, 476C.6

422.60 Imposition of tax — credit.

1. A franchise tax according to and measured by net income is imposed on financial institutions for the privilege of doing business in this state as financial institutions.

2. *a.* In addition to all taxes imposed under this division, there is imposed upon each financial institution doing business within the state the greater of the tax determined in section 422.63 or the state alternative minimum tax equal to sixty percent of the maximum state franchise tax rate, rounded to the nearest one-tenth of one percent, of the state alternative minimum taxable income of the taxpayer computed under this subsection.

b. The state alternative minimum taxable income of a taxpayer is equal to the taxpayer's state taxable income as computed with the adjustments in section 422.61, subsection 3, and with the following adjustments:

(1) Add items of tax preference included in federal alternative minimum taxable income under section 57, except subsections (a)(1) and (a)(5), of the Internal Revenue Code, make the adjustments included in federal alternative minimum taxable income under section 56, except subsections (a)(4), (c)(1), (d), and (g), of the Internal Revenue Code, and add losses as required by section 58 of the Internal Revenue Code.

(2) Make the adjustments provided in section 56(c)(1) of the Internal Revenue Code, except that in making the calculation under section 56(g)(1) of the Internal Revenue Code the state alternative minimum taxable income, computed without regard to the adjustments made by this subparagraph, the exemption provided for in subparagraph (4), and the state alternative tax net operating loss described in subparagraph (5), shall be substituted for the items described in section 56(g)(1)(B) of the Internal Revenue Code.

(3) Apply the allocation and apportionment provisions of section 422.63.

(4) Subtract an exemption amount of forty thousand dollars. This exemption amount shall be reduced, but not below zero, by an amount equal to twenty-five percent of the amount by which the alternative minimum taxable income of the taxpayer, computed without regard to the exemption amount in this subparagraph, exceeds one hundred fifty thousand dollars.

(5) In the case of a net operating loss beginning after December 31, 1986, which is carried back or carried forward to the current taxable year, the net operating loss shall be reduced by the amount of items of tax preference and adjustments arising in the tax year which was taken into account in computing the net operating loss in section 422.35, subsection 11. The deduction for a net operating loss for a tax year beginning after December 31, 1986, which is carried back or carried forward to the current taxable year shall not exceed ninety percent of the alternative minimum taxable income determined without regard for the net operating loss deduction.

(6) For purposes of this paragraph, *"Internal Revenue Code"* means the Internal Revenue Code of 1954, prior to the date of its redesignation as the Internal Revenue Code of 1986 by the Tax Reform Act of 1986, or means the Internal Revenue Code of 1986 as amended and in effect on December 21, 2017. This definition shall not be construed to include any amendment to the Internal Revenue Code enacted after the date specified in the preceding sentence, including any amendment with retroactive applicability or effectiveness.

c. This subsection is repealed January 1, 2021, for tax years beginning on or after that date.

3. *a.* (1) For tax years beginning before January 1, 2022, there is allowed as a credit against the tax determined in section 422.63 for a tax year an amount equal to the minimum tax credit for that tax year.

(2) The minimum tax credit for a tax year is the excess, if any, of the net minimum tax imposed for all prior tax years beginning on or after January 1, 1987, but before January 1, 2021, over the amount allowable as a credit under this subsection for those prior tax years.

b. (1) The allowable credit under paragraph *"a"* for a tax year beginning before January 1, 2021, shall not exceed the excess, if any, of the tax determined in section 422.63 over the state alternative minimum tax as determined in subsection 2. The allowable credit under paragraph *"a"* for a tax year beginning in the 2021 calendar year shall not exceed the tax determined in section 422.63.

(2) The net minimum tax for a tax year is the excess, if any, of the tax determined in subsection 2 for the tax year over the tax determined in section 422.63 for the tax year.

c. This subsection is repealed January 1, 2022, for tax years beginning on or after that date.

4. The taxes imposed under this division shall be reduced by a historic preservation tax credit allowed under chapter 404A.

5. *a.* The taxes imposed under this division shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business.

b. The taxes imposed under this division shall be reduced by investment tax credits authorized pursuant to sections 15.333 and 15E.193B, subsection 6, Code 2014.

6. The taxes imposed under this division shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

7. The taxes imposed under this division shall be reduced by tax credits for wind energy

production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

8. The taxes imposed under this division shall be reduced by a corporate tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

9. The taxes imposed under this division shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

10. The taxes imposed under this division shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

11. The taxes imposed under this division shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

12. *a.* The taxes imposed under this division shall be reduced by a solar energy system tax credit equal to sixty percent of the federal energy credit related to solar energy systems provided in section 48(a)(2)(A)(i)(II) and section 48(a)(2)(A)(i)(III) of the Internal Revenue Code, not to exceed twenty thousand dollars. For installations occurring on or after January 1, 2016, the applicable percentage of the federal energy credit related to solar energy systems shall be fifty percent.

b. The taxpayer may claim the credit pursuant to this subsection according to the same requirements, conditions, and limitations as provided pursuant to section 422.11L.

13. The taxes imposed under this division shall be reduced by a workforce housing investment tax credit allowed under section 15.355, subsection 3.

[C71, 73, 75, 77, 79, 81, §422.60; 82 Acts, ch 1023, §16, 31]

83 Acts, ch 179, §17, 22; 86 Acts, ch 1241, §28; 87 Acts, 1st Ex, ch 1, §14; 89 Acts, ch 285, §6; 2002 Acts, ch 1003, §3, 5; 2002 Acts, ch 1006, §9, 13; 2002 Acts, ch 1156, §4, 8; 2003 Acts, 1st Ex, ch 2, §86, 89; 2004 Acts, ch 1175, §406, 418; 2005 Acts, ch 150, §15, 63, 69; 2005 Acts, ch 160, §3, 14; 2006 Acts, ch 1158, §34 – 38; 2007 Acts, ch 162, §9, 13; 2007 Acts, ch 165, §6, 9; 2008 Acts, ch 1173, §10; 2008 Acts, ch 1191, §164; 2009 Acts, ch 41, §126; 2010 Acts, ch 1138, §13, 16, 23, 26; 2011 Acts, ch 25, §82, 143; 2011 Acts, ch 130, §43, 47, 71; 2012 Acts, ch 1136, §36, 39 – 41; 2014 Acts, ch 1093, §27 – 29; 2014 Acts, ch 1118, §10, 12; 2014 Acts, ch 1130, §21, 24 – 26, 39; 2014 Acts, ch 1141, §78 – 80; 2015 Acts, ch 30, §119; 2015 Acts, ch 124, §4, 9; 2015 Acts, ch 138, §122, 126, 127; 2017 Acts, ch 29, §122; 2019 Acts, ch 152, §10, 15, 65, 66

Referred to in §2.48, 422.85

2015 amendment to subsection 5, paragraph a, takes effect July 2, 2015, and applies to equity investments in a qualifying business made on or after that date; 2015 Acts, ch 138, §126, 127

Subsection 2, paragraph b, subparagraph (6), applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §15

Subsection 2, paragraph b, NEW subparagraph (6)

Subsection 2, NEW paragraph c

Subsection 3 amended

422.61 Definitions.

In this division, unless the context otherwise requires:

1. *"Financial institution"* means a state bank as defined in section 524.103, subsection 41, a state bank chartered under the laws of any other state, a national banking association, a trust company, a federally chartered savings and loan association, an out-of-state state chartered savings bank, a financial institution chartered by the federal home loan bank board, a non-Iowa chartered savings and loan association, or a production credit association.

2. *"Investment subsidiary"* means an affiliate that is owned, capitalized, or utilized by a financial institution with one of its purposes being to make, hold, or manage, for and on behalf of the financial institution, investments in securities which the financial institution would be permitted by applicable law to make for its own account.

3. *"Net income"* means the net income of the financial institution computed in accordance with section 422.35, with the following adjustments:

a. Federal income taxes paid or accrued shall not be subtracted.

b. Notwithstanding section 422.35, subsection 2, or any other provisions of law, income from obligations of the state and its political subdivisions and franchise taxes paid or accrued under this division during the taxable year shall be added. Income from sales of obligations of the state and its political subdivisions and interest and dividend income from these obligations are exempt from the taxes imposed by this division only if the law authorizing the obligations

specifically exempts the income from the sale and interest and dividend income from the state franchise tax.

c. Interest and dividends from federal securities shall not be subtracted.

d. Interest and dividends derived from obligations of United States possessions, agencies, and instrumentalities, including bonds which were purchased after January 1, 1991, and issued by the governments of Puerto Rico, Guam, and the Virgin Islands shall be added, to the extent they were not included in computing federal taxable income.

e. A deduction disallowed under section 265(b) or section 291(e)(1)(B) of the Internal Revenue Code shall be subtracted.

f. A deduction shall not be allowed for that portion of the taxpayer's expenses computed under this paragraph which is allocable to an investment in an investment subsidiary. The portion of the taxpayer's expenses which is allocable to an investment in an investment subsidiary is an amount which bears the same ratio to the taxpayer's expenses as the taxpayer's average adjusted basis, as computed pursuant to section 1016 of the Internal Revenue Code, of investment in that investment subsidiary bears to the average adjusted basis for all assets of the taxpayer. The portion of the taxpayer's expenses that is computed and disallowed under this paragraph shall be added.

g. Where a financial institution as defined in section 581 of the Internal Revenue Code is not subject to income tax and the shareholders of the financial institution are taxed on the financial institution's income under the provisions of the Internal Revenue Code, such tax treatment shall be disregarded and the financial institution shall compute its net income for franchise tax purposes in the same manner under this subsection as a financial institution that is subject to or liable for federal income tax under the Internal Revenue Code in effect for the applicable year.

4. *"Taxable year"* means the calendar year or the fiscal year ending during a calendar year, for which the tax is payable. *"Fiscal year"* includes a tax period of less than twelve months if, under the Internal Revenue Code, a corporation is required to file a tax return covering a tax period of less than twelve months.

5. *"Taxpayer"* means a financial institution subject to any tax imposed by this division.

[C71, 73, 75, 77, 79, 81, §422.61]

85 Acts, ch 230, §8; 87 Acts, ch 18, §2; 87 Acts, 1st Ex, ch 1, §15, 16; 89 Acts, ch 285, §7; 91 Acts, ch 217, §1; 95 Acts, ch 193, §1 – 3; 97 Acts, ch 154, §2, 3; 2001 Acts, ch 116, §10, 28; 2012 Acts, ch 1017, §83; 2013 Acts, ch 70, §7

Referred to in §321.105, 422.60

422.62 Due and delinquent dates.

The franchise tax is due and payable on the first day following the end of the taxable year of each financial institution, and is delinquent after the last day of the fourth month following the due date or forty-five days after the due date of the federal tax return, excluding extensions of time to file, whichever is the later. Every financial institution shall file a return as prescribed by the director on or before the delinquency date.

[C71, 73, 75, 77, 79, 81, §422.62]

85 Acts, ch 230, §9; 86 Acts, ch 1237, §25

422.63 Amount of tax.

The franchise tax is imposed annually in an amount equal to five percent of the net income received or accrued during the taxable year. If the net income of the financial institution is derived from its business carried on entirely within the state, the tax shall be imposed on the entire net income, but if the business is carried on partly within and partly without the state, the portion of net income reasonably attributable to the business within the state shall be specifically allocated or equitably apportioned within and without the state under rules of the director.

[C71, 73, 75, 77, 79, 81, §422.63]

86 Acts, ch 1194, §2

Referred to in §422.60

422.64 Reserved.

422.65 Allocation of revenue. Repealed by 2003 Acts, ch 178, §11.

422.66 Department to enforce.

The department shall administer and enforce the provisions of this division, and all applicable provisions of sections 422.24, 422.25, 422.26, 422.28, 422.29, and 422.30, and division VI of this chapter, apply to financial institutions and to the franchise tax imposed by this division.

[C71, 73, 75, 77, 79, 81, §422.66]

DIVISION VI

ADMINISTRATION

Referred to in §422.1, 422.13, 422.16, 422.66

422.67 Generally — bond — approval.

The director shall administer the taxes imposed by this chapter. The director shall give a bond in an amount to be fixed by the governor, which has been issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility. The reasonable cost of said bond shall be paid by the state, out of the proceeds of the taxes collected under the provisions of this chapter.

[C35, §6943-f54; C39, §**6943.091;** C46, 50, 54, 58, 62, 66, §422.60; C71, 73, 75, 77, 79, 81, §422.67]

Referred to in §99G.30A, 321.105A, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

422.68 Powers and duties.

1. The director shall have the power and authority to prescribe all rules not inconsistent with the provisions of this chapter, necessary and advisable for its detailed administration and to effectuate its purposes.

2. The director may, for administrative purposes, divide the state into districts, provided that in no case shall a county be divided in forming a district.

3. The director may destroy useless records and returns, reports, and communications of any taxpayer filed with or kept by the department after those returns, records, reports, or communications have been in the custody of the department for a period of not less than three years or such time as the director prescribes by rule. However, after the accounts of a person have been examined by the director and the amount of tax and penalty due have been finally determined, the director may order the destruction of any records previously filed by that taxpayer, notwithstanding the fact that those records have been in the custody of the department for a period less than three years. These records and documents shall be destroyed in the manner prescribed by the director.

4. The department may make photostat, microfilm, electronic, or other photographic copies of records, reports, and other papers either filed by the taxpayer or prepared by the department. In addition, the department may create and use any system of recordkeeping reasonably calculated to preserve its records for any time period required by law. When these photostat, electronic, microfilm, or other copies have been made, the department may destroy the original records which are the basis for the copies in any manner prescribed by the director. These photostat, electronic, microfilm, or other types of copies, when no longer of use, may be destroyed as provided in subsection 3. These photostat, microfilm, electronic, or other records shall be admissible in evidence when duly certified and authenticated by the officer having custody and control of them.

[C35, §6943-f55; C39, §**6943.092;** C46, 50, 54, 58, 62, 66, §422.61; C71, 73, 75, 77, 79, 81, §422.68]

85 Acts, ch 230, §10; 99 Acts, ch 151, §24, 89; 99 Acts, ch 152, §9, 40

Referred to in §99G.30A, 257.22, 321.105A, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 437A.17, 437B.13

422.69 Moneys paid and deposited.

1. All fees, taxes, interest, and penalties imposed under this chapter shall be paid to the

department in the form of remittances payable to the state treasurer and the department shall transmit each payment daily to the state treasurer.

2. Unless otherwise provided the fees, taxes, interest, and penalties collected under this chapter shall be credited to the general fund.

[C35, §6943-f56; C39, §**6943.093, 6943.101;** C46, §422.62, 422.70; C50, 54, 58, 62, 66, §422.62; C71, 73, 75, 77, 79, 81, §422.69]

85 Acts, ch 32, §88; 85 Acts, ch 258, §13; 88 Acts, ch 1154, §2; 89 Acts, ch 236, §15; 91 Acts, ch 260, §1231; 92 Acts, ch 1227, §29; 96 Acts, ch 1034, §37

Referred to in §99G.30A, 321.105A, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

422.70 General powers — hearings.

1. The director, for the purpose of ascertaining the correctness of a return or for the purpose of making an estimate of the taxable income or receipts of a taxpayer, has the following powers:

a. To examine or cause to be examined by an agent or representative designated by the director, books, papers, records, or memoranda.

b. To require by subpoena the attendance and testimony of witnesses.

c. To issue and sign subpoenas.

d. To administer oaths, to examine witnesses and receive evidence.

e. To compel witnesses to produce for examination books, papers, records, and documents relating to any matter which the director has the authority to investigate or determine.

2. Where the director finds the taxpayer has made a fraudulent return, the costs of any hearing, including a contested case hearing, shall be taxed to the taxpayer. In all other cases the costs shall be paid by the state.

3. The fees and mileage to be paid witnesses and charged as costs shall be the same as prescribed by law in proceedings in the district court of this state in civil cases. All costs shall be charged in the manner provided by law in proceedings in civil cases. If the costs are charged to the taxpayer they shall be added to the taxes assessed against the taxpayer and shall be collected in the same manner. Costs charged to the state shall be certified by the director and the department of administrative services shall issue warrants on the state treasurer for the amount of the costs, to be paid out of the proceeds of the taxes collected under this chapter.

4. In case of disobedience to a subpoena the director may invoke the aid of any court of competent jurisdiction in requiring the attendance and testimony of witnesses and production of records, books, papers, and documents, and such court may issue an order requiring the person to appear before the director and give evidence or produce records, books, papers, and documents, as the case may be, and any failure to obey such order of court may be punished by the court as a contempt thereof.

5. Testimony on hearings before the director may be taken by a deposition as in civil cases, and any person may be compelled to appear and depose in the same manner as witnesses may be compelled to appear and testify as hereinbefore provided.

[C35, §6943-f57; C39, §**6943.094;** C46, 50, 54, 58, 62, 66, §422.63; C71, 73, 75, 77, 79, 81, §422.70]

88 Acts, ch 1134, §79; 88 Acts, ch 1243, §9; 95 Acts, ch 83, §10; 2004 Acts, ch 1101, §48; 2013 Acts, ch 30, §90; 2014 Acts, ch 1026, §88

Referred to in §99G.30A, 257.22, 321.105A, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 425.27, 437A.17, 437B.13

Contempts, chapter 665

422.71 Assistants — salaries — expenses — bonds.

1. The director may appoint and remove such agents, auditors, clerks, and employees as the director may deem necessary, such persons to have such duties and powers as the director may, from time to time, prescribe.

2. The salaries of all assistants, agents, and employees shall be fixed by the director in a budget to be submitted to the department of management and approved by the legislature.

3. All such agents and employees shall be allowed such reasonable and necessary traveling and other expenses as may be incurred in the performance of their duties.

4. The director may require certain officers, agents, and employees to give bond for the faithful performance of the duties in such sum and with such sureties as the director may determine and the state shall pay, out of the proceeds of the taxes collected under the provisions of this chapter, the premiums on such bonds.

5. The director may utilize the office of treasurer of the various counties in order to administer this chapter and effectuate its purposes, and may appoint the treasurers of the various counties as agents to collect any or all of the taxes imposed by this chapter, provided, however, that no additional compensation shall be paid to said treasurer by reason thereof.

[C35, §6943-f58; C39, §**6943.095;** C46, 50, 54, 58, 62, 66, §422.64; C71, 73, 75, 77, 79, 81, §422.71]

88 Acts, ch 1134, §80

Referred to in §99G.30A, 321.105A, 331.559, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 437A.17, 437B.13

422.72 Information deemed confidential — informational exchange agreement — subpoenas.

1. *a.* (1) It is unlawful for the director, or any person having an administrative duty under this chapter, or any present or former officer or other employee of the state authorized by the director to examine returns, to divulge in any manner whatever, the business affairs, operations, or information obtained by an investigation under this chapter of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth or disclosed in any return, or to permit any return or copy of a return or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law.

(2) It is unlawful for any person to willfully inspect, except as authorized by the director, any return or return information.

(3) However, the director may authorize examination of such state returns and other state information which is confidential under this section, if a reciprocal arrangement exists, by tax officers of another state or the federal government.

b. The director may, by rules adopted pursuant to chapter 17A, authorize examination of state information and returns by other officers or employees of this state to the extent required by their official duties and responsibilities. Disclosure of state information to tax officers of another state is limited to disclosures which have a tax administrative purpose and only to officers of those states which by agreement with this state limit the disclosure of the information as strictly as the laws of this state protecting the confidentiality of returns and information. The director shall place upon the state tax form a notice to the taxpayer that state tax information may be disclosed to tax officials of another state or of the United States for tax administrative purposes.

c. The department shall not authorize the examination of tax information by officers and employees of this state, another state, or of the United States if the officers or employees would otherwise be required to obtain a judicial order to examine the information if it were to be obtained from another source, and if the purpose of the examination is other than for tax administration. However, the director may provide sample individual income tax information to be used for statistical purposes to the legislative services agency. The information shall not include the name or mailing address of the taxpayer or the taxpayer's social security number. Any information contained in an individual income tax return which is provided by the director shall only be used as a part of a database which contains similar information from a number of returns. The legislative services agency shall not have access to the income tax returns of individuals. Each request for individual income tax information shall contain a statement by the director of the legislative services agency that the individual income tax information received by the legislative services agency shall be used solely for statistical purposes. This subsection does not prevent the department from authorizing the examination of state returns and state information under the provisions of section 252B.9. This subsection prevails over any general law of this state relating to public records.

d. The director shall provide state tax returns and return information to the auditor of state, to the extent that the information is necessary to complete the annual audit of the department required by section 11.2. The state tax returns and return information provided

by the director shall remain confidential and shall not be included in any public documents issued by the auditor of state.

2. Federal tax returns, copies of returns, and return information as defined in section 6103(b) of the Internal Revenue Code, which are required to be filed with the department for the enforcement of the income tax laws of this state, shall be held as confidential by the department and subject to the disclosure limitations in subsection 1.

3. *a.* Unless otherwise expressly permitted by section 8A.504, section 8G.4, section 11.41, section 96.11, subsection 6, section 421.17, subsections 22, 23, and 26, section 421.17, subsection 27, paragraph *"k"*, section 421.17, subsection 31, section 252B.9, section 321.40, subsection 6, sections 321.120, 421.19, 421.28, 422.20, and 452A.63, this section, or another provision of law, a tax return, return information, or investigative or audit information shall not be divulged to any person or entity, other than the taxpayer, the department, or internal revenue service for use in a matter unrelated to tax administration.

b. This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department, and a subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service for use in a nontax proceeding is void.

4. A person violating subsection 1, 2, 3, or 6 is guilty of a serious misdemeanor.

5. The director may disclose taxpayer identity information to the press and other media for purposes of notifying persons entitled to tax refunds when the director, after reasonable effort and lapse of time, has been unable to locate the persons.

6. *a.* The department may enter into a written informational exchange agreement for tax administration purposes with a city or county which is entitled to receive funds due to a local hotel and motel tax or a local sales and services tax. The written informational exchange agreement shall designate no more than two paid city or county employees that have access to actual return information relating to that city's or county's receipts from a local hotel and motel tax or a local sales and services tax.

b. City or county employees designated to have access to information under this subsection are deemed to be officers and employees of the state for purposes of the restrictions pursuant to subsection 1 pertaining to confidential information. The department may refuse to enter into a written informational exchange agreement if the city or county does not agree to pay the actual cost of providing the information and the department may refuse to abide by a written informational exchange agreement if the city or county does not promptly pay the actual cost of providing the information or take reasonable precautions to protect the information's confidentiality.

7. *a.* Notwithstanding subsection 3, the director shall provide state tax returns and return information in response to a subpoena issued by the court pursuant to rule of criminal procedure 2.5 commanding the appearance before the attorney general or an assistant attorney general if the subpoena is accompanied by affidavits from such person and from a sworn peace officer member of the department of public safety affirming that the information is necessary for the investigation of a felony violation of chapter 124 or chapter 706B.

b. The affidavits accompanying the subpoenas and the information provided by the director shall remain a confidential record which may be disseminated only to a prosecutor or peace officer involved in the investigation, or to the taxpayer who filed the information and to the court in connection with the filing of criminal charges or institution of a forfeiture action. A person who knowingly files a false affidavit with the director to secure information or who divulges information received under this subsection in a manner prohibited by this subsection commits a serious misdemeanor.

8. The department may permit, by rule, the disclosure of state tax information to a person a taxpayer has authorized to receive such state tax information, in the manner prescribed by the department.

[C35, §6943-f59; C39, §**6943.096;** C46, 50, 54, 58, 62, 66, §422.65; C71, 73, 75, 77, 79, 81, §422.72]

83 Acts, ch 32, §1, 2; 87 Acts, ch 199, §9; 88 Acts, ch 1028, §34; 88 Acts, ch 1153, §3, 4; 90 Acts, ch 1232, §19; 91 Acts, ch 159, §20; 97 Acts, ch 158, §22, 23; 99 Acts, ch 151, §25, 89; 99

Acts, ch 152, §10, 40; 2003 Acts, ch 35, §45, 46, 49; 2003 Acts, ch 145, §257; 2008 Acts, ch 1113, §10, 11; 2010 Acts, ch 1146, §15, 26; 2010 Acts, ch 1193, §148, 149; 2011 Acts, ch 122, §52; 2013 Acts, ch 30, §91; 2013 Acts, ch 70, §8, 9; 2019 Acts, ch 152, §18

Referred to in §2A.3, 8A.504, 99G.30A, 257.22, 321.105A, 421.17, 421.19, 421.28, 422.20, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 425.28

NEW subsection 8

422.73 Correction of errors — refunds, credits, and carrybacks.

1. If it appears that an amount of tax, penalty, or interest has been paid which was not due under division II, III or V of this chapter, then that amount shall be credited against any tax due on the books of the department by the person who made the excessive payment, or that amount shall be refunded to the person or with the person's approval, credited to tax to become due. A claim for refund or credit that has not been filed with the department within three years after the return upon which a refund or credit claimed became due, or within one year after the payment of the tax upon which a refund or credit is claimed was made, whichever time is the later, shall not be allowed by the director. If, as a result of a carryback of a net operating loss or a net capital loss, the amount of tax in a prior period is reduced and an overpayment results, the claim for refund or credit of the overpayment shall be filed with the department within the three years after the return for the taxable year of the net operating loss or net capital loss became due. Notwithstanding the period of limitation specified, the taxpayer shall have six months from the day of final disposition of any income tax matter between the taxpayer and the internal revenue service with respect to the particular tax year to claim an income tax refund or credit.

2. Notwithstanding subsection 1, a claim for refund or credit of the individual income tax paid which resulted from a reduction in a person's federal adjusted gross income due to section 1106 of the FAA Modernization and Reform Act of 2012, Pub. L. No. 112-95, shall be considered timely if the claim is filed with the department on or before June 30, 2013.

3. The department shall enter into an agreement with the internal revenue service for the transmission of federal income tax reports on individuals required to file an Iowa income tax return who have been involved in an income tax matter with the internal revenue service. After final disposition of the income tax matter between the taxpayer and the internal revenue service, the department shall determine whether the individual is due a state income tax refund as a result of final disposition of such income tax matter. If the individual is due a state income tax refund, the department shall notify the individual within thirty days and request the individual to file a claim for refund or credit with the department.

[C35, §6943-f60; C39, §**6943.097;** C46, 50, 54, 58, 62, 66, §422.66; C71, 73, 75, 77, 79, 81, §422.73; 81 Acts, ch 138, §1]

83 Acts, ch 154, §1, 2; 83 Acts, ch 155, §1 – 3; 84 Acts, ch 1155, §1; 85 Acts, ch 230, §11; 86 Acts, ch 1194, §3; 86 Acts, ch 1237, §26; 87 Acts, 2nd Ex, ch 1, §12; 89 Acts, ch 285, §8; 91 Acts, ch 221, §1, 2; 94 Acts, ch 1023, §51; 98 Acts, ch 1078, §9, 13; 99 Acts, ch 156, §4, 23; 2003 Acts, 1st Ex, ch 2, §185, 205; 2006 Acts, 1st Ex, ch 1001, §43, 49; 2007 Acts, ch 186, §18; 2011 Acts, ch 25, §143; 2012 Acts, ch 1110, §14; 2013 Acts, ch 1, §13 – 15

Referred to in §8A.504, 99G.30A, 257.22, 422.16, 422.91, 422D.3, 423.42, 423B.6, 423C.4, 428A.8, 453B.14

422.74 Certification of refund.

If a refund is authorized in any division of this chapter, the director shall certify the amount of the refund and the name of the payee and draw a warrant on the general fund of the state in the amount specified payable to the named payee, and the treasurer of state shall pay the warrant.

[C35, §6943-f61; C39, §**6943.098;** C46, 50, 54, 58, 62, 66, §422.67; C71, 73, 75, 77, 79, 81, §422.74]

91 Acts, ch 97, §47

Referred to in §99G.30A, 257.22, 321.105A, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 453B.14

422.75 Statistics — publication.

The department shall prepare and publish an annual report which shall include statistics reasonably available, with respect to the operation of this chapter, including amounts collected, classification of taxpayers, and such other facts as are deemed pertinent and

valuable. The annual report shall also include the reports and information required pursuant to section 421.17, subsection 13, and section 421.60, subsection 2, paragraphs "*i*" and "*l*".

[C35, §6943-f62; C39, §**6943.099;** C46, 50, 54, 58, 62, 66, §422.68; C71, 73, 75, 77, 79, 81, §422.75]

98 Acts, ch 1119, §28; 2006 Acts, ch 1010, §102; 2007 Acts, ch 186, §19

Referred to in §99G.30A, 257.22, 321.105A, 422D.3, 423.42, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 437A.17, 437B.13

422.76 through 422.84 Reserved.

DIVISION VII

ESTIMATED TAXES BY CORPORATIONS AND FINANCIAL INSTITUTIONS

Referred to in §422.1

422.85 Imposition of estimated tax.

A taxpayer subject to the tax imposed by sections 422.33 and 422.60 shall make payments of estimated tax for the taxable year if the amount of tax payable, less credits, can reasonably be expected to be more than one thousand dollars for the taxable year. For purposes of this division, "*estimated tax*" means the amount which the taxpayer estimates to be the tax due and payable under division III or V of this chapter for the taxable year.

[C79, 81, §422.85]

89 Acts, ch 251, §26

Referred to in §422.86

422.86 Payment of estimated tax.

A taxpayer required to pay estimated tax under section 422.85 shall pay the estimated tax in accordance with the following schedule:

1. If it is first determined that the estimated tax will be greater than one thousand dollars on or before the last day of the fourth month of the taxable year, the estimated tax shall be paid in four equal installments. The first installment shall be paid not later than the last day of the fourth month of the taxable year. The second and third installments shall be paid not later than the last day of the sixth and ninth months of the taxable year, and the final installment shall be paid on or before the last day of the taxable year.

2. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the fourth month but not later than the last day of the sixth month of the taxable year, the estimated tax shall be paid in three equal installments. The first installment shall be paid not later than the last day of the sixth month of the taxable year. The second installment shall be paid on or before the last day of the ninth month of the taxable year and the third installment shall be paid on or before the last day of the taxable year.

3. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the sixth month but not later than the last day of the ninth month of the taxable year, the estimated tax shall be paid in two equal installments. The first installment shall be paid not later than the last day of the ninth month and the second installment shall be paid on or before the last day of the taxable year.

4. If it is first determined that the estimated tax will be greater than one thousand dollars after the last day of the ninth month of the taxable year, the estimated tax shall be paid in full on or before the last day of the taxable year.

5. If, after paying any installment of estimated tax, the taxpayer makes a new estimate, the remaining installments shall be ratably adjusted to reflect the increase or decrease in the estimated tax.

[C79, 81, §422.86]

89 Acts, ch 251, §27

422.87 Reserved.

422.88 Failure to pay estimated tax.

1. If the taxpayer submits an underpayment of the estimated tax, the taxpayer is subject to an underpayment penalty at the rate established under section 421.7 upon the amount of the underpayment for the period of the underpayment.

2. The amount of the underpayment shall be the excess of the amount of the installment which would be required to be paid if the estimated tax was equal to one hundred percent of the tax shown on the return of the taxpayer for the taxable year over the amount of installments paid on or before the date prescribed for payment.

3. If the taxpayer did not file a return during the taxable year, the amount of the underpayment shall be equal to one hundred percent of the taxpayer's tax liability for the taxable year over the amount of installments paid on or before the date prescribed for payment.

4. The period of the underpayment shall run from the date the installment was required to be paid to the last day of the fourth month following the close of the taxable year or the date on which such portion is paid, whichever date first occurs.

5. A payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under subsection 2 or 3 of this section for such installment date.

[C79, 81, §422.88; 82 Acts, ch 1180, §4, 9]

95 Acts, ch 83, §11, 36; 2009 Acts, ch 179, §135, 153

Referred to in §422.89

422.89 Exception to penalty.

The penalty for underpayment of any installment of estimated tax imposed under section 422.88 shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax amount at least to one of the following:

1. The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for tax was filed by the taxpayer for the preceding taxable year and such preceding year was a taxable year of twelve months.

2. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the taxpayer for, and the law applicable to, the preceding taxable year.

3. *a.* An amount equal to one hundred percent of the tax for the taxable year computed by placing on an annualized basis the taxable income:

(1) For the first three months of the taxable year if an installment is required to be paid in the fourth month;

(2) For the first three months or for the first five months of the taxable year if an installment is required to be paid in the sixth month;

(3) For the first six months or for the first eight months of the taxable year if an installment is required to be paid in the ninth month; and

(4) For the first nine months or for the first eleven months of the taxable year if an installment is required to be paid in the twelfth month of the taxable year.

b. The taxable income shall be placed on an annualized basis by multiplying the taxable income as determined under this subsection by twelve and dividing the resulting amount by the number of months in the taxable year (three, five, six, eight, nine, or eleven months, as the case may be) referred to in this subsection.

[C79, 81, §422.89]

95 Acts, ch 83, §12, 36; 2011 Acts, ch 25, §143; 2012 Acts, ch 1110, §15, 17

422.90 Penalty not subject to waiver. Repealed by 99 Acts, ch 151, §85, 89.

422.91 Credit for estimated tax.

1. Any amount of estimated tax paid is a credit against the amount of tax due on a final, completed return, and any overpayment of five dollars or more shall be refunded to the

taxpayer with interest in accordance with section 421.60, subsection 2, paragraph "*e*", and the return constitutes a claim for refund for this purpose. Amounts less than five dollars shall be refunded to the taxpayer only upon written application in accordance with section 422.73, and only if the application is filed within twelve months after the due date for the return.

2. In lieu of claiming a refund, the taxpayer may elect to have the overpayment shown on its final, completed return for the taxable year credited to the tax liability for the following taxable year.

[C79, 81, §422.91; 81 Acts, ch 133, §3, 4; 82 Acts, ch 1180, §5, 9]

89 Acts, ch 251, §28; 2018 Acts, ch 1161, §10, 15, 16

2018 amendment applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

422.92 Rules for short taxable year.

A taxpayer having a taxable year of less than twelve months shall pay estimated tax under rules adopted by the director.

[C79, 81, §422.92]

89 Acts, ch 251, §29

422.93 Public utility accounting method.

Nothing in this chapter shall be construed to require the utilities board of the department of commerce to allow or require the use of any particular method of accounting by any public utility to compute its tax expense, depreciation expense, or operating expense for purposes of establishing its cost of service for rate-making purposes and for reflecting operating results in its regulated books of account.

[82 Acts, ch 1023, §17]

422.94 through 422.99 Reserved.

DIVISION VIII

ALLOCATION OF REVENUES

Referred to in §422.1, 422.2

422.100 Allocation to the child care credit fund. Repealed by 2009 Acts, ch 182, §138.

422.101 through 422.104 Repealed by 2002 Acts, ch 1150, §22.

422.105 through 422.109 Reserved.

DIVISION IX

FUEL TAX CREDIT

Referred to in §422.1, 452A.17

422.110 Income tax credit in lieu of refund.

In lieu of the fuel tax refund provided in section 452A.17, a person or corporation subject to taxation under division II or III of this chapter may elect to receive an income tax credit. The person or corporation which elects to receive an income tax credit shall cancel its refund permit obtained under section 452A.18 within thirty days after the first day of its tax year or the permit becomes invalid at that time. For the purposes of this section, "*person*" includes a person claiming a tax credit based upon the person's pro rata share of the earnings from a partnership, limited liability company, or corporation which is not subject to a tax under division II or III of this chapter as a partnership, limited liability company, or corporation. If the election to receive an income tax credit has been made, it remains effective for at least one tax year, and for subsequent tax years unless a change is requested and a new refund

permit applied for within thirty days after the first day of the person's or corporation's tax year. The income tax credit shall be the amount of the Iowa fuel tax paid on fuel purchased by the person or corporation and is subject to the conditions provided in section 452A.17 with the exception that the income tax credit is not available for refunds relating to casualty losses, transport diversions, pumping credits, blending errors, idle time, power takeoffs, reefer units, and exports by distributors.

The right to a credit under this section is not assignable and the credit may be claimed only by the person or corporation that purchased the fuel.

[C75, 77, §422.86; C79, 81, §422.110; 82 Acts, ch 1176, §2]

86 Acts, ch 1141, §19; 86 Acts, ch 1241, §29; 88 Acts, ch 1205, §22, 23; 95 Acts, ch 155, §6, 7, 44; 99 Acts, ch 151, §26, 89; 2001 Acts, ch 116, §11

Referred to in §2.48

422.111 Fuel tax credit as income tax credit.

The fuel tax credit may be applied against the income tax liability of the person or corporation as determined on the tax return filed for the year in which the fuel tax was paid. The department shall provide forms for claiming the fuel tax credit. If the fuel tax credit would result in an overpayment of income tax, the person or corporation may apply for a refund of the amount of overpayment or may have the overpayment credited to income tax due in subsequent years. Each person or corporation that claims a fuel tax credit shall maintain the original invoices showing the purchase of the fuel on which a credit is claimed. An invoice is not acceptable in support of a claim for credit unless the invoice is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department, or unless the invoice is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the fuel, the total purchase price including the Iowa fuel tax, and that the total purchase price has been paid. However, as to refund invoices made on a billing machine, the department may waive these requirements. If an original invoice is lost or destroyed, the department may approve a credit supported by a copy identified and certified by the seller as being a true copy of the original. Each person or corporation that claims a fuel tax credit shall maintain complete records of purchases of motor fuel or undyed special fuel on which Iowa fuel tax was paid, and for which a fuel tax credit is claimed.

In order to verify the validity of a claim for credit the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of the claimant to furnish the books and records for examination shall constitute a waiver of rights to claim a credit related to that taxpayer's year and the department may disallow the entire credit claimed by the taxpayer for that year.

[C75, 77, §422.87; C79, 81, §422.111]

88 Acts, ch 1205, §24; 99 Acts, ch 151, §27, 28, 89

422.112 Aircraft fuel tax transfer.

The department shall certify quarterly to the treasurer of state the amount of credit that has been taken against income tax liability since the time of the last certification, for the Iowa fuel tax paid on motor fuel, special fuel and motor fuel used for the purpose of operating aircraft, and the treasurer of state shall transfer the amount of the total credit from the motor fuel tax fund, or in the case of aircraft motor fuel, from the separate fund established by section 452A.82, to the general fund of the state.

[C75, 77, §422.88; C79, 81, §422.112]

422.113 through 422.119 Reserved.

DIVISION X

LIVESTOCK PRODUCTION TAX CREDIT

422.120 through 422.122 Repealed by 2009 Acts, ch 179, §152, 153.

CHAPTERS 422A to 422C

RESERVED

CHAPTER 422D

OPTIONAL TAXES FOR EMERGENCY MEDICAL SERVICES

Referred to in §298.14

422D.1 Authorization — election — imposition and repeal — use of revenues.
422D.2 Local income surtax.
422D.3 Administration.
422D.4 Payment to local government — use of receipts.
422D.5 Property tax levy.
422D.6 Emergency medical services trust fund.

422D.1 Authorization — election — imposition and repeal — use of revenues.

1. *a.* A county board of supervisors may offer for voter approval any of the following taxes or a combination of the following taxes:

(1) Local option income surtax.

(2) An ad valorem property tax.

b. Revenues generated from these taxes shall be used for emergency medical services as provided in section 422D.6.

2. *a.* The taxes for emergency medical services shall only be imposed after an election at which a majority of those voting on the question of imposing the tax or combination of taxes specified in subsection 1, paragraph "*a*", subparagraph (1) or (2), vote in favor of the question. However, the tax or combination of taxes specified in subsection 1 shall not be imposed on property within or on residents of a benefited emergency medical services district under chapter 357F. The question of imposing the tax or combination of the taxes may be submitted at the regular city election, a special election, or the general election. Notice of the question shall be provided by publication at least sixty days before the time of the election and shall identify the tax or combination of taxes and the rate or rates, as applicable. If a majority of those voting on the question approve the imposition of the tax or combination of taxes, the tax or combination of taxes shall be imposed as follows:

(1) A local option income surtax shall be imposed for tax years beginning on or after January 1 of the fiscal year in which the favorable election was held.

(2) An ad valorem property tax shall be imposed for the fiscal year in which the election was held.

b. Before a county imposes an income surtax as specified in subsection 1, paragraph "*a*", subparagraph (1), a benefited emergency medical services district in the county shall be dissolved, and the county shall be liable for the outstanding obligations of the benefited district. If the benefited district extends into more than one county, the county imposing the income surtax shall be liable for only that portion of the obligations relating to the portion of the benefited district in the county.

3. Revenues received by the county from the taxes imposed under this chapter shall be deposited into the emergency medical services trust fund created pursuant to section 422D.6 and shall be used as provided in that section.

4. Any tax or combination of taxes imposed shall be for a maximum period of five years.

92 Acts, ch 1226, §17; 2011 Acts, ch 25, §83; 2013 Acts, ch 30, §92

Referred to in §422D.2, 422D.3, 422D.5

422D.2 Local income surtax.

A county may impose by ordinance a local income surtax as provided in section 422D.1 at the rate set by the board of supervisors, of up to one percent, on the state individual income tax of each individual residing in the county at the end of the individual's applicable tax year. However, the cumulative total of the percents of income surtax imposed on any taxpayer in the county shall not exceed twenty percent. The reason for imposing the surtax and the amount needed shall be set out in the ordinance. The surtax rate shall be set to raise only the amount needed. For purposes of this section, *"state individual income tax"* means the tax computed under section 422.5, less the amounts of nonrefundable credits allowed under chapter 422, division II.

92 Acts, ch 1226, §18; 97 Acts, ch 23, §46; 2006 Acts, ch 1158, §39; 2013 Acts, ch 123, §44 – 46; 2018 Acts, ch 1161, §51, 53, 54

See also §298.14

2018 amendment applies retroactively to January 1, 2018, for tax years beginning on or after that date; 2018 Acts, ch 1161, §54

422D.3 Administration.

1. A local income surtax shall be imposed January 1 of the fiscal year in which the favorable election was held for tax years beginning on or after January 1, and is repealed as provided in section 422D.1, subsection 4, as of December 31 for tax years beginning after December 31.

2. The director of revenue shall administer the local income surtax as nearly as possible in conjunction with the administration of state income tax laws. The director shall provide on the regular state tax forms for reporting local income surtax.

3. An ordinance imposing a local income surtax shall adopt by reference the applicable provisions of the appropriate sections of chapter 422, division II. All powers and requirements of the director in administering the state income tax law apply to the administration of a local income surtax, including but not limited to, the provisions of sections 422.4, 422.20 through 422.31, 422.68, 422.70, and 422.72 through 422.75. Local officials shall confer with the director of revenue for assistance in drafting the ordinance imposing a local income surtax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

4. The director, in consultation with local officials, shall collect and account for a local income surtax and any interest and penalties. The director shall credit local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 of the calendar year following the tax year for which the local income surtax is imposed to a local income surtax fund established in the department of revenue. All local income surtax receipts and any interest and penalties received or refunded from returns filed after November 1 of the calendar year following the tax year for which the local income surtax is imposed shall be deposited in or withdrawn from the state general fund and shall be considered part of the cost of administering the local income surtax.

92 Acts, ch 1226, §19; 99 Acts, ch 151, §35, 89; 2003 Acts, ch 145, §286; 2018 Acts, ch 1026, §131

422D.4 Payment to local government — use of receipts.

1. On or before December 15, the director of revenue shall make an accounting of the local income surtax receipts and any interest and penalties collected from returns filed on or before November 1 and shall certify to the treasurer of state this amount collected. The treasurer of state shall remit within fifteen days of the certification by the director to each county which has imposed a local income surtax the amount in the local income surtax fund collected as a result of its surtax.

2. Local income surtax moneys received by a county shall be deposited and used as provided in section 422D.6.

92 Acts, ch 1226, §20; 2003 Acts, ch 145, §286

422D.5 Property tax levy.

A county may levy an emergency medical services tax at the rate set by the board of supervisors and approved at the election as provided in section 422D.1, on all taxable property in the county for fiscal years beginning with the fiscal year in which the favorable election was held. The reason for imposing the tax and the amount needed shall be set out on the ballot. The rate shall be set so as to raise only the amount needed. The levy is repealed for subsequent fiscal years as provided in section 422D.1, subsection 4.

92 Acts, ch 1226, §21

422D.6 Emergency medical services trust fund.

1. A county authorized to impose a tax under this chapter shall establish an emergency medical services trust fund into which revenues received from the taxes imposed shall be deposited. Moneys in the trust fund shall be used for emergency medical services. In addition, moneys in the fund may be used for the purpose of matching federal or state funds for education and training related to emergency medical services.

2. A county may enter into chapter 28E agreements with other counties in order to ensure adequate coverage of the county's service area.

3. Costs which are eligible for emergency medical services trust fund expenditures include, but are not limited to:

a. Defibrillators.

b. Nondisposable essential ambulance equipment, as defined by rule by the Iowa department of public health.

c. Communications pagers, radios, and base repeaters.

d. Training in the use of emergency medical services equipment.

e. Vehicles including, but not limited to, ambulances, fire apparatus, boats, rescue/first response vehicles, and snowmobiles.

f. Automotive parts.

g. Buildings.

h. Land.

92 Acts, ch 1226, §22

Referred to in §135.25, 422D.1, 422D.4

CHAPTER 423

STREAMLINED SALES AND USE TAX ACT

Referred to in §15.331A, 15.331C, 15.355, 15J.4, 29C.24, 34A.7B, 262.54, 321.24, 321.105A, 321F.9, 421.71, 422.1, 423B.5, 423B.6, 423C.3, 423C.4, 423D.2, 423D.4, 423G.5, 453A.26, 453A.47C, 476B.2, 476B.6, 476B.7, 476B.8, 476C.4, 476C.6, 728.1

Former ch 423 repealed effective July 1, 2004; see 2003 Acts, 1st Ex, ch 2, §94 – 151, 205

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SUBCHAPTER I

DEFINITIONS

423.1 Definitions.

As used in this chapter the following words, terms, and phrases have the meanings ascribed to them by this section, except where the context clearly indicates that a different meaning is intended:

1. *"Advertising and promotional direct mail"* means direct mail the primary purpose of which is to attract public attention to a product, person, business, or organization or in an attempt to sell, popularize, or secure financial support for a product, person, business, or organization. For purposes of this subsection, *"product"* may include tangible personal property, a service, or an item transferred electronically.

2. *"Affiliate"* means any entity to which any of the following applies:

a. Directly, indirectly, or constructively controls another entity.

b. Is directly, indirectly, or constructively controlled by another person.

c. Is subject to the control of a common person. A common person is a person who owns directly or indirectly more than ten percent of the voting securities of the entity.

3. *"Agent"* means a person appointed by a seller to represent the seller before the member states.

4. *"Agreement"* means the streamlined sales and use tax agreement authorized by subchapter IV of this chapter to provide a mechanism for establishing and maintaining a cooperative, simplified system for the application and administration of sales and use taxes.

5. *"Agricultural production"* includes the production of flowering, ornamental, or vegetable plants in commercial greenhouses or otherwise, and production from aquaculture, and production from silvicultural activities. *"Agricultural products"* includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

6. *"Business"* includes any activity engaged in by any person or caused to be engaged in by the person with the object of gain, benefit, or advantage, either direct or indirect.

7. *"Certificate of title"* means a certificate of title issued for a vehicle or for manufactured housing under chapter 321.

8. *"Certified automated system"* means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

9. *"Certified service provider"* means an agent certified under the agreement to perform all of a seller's sales or use tax functions, other than the seller's obligation to remit tax on its own purchases.

10. *"Computer"* means an electronic device that accepts information in digital or similar form and manipulates the information for a result based on a sequence of instructions.

11. *"Computer software"* means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task.

12. *"Delivered electronically"* means delivered to the purchaser by means other than tangible storage media.

13. *"Delivery charges"* means charges assessed by a seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including but not limited to transportation, shipping, postage, handling, crating, and packing charges.

14. *"Department"* means the department of revenue.

15. *a.* *"Direct mail"* means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items is not billed directly to the recipients. *"Direct mail"* includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.

b. *"Direct mail"* does not include:

(1) Multiple items of printed material delivered to a single address.

(2) The development of billing information or the provision of a data processing service that is more than incidental.

16. *"Director"* means the director of revenue.

17. *"Electronic"* means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

18. *"Farm deer"* means the same as defined in section 170.1.

19. *"Farm machinery and equipment"* means machinery and equipment used in agricultural production.

20. *"First use of a service"*. A *"first use of a service"* occurs, for the purposes of this chapter, at the location at which the service is received. For purposes of this subsection, the location at which the service is received is the location at which the purchaser or the purchaser's donee can first make use of the result of the service. For purposes of this subsection, the location at which the seller performs the service is not determinative of the location at which the service is received.

21. *"Goods, wares, or merchandise"* means the same as tangible personal property.

22. *"Governing board"* means the group comprised of representatives of the member states of the agreement which is created by the agreement to be responsible for the agreement's administration and operation.

22A. *"Information services"* means delivering or providing access to databases or subscriptions to information through any tangible or electronic medium. *"Information services"* includes but is not limited to database files, research databases, genealogical information, and other similar information.

23. *"Installed purchase price"* is the amount charged, valued in money whether paid in money or otherwise, by a building contractor to convert manufactured housing from tangible personal property into realty. *"Installed purchase price"* includes but is not limited to amounts charged for installing a foundation and electrical and plumbing hookups. *"Installed purchase price"* excludes any amount charged for landscaping in connection with the conversion.

24. *a.* *"Lease or rental"* means any transfer of possession or control of, or access to, tangible personal property or specified digital products for a fixed or indeterminate term for consideration. A *"lease or rental"* may include future options to purchase or extend.

b. *"Lease or rental"* includes agreements covering motor vehicles and trailers when the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. §7701(h)(1).

c. *"Lease or rental"* does not include any of the following:

(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments.

(2) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of any option price does not exceed the greater of one hundred dollars or one percent of the total required payments.

(3) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subparagraph, an operator must do more than maintain, inspect, or set up the tangible personal property.

d. This definition shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles; the Internal Revenue Code; the uniform commercial code, chapter 554; or other provisions of federal, state, or local law.

25. *"Livestock"* includes but is not limited to an animal classified as an ostrich, rhea, emu, bison, farm deer, or preserve whitetail as defined in section 484C.1.

26. *"Manufactured housing"* means *"manufactured home"* as defined in section 321.1.

27. *"Member state"* is any state which has signed the agreement.

28. *"Mobile home"* means *"manufactured or mobile home"* as defined in section 321.1.

29. *"Model 1 seller"* is a seller registered under the agreement that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

30. *"Model 2 seller"* is a seller registered under the agreement that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

31. *"Model 3 seller"* is a seller registered under the agreement that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this definition, a *"seller"* includes an affiliated group of sellers using the same proprietary system.

32. *"Model 4 seller"* is a seller registered under the agreement that is not a model 1, model 2, or model 3 seller.

33. *"Nonresidential commercial operations"* means industrial, commercial, mining, or agricultural operations, whether for profit or not, but does not include apartment complexes, manufactured home communities, or mobile home parks.

34. *"Not registered under the agreement"* means lack of registration by a seller with the member states under the central registration system referenced in section 423.11, subsection 4.

35. *"Other direct mail"* means all direct mail that is not advertising and promotional direct mail even if advertising and promotional direct mail is included in the same mailing. For purposes of this subsection, other direct mail includes but is not limited to:

a. Transactional direct mail that contains personal information specific to the addressee including but not limited to invoices, bills, statements of account, and payroll advices.

b. A legally required mailing including but not limited to privacy notices, tax reports, and stockholder reports.

c. Other nonpromotional direct mail delivered to existing or former shareholders, customers, employees, or agents including but not limited to newsletters and pieces of informational literature.

36. *"Person"* means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

36A. *"Personal property"* includes but is not limited to tangible personal property and specified digital products.

37. *"Place of business"* means any warehouse, store, place, office, building, or structure where tangible personal property, specified digital products, or services are offered for sale at retail or where any taxable amusement is conducted, or each office where gas, water, heat, communication, or electric services are offered for sale at retail. When a retailer or amusement operator sells merchandise by means of vending machines or operates music or amusement devices by coin-operated machines at more than one location within the state, the office, building, or place where the books, papers, and records of the taxpayer are kept shall be deemed to be the taxpayer's place of business.

38. *"Prewritten computer software"* includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than the purchaser. The combining of two or more prewritten computer software programs or prewritten portions of prewritten programs does not cause the combination to be other than prewritten computer software. *"Prewritten computer software"* also means computer software, including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser. When a person modifies or enhances computer software of which the person is not the author or creator, the person shall be deemed to be the author or creator only of such person's modifications or enhancements. Prewritten computer software or a prewritten portion of the prewritten software that is modified or enhanced to any degree, when such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software. However, when there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for such modification or enhancement, such modification or enhancement shall not constitute prewritten computer software.

39. *"Property purchased for resale in connection with the performance of a service"* means property which is purchased for resale in connection with the rendition, furnishing, or performance of a service by a person who renders, furnishes, or performs the service if all of the following occur:

a. The provider and user of the service intend that a sale of the property will occur.

b. The property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value.

c. The sale is evidenced by a separate charge for the identifiable piece of property.

40. *"Purchase"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.

41. *"Purchase price"* means the same as *"sales price"* as defined in this section.

42. *"Purchaser"* is a person to whom a sale of personal property is made or to whom a service is furnished.

43. *a.* *"Receive"* and *"receipt"* mean any of the following:

(1) Taking possession of tangible personal property.

(2) Making first use of a service.

(3) Taking possession or making first use of specified digital products, whichever comes first.

b. *"Receive"* and *"receipt"* do not include possession by a shipping company on behalf of a purchaser.

44. *"Registered under the agreement"* means registration by a seller under the central registration system referenced in section 423.11, subsection 4.

45. *"Relief agency"* means the state, any county, city and county, city, or district thereof, or any agency engaged in actual relief work.

46. *"Retail sale"* or *"sale at retail"* means any sale, lease, or rental for any purpose other than resale, sublease, or subrent.

47. *"Retailer"* means and includes every person engaged in the business of selling tangible personal property, specified digital products, or taxable services at retail, or the furnishing of gas, electricity, water, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this chapter to regard any agent or affiliate of a retailer as a retailer for purposes of this chapter, the director may so regard them, or when it is necessary for the efficient administration of this chapter to regard any salespersons, representatives, truckers, peddlers, canvassers, or other persons as agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or from whom they obtain tangible personal property, services, or specified digital products sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this chapter. *"Retailer"* includes a seller obligated to collect sales or use tax, including any person obligated to collect sales and use tax pursuant to section 423.14A.

48. *a.* *"Retailer maintaining a place of business in this state"* or any like term includes any of the following:

(1) A retailer having or maintaining within this state, directly or by a subsidiary, an office, distribution house, sales house, warehouse, or other place of business, or any representative operating within this state under the authority of the retailer or its subsidiary, irrespective of whether that place of business or representative is located here permanently or temporarily, or whether the retailer or subsidiary is admitted to do business within this state pursuant to chapter 490.

(2) A person obligated to collect sales and use tax pursuant to section 423.14A.

b. (1) A retailer shall be presumed to be maintaining a place of business in this state for purposes of paragraph *"a"*, subparagraph (1), if any person that has substantial nexus in this state, other than a person acting in its capacity as a common carrier, does any of the following:

(a) Sells a similar line of products as the retailer and does so under the same or similar business name.

(b) Maintains an office, distribution facility, warehouse, storage place, or similar place of business in this state to facilitate the delivery of personal property or services sold by the retailer to the retailer's customers.

(c) Uses trademarks, service marks, or trade names in this state that are the same or substantially similar to those used by the retailer.

(d) Delivers, installs, assembles, or performs maintenance services for the retailer's customers.

(e) Facilitates the retailer's delivery of property to customers in this state by allowing the retailer's customers to take delivery of property sold by the retailer at an office, distribution

facility, warehouse, storage place, or similar place of business maintained by the person in this state.

(f) Conducts any other activities in this state that are significantly associated with the retailer's ability to establish and maintain a market in this state for the retailer's sales.

(2) The presumption established in this paragraph may be rebutted by a showing of proof that the person's activities in this state are not significantly associated with the retailer's ability to establish or maintain a market in this state for the retailer's sales.

49. *"Retailers who are not model sellers"* means all retailers other than model 1, model 2, or model 3 sellers.

50. *"Sales"* or *"sale"* means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for consideration, including but not limited to any such transfer, exchange, or barter on a subscription basis.

51. *"Sales price"* applies to the measure subject to sales tax.

a. *"Sales price"* means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, without any deduction for any of the following:

(1) The seller's cost of the property sold.

(2) The cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller except as provided in paragraph *"b"*, subparagraphs (5) and (6), and any other expenses of the seller.

(3) Charges by the seller for any services necessary to complete the sale, other than delivery and installation charges.

(4) Delivery charges.

(5) Installation charges.

(6) Credit for any trade-in authorized by section 423.3, subsection 59.

b. *"Sales price"* does not include:

(1) Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale.

(2) Interest, financing, and carrying charges from credit extended on the sale of personal property or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(3) Any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(4) Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of the manufacturer's, distributor's, or wholesaler's product or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product. This subparagraph does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers.

(5) Any state or local tax on a retail sale that is imposed on the seller if the statute, rule, or local ordinance imposing the tax provides that the seller may, but is not required to, collect such tax from the consumer, and if the tax is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

(6) Any tribal tax on a retail sale that is imposed on the seller if the tribal law imposing the tax provides that the seller may but is not required to collect such tax from the consumer, and if the tax is separately stated on the invoice, bill of sale, or similar document given to the purchaser.

c. The sales price does not include and the sales tax shall not apply to amounts received for charges included in paragraph *"a"*, subparagraphs (3) through (6), if they are separately contracted for, separately stated on the invoice, billing, or similar document given to the purchaser, and the amounts represent charges which are not the sales price of a taxable sale or of the furnishing of a taxable service.

d. For purposes of this definition, the sales price from a rental or lease includes rent, royalties, and copyright and license fees.

52. *"Sales tax"* means the tax levied under subchapter II of this chapter.

53. *"Seller"* means any person making sales, leases, or rentals of personal property or services.

54. *"Services"* means all acts or services rendered, furnished, or performed, other than services used in processing of tangible personal property for use in retail sales or services, for an employer who pays the wages of an employee for a valuable consideration by any person engaged in any business or occupation specifically enumerated in section 423.2. The tax shall be due and collectible when first use of the service is received by the ultimate user of the service.

55. *"Services used in the processing of tangible personal property"* includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale.

55A. *"Sold at retail in the state"* and other references to sales "in the state" or "in this state" includes but is not limited to sales sourced to this state under this chapter.

55B. *a. "Specified digital products"* means electronically transferred digital audio-visual works, digital audio works, digital books, or other digital products.

b. For purposes of this subsection:

(1) *"Digital audio-visual works"* means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any.

(2) *"Digital audio works"* means works that result from the fixation of a series of musical, spoken, or other sounds, including but not limited to ringtones. For purposes of this subparagraph, *"ringtones"* means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.

(3) *"Digital books"* means works that are generally recognized in the ordinary and usual sense as books.

(4) *"Electronically transferred"* means obtained or accessed by the purchaser by means other than tangible storage media, including but not limited to a specified digital product purchased through a computer software application, commonly referred to as an in-app purchase, or through another specified digital product, or through any other means.

(5) *"Other digital products"* means greeting cards, images, video or electronic games or entertainment, news or information products, and computer software applications.

56. *"State"* means any state of the United States, the District of Columbia, and Puerto Rico.

57. *"State agency"* means an authority, board, commission, department, instrumentality, or other administrative office or unit of this state, or any other state entity reported in the Iowa comprehensive annual financial report, including public institutions of higher education.

57A. *"Subscription"* means any arrangement in which a person has the right or ability to access, receive, use, obtain, purchase, or otherwise acquire tangible personal property, specified digital products, or services on a permanent or less than permanent basis, regardless of whether the person actually accesses, receives, uses, obtains, purchases, or otherwise acquires such tangible personal property, specified digital product, or service.

58. *"System"* means the central electronic registration system maintained by Iowa and other states which are signatories to the agreement.

59. *"Tangible personal property"* means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. *"Tangible personal property"* includes electricity, water, gas, steam, and prewritten computer software.

60. *"Taxpayer"* includes any person who is subject to a tax imposed by this chapter, whether acting on the person's own behalf or as a fiduciary.

61. *"Trailer"* shall mean every trailer, as is now or may be hereafter so defined by chapter 321, which is required to be registered or is subject only to the issuance of a certificate of title under chapter 321.

62. *"Use"* means and includes the exercise by any person of any right or power over or access to tangible personal property or a specified digital product incident to the ownership of that property, or any right or power over or access to the product or result of a service. A retailer's or building contractor's sale of manufactured housing for use in this state, whether

in the form of tangible personal property or of realty, is a use of that property for the purposes of this chapter.

63. *"Use tax"* means the tax levied under subchapter III of this chapter.

64. *"User"* means the immediate recipient of the personal property or services who is entitled to exercise a right or power over or access to the personal property, or the product or result of such services.

65. *"Value of services"* means the price to the user exclusive of any direct tax imposed by the federal government or by this chapter.

66. *"Vehicles subject to registration"* means any vehicle subject to registration pursuant to section 321.18.

67. *"Voting security"* means a security to which any of the following applies:

a. Confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the entity.

b. Is convertible into, or entitles the holder to receive upon its exercise, a security that confers such a right to vote.

c. Is a general partnership interest.

2003 Acts, 1st Ex, ch 2, §94, 205; 2004 Acts, ch 1073, §22, 23; 2005 Acts, ch 140, §3, 4, 42; 2006 Acts, ch 1030, §39; 2007 Acts, ch 179, §1; 2010 Acts, ch 1145, §2 – 7, 17; 2011 Acts, ch 25, §84; 2011 Acts, ch 92, §1 – 4; 2012 Acts, ch 1066, §1, 2; 2012 Acts, ch 1121, §12, 14; 2013 Acts, ch 70, §10; 2013 Acts, ch 122, §1; 2013 Acts, ch 140, §125; 2015 Acts, ch 29, §54; 2015 Acts, ch 116, §14, 19, 20; 2018 Acts, ch 1161, §155 – 168, 229, 230; 2019 Acts, ch 152, §19, 32, 33

Referred to in §15.106, 15J.2, 100.19, 321.105A, 418.1, 422.7(21)(a), 422.10, 422.33, 423.2, 423.3, 423.5, 423.15, 423.45, 423A.2, 423B.5, 423B.6, 423B.10, 423C.2, 423D.1, 423G.2

2015 amendment to subsection 25 takes effect June 18, 2015, and applies retroactively to July 1, 2005; refunds prohibited for sales occurring between July 1, 2005, and June 18, 2015; 2015 Acts, ch 116, §17, 19, 20

Legislative intent regarding 2018 amendments to subsections 37 and 50 and enactment of subsections 55A and 57A; 2018 Acts, ch 1161, §227

2019 amendment to subsection 2, paragraphs b and c, applies retroactively to January 1, 2019, for tax years beginning on or after that date; 2019 Acts, ch 152, §33

Subsection 2, paragraphs b and c amended

SUBCHAPTER II

SALES TAX

Referred to in §423.1, 423.19, 423.22, 423.24, 423.25, 423.36, 423.40, 423.42, 423B.5, 423C.3, 423F.1, 423F.2, 453A.47C

423.2 Tax imposed.

1. There is imposed a tax of six percent upon the sales price of all sales of tangible personal property, consisting of goods, wares, or merchandise, sold at retail in the state to consumers or users except as otherwise provided in this subchapter.

a. For the purposes of this subchapter, sales of the following services are treated as if they were sales of tangible personal property:

(1) Sales of engraving, printing, and binding services.

(2) Sales of vulcanizing, recapping, and retreading services.

(3) Sales of prepaid calling services and prepaid wireless calling services.

(4) Sales of optional service or warranty contracts, except residential service contracts regulated under chapter 523C, which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under this section. The sales price is subject to tax even if some of the services furnished are not enumerated under this section. Additional sales, services, or use taxes shall not be levied on services, parts, or labor provided under optional service or warranty contracts which are subject to tax under this subsection.

(5) Sales of optional service or warranty contracts for computer software maintenance or support services.

(a) If a service or warranty contract does not specify a fee amount for nontaxable services or taxable personal property, the tax imposed pursuant to this section shall be imposed upon an amount equal to the sales price of the contract.

(b) If a service or warranty contract provides only for technical support services, no tax shall be imposed pursuant to this section.

(6) Subparagraphs (4) and (5) shall also apply to the use tax imposed under section 423.5.

b. Sales of building materials, supplies, and equipment to owners, contractors, subcontractors, or builders for the erection of buildings or the alteration, repair, or improvement of real property are retail sales of tangible personal property in whatever quantity sold. Where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the person shall purchase such items of tangible personal property without liability for the tax if such property will be subject to the tax at the time of resale or at the time it is withdrawn from inventory for construction purposes. The sales tax shall be due in the reporting period when the materials, supplies, and equipment are withdrawn from inventory for construction purposes or when sold at retail. The tax shall not be due when materials are withdrawn from inventory for use in construction outside of Iowa and the tax shall not apply to tangible personal property purchased and consumed by the manufacturer as building materials in the performance by the manufacturer or its subcontractor of construction outside of Iowa. The sale of carpeting is not a sale of building materials. The sale of carpeting to owners, contractors, subcontractors, or builders shall be treated as the sale of ordinary tangible personal property and subject to the tax imposed under this subsection and the use tax.

c. The use within this state of tangible personal property by the manufacturer thereof, as building materials, supplies, or equipment, in the performance of construction contracts in Iowa, shall, for the purpose of this subchapter, be construed as a sale at retail of tangible personal property by the manufacturer who shall be deemed to be the consumer of such tangible personal property. The tax shall be computed upon the cost to the manufacturer of the fabrication or production of the tangible personal property.

2. A tax of six percent is imposed upon the sales price of the sale or furnishing of gas, electricity, water, heat, pay television service, and communication service, including the sales price from such sales by any municipal corporation or joint water utility furnishing gas, electricity, water, heat, pay television service, and communication service to the public in its proprietary capacity, except as otherwise provided in this subchapter, when sold at retail in the state to consumers or users.

3. A tax of six percent is imposed upon the sales price of all sales of tickets or admissions to places of amusement, fairs, and athletic events except those of elementary and secondary educational institutions. A tax of six percent is imposed on the sales price of an entry fee or like charge imposed solely for the privilege of participating in an activity at a place of amusement, fair, or athletic event unless the sales price of tickets or admissions charges for observing the same activity are taxable under this subchapter. A tax of six percent is imposed upon that part of private club membership fees or charges paid for the privilege of participating in any athletic sports provided club members.

4. *a.* A tax of six percent is imposed upon the sales price derived from the operation of all forms of amusement devices and games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, and card game tournaments conducted under section 99B.27, that are operated or conducted within the state, the tax to be collected from the operator in the same manner as for the collection of taxes upon the sales price of tickets or admission as provided in this section. Nothing in this subsection shall legalize any games of skill or chance or slot-operated devices which are now prohibited by law.

b. The tax imposed under this subsection covers the total amount from the operation of games of skill, games of chance, raffles, and bingo games as defined in chapter 99B, card game tournaments conducted under section 99B.27, and musical devices, weighing machines, shooting galleries, billiard and pool tables, bowling alleys, pinball machines, slot-operated devices selling merchandise not subject to the general sales taxes and on the total amount from devices or systems where prizes are in any manner awarded to patrons and upon the receipts from fees charged for participation in any game or other form of amusement, and generally upon the sales price from any source of amusement operated for profit, not specified in this section, and upon the sales price from which tax is not collected for tickets or admission, but tax shall not be imposed upon any activity exempt from sales tax under section 423.3, subsection 78. Every person receiving any sales price from the

sources described in this section is subject to all provisions of this subchapter relating to retail sales tax and other provisions of this chapter as applicable.

5. There is imposed a tax of six percent upon the sales price from the furnishing of services as defined in section 423.1.

6. The sales price of any of the following enumerated services is subject to the tax imposed by subsection 5:

a. Alteration and garment repair.

b. Armored car.

c. Vehicle repair.

d. Battery, tire, and allied.

e. Investment counseling.

f. Service charges of all financial institutions. For the purposes of this paragraph, "*financial institutions*" means all national banks, federally chartered savings and loan associations, federally chartered savings banks, federally chartered credit unions, banks organized under chapter 524, credit unions organized under chapter 533, and all banks, savings banks, credit unions, and savings and loan associations chartered or otherwise created under the laws of any state and doing business in Iowa.

g. Barber and beauty.

h. Boat repair.

i. Vehicle wash and wax.

j. Campgrounds.

k. Carpentry repair and installation.

l. Roof, shingle, and glass repair.

m. Dance schools and dance studios.

n. Dating services.

o. Dry cleaning, pressing, dyeing, and laundering excluding the use of self-pay washers and dryers.

p. Electrical and electronic repair and installation.

q. Excavating and grading.

r. Farm implement repair of all kinds.

s. Flying service.

t. Furniture, rug, carpet, and upholstery repair and cleaning.

u. Fur storage and repair.

v. Golf and country clubs and all commercial recreation.

w. Gun and camera repair.

x. House and building moving.

y. Household appliance, television, and radio repair.

z. Janitorial and building maintenance or cleaning.

aa. Jewelry and watch repair.

ab. Lawn care, landscaping, and tree trimming and removal.

ac. Personal transportation service, including but not limited to taxis, driver service, ride sharing service, rides for hire, and limousine service.

ad. Machine operator.

ae. Machine repair of all kinds.

af. Motor repair.

ag. Motorcycle, scooter, and bicycle repair.

ah. Oilers and lubricators.

ai. Office and business machine repair.

aj. Painting, papering, and interior decorating.

ak. Parking facilities.

al. Pay television, including but not limited to streaming video, video on-demand, and pay-per-view.

am. Pet grooming.

an. Pipe fitting and plumbing.

ao. Wood preparation.

ap. Executive search agencies.

aq. Private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state.

ar. Reflexology.

as. Security and detective services, excluding private security and detective services furnished by a peace officer with the knowledge and consent of the chief executive officer of the peace officer's law enforcement agency.

at. Sewage services for nonresidential commercial operations.

au. Sewing and stitching.

av. Shoe repair and shoeshine.

aw. Sign construction and installation.

ax. Storage of household goods, mini-storage, and warehousing of raw agricultural products.

ay. Swimming pool cleaning and maintenance.

az. Tanning beds or salons.

ba. Taxidermy services.

bb. Telephone answering service.

bc. Test laboratories, including mobile testing laboratories and field testing by testing laboratories, and excluding tests on humans or animals and excluding environmental testing services.

bd. Termite, bug, roach, and pest eradicators.

be. Tin and sheet metal repair.

bf. Transportation service consisting of the rental of recreational vehicles or recreational boats, or the rental of vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less, or the rental of aircraft for a period of sixty days or less.

bg. Turkish baths, massage, and reducing salons, excluding services provided by massage therapists licensed under chapter 152C.

bh. Water conditioning and softening.

bi. Weighing.

bj. Welding.

bk. Well drilling.

bl. Wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables.

bm. Wrecking service.

bn. Wrecker and towing.

bo. Photography.

bp. Retouching.

bq. Storage of tangible or electronic files, documents, or other records.

br. Information services.

bs. Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products.

bt. Video game services and tournaments.

bu. Software as a service.

7. *a.* A tax of six percent is imposed upon the sales price from the sales, furnishing, or service of solid waste collection and disposal service.

(1) For purposes of this subsection, "*solid waste*" means garbage, refuse, sludge from a water supply treatment plant or air contaminant treatment facility, and other discarded waste materials and sludges, in solid, semisolid, liquid, or contained gaseous form, resulting from nonresidential commercial operations, but does not include auto hulks; street sweepings; ash; construction debris; mining waste; trees; tires; lead acid batteries; used oil; hazardous waste; animal waste used as fertilizer; earthen fill, boulders, or rock; foundry sand used for daily cover at a sanitary landfill; sewage sludge; solid or dissolved material in domestic sewage or other common pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluents or discharges which are point sources subject to permits under section 402 of the federal Water Pollution Control Act, or dissolved materials

in irrigation return flows; or source, special nuclear, or by-product material defined by the federal Atomic Energy Act of 1954.

(2) A recycling facility that separates or processes recyclable materials and that reduces the volume of the waste by at least eighty-five percent is exempt from the tax imposed by this subsection if the waste exempted is collected and disposed of separately from other solid waste.

b. A person who transports solid waste generated by that person or another person without compensation shall pay the tax imposed by this subsection at the collection or disposal facility based on the disposal charge or tipping fee. However, the costs of a service or portion of a service to collect and manage recyclable materials separated from solid waste by the waste generator are exempt from the tax imposed by this subsection.

8. *a.* A tax of six percent is imposed on the sales price from sales of bundled transactions. For the purposes of this subsection, a *"bundled transaction"* is the retail sale of two or more distinct and identifiable products, except real property and services to real property, which are sold for one nonitemized price. A *"bundled transaction"* does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

b. *"Distinct and identifiable products"* does not include any of the following:

(1) Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sale of the products.

(2) A product provided free of charge with the required purchase of another product. A product is *"provided free of charge"* if the sales price of the product purchased does not vary depending on the inclusion of the product which is provided free of charge.

(3) Items included in the definition of *"sales price"* pursuant to section 423.1.

c. *"One nonitemized price"* does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form.

d. A transaction that otherwise meets the definition of *"bundled transaction"* as defined in this subsection is not a bundled transaction if it is any of the following:

(1) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service.

(2) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service.

(3) (a) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis.

(b) For purposes of this subparagraph, *"de minimis"* means the seller's purchase or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products. Sellers shall use either the purchase price or the sale price of the products to determine if the taxable products are de minimis. Sellers may not use a combination of the purchase price and sales price of the products to determine if the taxable products are de minimis.

(4) The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

(a) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies.

(b) The seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction.

9. A tax of six percent is imposed upon the sales price from any mobile telecommunications service, including all paging services, that this state is allowed to tax pursuant to the provisions of the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §116 et seq. For purposes of this subsection, taxes on mobile telecommunications service, as defined under the federal Mobile Telecommunications

Sourcing Act that are deemed to be provided by the customer's home service provider, shall be paid to the taxing jurisdiction whose territorial limits encompass the customer's place of primary use, regardless of where the mobile telecommunications service originates, terminates, or passes through and shall in all other respects be taxed in conformity with the federal Mobile Telecommunications Sourcing Act. All other provisions of the federal Mobile Telecommunications Sourcing Act are adopted by the state of Iowa and incorporated into this subsection by reference. With respect to mobile telecommunications service under the federal Mobile Telecommunications Sourcing Act, the director shall, if requested, enter into agreements consistent with the provisions of the federal Act.

10. *a.* A tax of six percent is imposed on the sales price of specified digital products sold at retail in the state. The tax applies whether the purchaser obtains permanent use or less than permanent use of the specified digital product, whether the sale is conditioned or not conditioned upon continued payment from the purchaser, and whether the sale is on a subscription basis or is not on a subscription basis.

b. The sale of a digital code that may be used to obtain or access a specified digital product shall be taxed in the same manner as the specified digital product. For purposes of this paragraph, "*digital code*" means a method that permits a purchaser to obtain or access at a later date a specified digital product.

11. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa.

12. The sales tax rate of six percent is reduced to five percent on January 1, 2051.

2003 Acts, 1st Ex, ch 2, §95, 205; 2004 Acts, ch 1073, §24, 25; 2005 Acts, ch 140, §5, 18, 43; 2006 Acts, ch 1158, §70, 80; 2007 Acts, ch 119, §6; 2007 Acts, ch 186, §20; 2008 Acts, ch 1134, §4 – 10, 36; 2010 Acts, ch 1145, §8, 9, 17; 2011 Acts, ch 25, §143; 2011 Acts, ch 92, §5; 2012 Acts, ch 1017, §84; 2012 Acts, ch 1094, §17, 18; 2012 Acts, ch 1098, §2; 2013 Acts, ch 70, §11; 2013 Acts, ch 119, §9; 2013 Acts, ch 140, §126; 2014 Acts, ch 1102, §1; 2014 Acts, ch 1110, §4; 2014 Acts, ch 1127, §1, 3; 2015 Acts, ch 114, §1; 2015 Acts, ch 120, §21 – 25; 2016 Acts, ch 1117, §2, 3; 2018 Acts, ch 1146, §1, 3, 4; 2018 Acts, ch 1161, §169 – 173, 229 – 231; 2019 Acts, ch 152, §20, 21; 2019 Acts, ch 166, §7

Referred to in §15J.2, 28A.17, 29C.15, 99B.27, 321.105A, 328.26, 418.1, 418.11, 418.15, 423.1, 423.2A, 423.3, 423.4, 423.5, 423.6, 423.14A, 423.22, 423.26, 423.30, 423.34, 423.36, 423.40, 423.41, 423C.3

Local sales and services tax, §423B.5 et seq.

Legislative intent regarding 2018 amendments relating to pay television service; 2018 Acts, ch 1161, §227

Subsection 1, paragraph a, subparagraph (5), subparagraph division (a) amended

Subsection 6, paragraph k amended

Subsection 12 amended

423.2A Deposit and transfer of revenues.

1. *a.* All revenues arising under the operation of the provisions of this subchapter II shall be deposited into the general fund of the state.

b. Subsequent to the deposit into the general fund of the state, the director shall credit an amount equal to the product of the sales tax rate imposed in section 423.2 times the sales price of the tangible personal property or services furnished to purchasers at a baseball and softball complex that has received an award under section 15F.207, Code 2019, and that meets the qualifications of section 423.4, subsection 10, into the baseball and softball complex sales tax rebate fund created under section 423.4, subsection 10, paragraph "*e*". The director shall credit the moneys beginning the first day of the quarter following July 1, 2016. This paragraph is repealed thirty days following the date on which five million dollars in total rebates have been provided under section 423.4, subsection 10.

2. Subsequent to the deposit into the general fund of the state pursuant to subsection 1, the department shall do the following in the order prescribed:

a. Transfer the revenues collected under chapter 423B.

b. Transfer from the remaining revenues the amounts required under Article VII, section 10, of the Constitution of the State of Iowa to the natural resources and outdoor recreation trust fund created in section 461.31, if applicable.

c. Transfer one-sixth of the remaining revenues to the secure an advanced vision for education fund created in section 423F.2. This paragraph "*c*" is repealed January 1, 2051.

d. Transfer to the baseball and softball complex sales tax rebate fund that portion of the

sales tax receipts described in subsection 1, paragraph *"b"*, remaining after the transfers required under paragraphs *"a"*, *"b"*, and *"c"* of this subsection 2. This paragraph is repealed thirty days following the date on which five million dollars in total rebates have been provided under section 423.4, subsection 10.

e. Beginning the first day of the calendar quarter beginning on the reinvestment district's commencement date, subject to remittance limitations established by the economic development authority board pursuant to section 15J.4, subsection 3, transfer to a district account created in the state reinvestment district fund for each reinvestment district established under chapter 15J, the amount of new state sales tax revenue, determined in section 15J.5, subsection 1, paragraph *"b"*, in the district, that remains after the prior transfers required under this subsection 2. Such transfers shall cease pursuant to section 15J.8.

f. Subject to the limitation on the calculation and deposit of sales tax increment revenues in section 418.12, beginning the first day of the quarter following adoption of the resolution pursuant to section 418.4, subsection 3, paragraph *"d"*, transfer to the account created in the sales tax increment fund for each governmental entity approved to use sales tax increment revenues under chapter 418, that portion of the increase in sales tax revenue, determined in section 418.11, subsection 2, paragraph *"d"*, in the applicable area of the governmental entity, that remains after the other transfers required under this subsection 2.

g. Beginning the first day of the quarter following July 1, 2014, transfer to the raceway facility tax rebate fund created in section 423.4, subsection 11, paragraph *"e"*, that portion of the sales tax receipts collected and remitted upon sales of tangible personal property or services furnished by retailers at a raceway facility meeting the qualifications of section 423.4, subsection 11, that remains after the transfers required in paragraphs *"a"* through *"f"* of this subsection 2. This paragraph is repealed June 30, 2025, or thirty days following the date on which an amount of total rebates specified in section 423.4, subsection 11, paragraph "c", subparagraph (3), subparagraph division (b), has been provided or thirty days following the date on which rebates cease as provided in section 423.4, subsection 11, paragraph "c", subparagraph (4), whichever is earliest.

3. Of the amount of sales tax revenue actually transferred per quarter pursuant to subsection 2, paragraphs *"e"* and *"f"*, the department shall retain an amount equal to the actual cost of administering the transfers under subsection 2, paragraphs *"e"* and *"f"*, or twenty-five thousand dollars, whichever is less. The amount retained by the department pursuant to this subsection shall be divided pro rata each quarter between the amounts that would have been transferred pursuant to subsection 2, paragraphs *"e"* and *"f"*, without the deduction made by operation of this subsection. Revenues retained by the department pursuant to this subsection shall be considered repayment receipts as defined in section 8.2.

2018 Acts, ch 1161, §174, 229; 2019 Acts, ch 59, §124; 2019 Acts, ch 166, §8
Referred to in §15J.4, 15J.5, 15J.6, 418.11, 418.12, 423.4
Subsection 2, paragraphs c and g amended

423.3 Exemptions.

There is exempted from the provisions of this subchapter and from the computation of the amount of tax imposed by it the following:

1. The sales price from sales of tangible personal property, specified digital products, and services furnished which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state.

2. The sales price of sales for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with the furnishing of taxable services except for the purchase of tangible personal property, the leasing or rental of which is exempted from tax by subsection 49.

3. The sales price of agricultural breeding livestock and domesticated fowl.

3A. The sale of preserve whitetail as defined in section 484C.1 if the sale occurred between July 1, 2005, and December 31, 2015.

4. The sales price of commercial fertilizer.

5. *a.* The sales price of agricultural limestone, herbicide, pesticide, insecticide, including

adjuvants, surfactants, and other products directly related to the application enhancement of those products, food, medication, or agricultural drain tile, including installation of agricultural drain tile, any of which are to be used in disease control, weed control, insect control, or health promotion of plants or livestock produced as part of agricultural production for market.

b. The following enumerated materials associated with the installation of agricultural drain tile which is exempt pursuant to paragraph *"a"* shall also be exempt under paragraph *"a"*:

(1) Tile intakes.

(2) Outlet pipes and guards.

(3) Aluminum and gabion structures.

(4) Erosion control fabric.

(5) Water control structures.

(6) Miscellaneous tile fittings.

6. The sales price of tangible personal property which will be consumed as fuel in creating heat, power, or steam for grain drying, or for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, or for use in cultivation of agricultural products by aquaculture, or in implements of husbandry engaged in agricultural production.

7. The sales price of services furnished by specialized flying implements of husbandry used for agricultural aerial spraying.

8. *a.* The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment and replacement parts, if the following conditions are met:

(1) The farm machinery and equipment shall be directly and primarily used in production of agricultural products.

(2) The farm machinery and equipment shall constitute self-propelled implements or implements customarily drawn or attached to self-propelled implements or the farm machinery or equipment is a grain dryer.

(3) The replacement part is used in any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in the production of agricultural products.

b. Vehicles subject to registration, as defined in section 423.1, or replacement parts for such vehicles, are not eligible for this exemption.

c. For purposes of this subsection, the following items are exempt under paragraph *"a"* when used in agricultural production:

(1) A snow blower that is to be attached to a self-propelled implement of husbandry.

(2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry.

(3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

d. (1) For purposes of this subsection, the following items are exempt under paragraph *"a"* when used primarily in agricultural production:

(a) A diesel fuel trailer, regardless of the vehicle to which it is to be attached.

(b) A seed tender, regardless of the vehicle to which it is to be attached.

(c) An all-terrain vehicle.

(d) An off-road utility vehicle.

(2) For purposes of this paragraph:

(a) *"All-terrain vehicle"* means the same as defined in section 321I.1.

(b) *"Fuel trailer"* means a trailer that holds dyed diesel fuel or diesel exhaust fluid and that is used to transport such fuel or fluid to a self-propelled implement of husbandry.

(c) *"Off-road utility vehicle"* means the same as defined in section 321I.1.

(d) *"Seed tender"* means a trailer that holds seed and that is used to transport seed to an implement of husbandry and load seed into an implement of husbandry.

9. The sales price of wood chips, sawdust, hay, straw, paper, or other materials used for bedding in the production of agricultural livestock or fowl.

10. The sales price of gas, electricity, water, or heat to be used in implements of husbandry engaged in agricultural production.

11. The sales price exclusive of services of farm machinery and equipment, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the machinery and equipment, and including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets and shutter or inlet systems, and refrigerators, and replacement parts, if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in any repair or reconstruction necessary to the farm machinery's or equipment's exempt use in livestock or dairy production, aquaculture production, or the production of flowering, ornamental, or vegetable plants.

12. The sales price, exclusive of services, from sales of irrigation equipment used in farming operations.

13. The sales price from the sale or rental of irrigation equipment, whether installed above or below ground, to a contractor or farmer if the equipment will be primarily used in agricultural operations.

14. The sales price from the sales of horses, commonly known as draft horses, when purchased for use and so used as draft horses.

15. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock, or dairy production.

16. The sales price from the sale of feed and feed supplements and additives when used for consumption by farm deer or bison.

16A. *a.* The sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin.

b. For purposes of this subsection, "*grain bin*" means property that is vented and covered with corrugated metal or similar material, and that is primarily used to hold loose grain for drying or storage.

17. The sales price of all tangible personal property, specified digital products, or services, used for educational purposes sold to any private nonprofit educational institution in this state. For the purpose of this subsection, "*educational institution*" means an institution which primarily functions as a school, college, or university with students, faculty, and an established curriculum. The faculty of an educational institution must be associated with the institution and the curriculum must include basic courses which are offered every year. "*Educational institution*" includes an institution primarily functioning as a library.

18. The sales price of tangible personal property or specified digital products sold, or of services furnished, to the following nonprofit corporations:

a. Residential care facilities and intermediate care facilities for persons with an intellectual disability and residential care facilities for persons with mental illness licensed by the department of inspections and appeals under chapter 135C.

b. Residential facilities licensed by the department of human services pursuant to chapter 237, other than those maintained by individuals as defined in section 237.1, subsection 7.

c. Rehabilitation facilities that provide accredited rehabilitation services to persons with disabilities which are accredited by the commission on accreditation of rehabilitation facilities or the council on quality and leadership and adult day care services approved for reimbursement by the state department of human services.

d. Community mental health centers accredited by the department of human services pursuant to chapter 225C.

e. Health centers as defined in 42 U.S.C. §254b.

f. Home and community-based services providers certified to offer Medicaid waiver services by the department of human services that are any of the following:

(1) Health and disability waiver service providers, described in 441 IAC 77.30.

(2) Hospice providers, described in 441 IAC 77.32.
(3) Elderly waiver service providers, described in 441 IAC 77.33.
(4) AIDS/HIV waiver service providers, described in 441 IAC 77.34.
(5) Federally qualified health centers, described in 441 IAC 77.35.
(6) Intellectual disabilities waiver service providers, described in 441 IAC 77.37.
(7) Brain injury waiver service providers, described in 441 IAC 77.39.

g. Substance abuse treatment or prevention programs that receive block grant funding from the Iowa department of public health.

19. The sales price of tangible personal property sold to a nonprofit organization which was organized for the purpose of lending the tangible personal property to the general public for use by them for nonprofit purposes.

20. The sales price of tangible personal property or specified digital products sold, or of services furnished, to nonprofit legal aid organizations.

21. The sales price of tangible personal property, of specified digital products, or of services, used for educational, scientific, historic preservation, or aesthetic purpose sold to a nonprofit private museum.

22. The sales price from sales of tangible personal property, of specified digital products, or from services furnished, to a nonprofit private art center to be used in the operation of the art center.

23. The sales price of tangible personal property or specified digital products sold, or of services furnished, by a fair organized under chapter 174.

24. The sales price from services furnished by the notification center established pursuant to section 480.3, and the vendor selected pursuant to section 480.3 to provide the notification service.

25. The sales price of food and beverages sold for human consumption by a nonprofit organization which principally promotes a food or beverage product for human consumption produced, grown, or raised in this state and whose income is exempt from federal taxation under section 501(c) of the Internal Revenue Code.

26. The sales price of tangible personal property or specified digital products sold, or of services furnished, to a statewide nonprofit organ procurement organization, as defined in section 142C.2.

26A. *a.* The sales price of tangible personal property sold or of test laboratory services furnished, if such tangible personal property or test laboratory services are sold or furnished to a nonprofit blood center that is registered by the federal food and drug administration, and the tangible personal property or test laboratory services are directly and primarily used in the processing of human blood.

b. As used in this subsection, *"processing"* means the same as defined in subsection 47, except that for purposes of the definition of *"processing"* used in this subsection, a *"manufacturer"* shall be construed to include a nonprofit blood center.

27. The sales price of tangible personal property or specified digital products sold, or of services furnished, to a nonprofit hospital licensed pursuant to chapter 135B to be used in the operation of the hospital.

28. The sales price of tangible personal property or specified digital products sold, or of services furnished, to a freestanding nonprofit hospice facility which operates a hospice program as defined in 42 C.F.R. ch. IV, §418.3, which property or services are to be used in the hospice program.

29. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract with a nonprofit hospital licensed pursuant to chapter 135B if all of the following apply:

a. The sales and delivery of the goods, wares, or merchandise, or the services furnished occurred between July 1, 1998, and December 31, 2001.

b. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

c. The sales or services were purchased by a contractor as the agent for the hospital or were purchased directly by the hospital.

30. The sales price of livestock ear tags sold by a nonprofit organization whose income is

exempt from federal taxation under section 501(c)(6) of the Internal Revenue Code where the proceeds are used in bovine research programs selected or approved by such organization.

31. The sales price of tangible personal property or specified digital products sold to and of services furnished, and used for public purposes sold to a tax-certifying or tax-levying body of the state or a governmental subdivision of the state, including regional transit systems, as defined in section 324A.1, the state board of regents, department of human services, state department of transportation, any municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except any of the following:

a. The sales price of tangible personal property or specified digital products sold to, or of services furnished, and used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, heat, pay television service, or communication service to the general public.

b. The sales price of furnishing of sewage services to a county or municipality on behalf of nonresidential commercial operations.

c. The furnishing of solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality.

32. The sales price of tangible personal property or specified digital products sold, or of services furnished, by a county or city. This exemption does not apply to any of the following:

a. The tax specifically imposed under section 423.2 on the sales price from sales or furnishing of gas, electricity, water, heat, pay television service, or communication service to the public by a municipal corporation in its proprietary capacity.

b. The sale or furnishing of solid waste collection and disposal service to nonresidential commercial operations.

c. The sale or furnishing of sewage service for nonresidential commercial operations.

d. Fees paid to cities and counties for the privilege of participating in any athletic sports.

33. *a.* The sales price of mementos and other items relating to Iowa history and historic sites, the general assembly, and the state capitol, sold by the legislative services agency and its legislative information office on the premises of property under the control of the legislative council, at the state capitol, and on other state property.

b. The legislative services agency is not a retailer under this chapter and the sale of items or provision of services by the legislative services agency is not a retail sale under this chapter and is exempt from the sales tax.

34. The sales price from sales of mementos and other items relating to Iowa history and historic sites by the department of cultural affairs on the premises of property under its control and at the state capitol.

35. The sales price from sales or services furnished by the state fair organized under chapter 173.

36. The sales price from sales of tangible personal property or specified digital products or of the sale or furnishing of electrical energy, natural or artificial gas, or communication service to another state or political subdivision of another state if the other state provides a similar reciprocal exemption for this state and political subdivision of this state.

37. The sales price of services on or connected with new construction, reconstruction, alteration, expansion, remodeling, or the services of a general building contractor, architect, or engineer. The exemption in this subsection also applies to the sales price on the lease or rental of all machinery, equipment, and replacement parts directly and primarily used by owners, contractors, subcontractors, and builders for new construction, reconstruction, alteration, expansion, or remodeling of real property or structures and of all machinery, equipment, and replacement parts which improve the performance, safety, operation, or efficiency of the machinery, equipment, and replacement parts so used.

38. The sales price from the sale of building materials, supplies, or equipment sold to rural water districts organized under chapter 504 as provided in chapter 357A and used for the construction of facilities of a rural water district.

39. The sales price from “casual sales”.

a. *"Casual sales"* means:

(1) Sales of tangible personal property or specified digital products, or the furnishing of services, of a nonrecurring nature, by the owner, if the seller, at the time of the sale, is not engaged for profit in the business of selling tangible personal property, specified digital products, or services taxed under section 423.2.

(2) The sale of all or substantially all of the tangible personal property, or specified digital products, or services held or used by a seller in the course of the seller's trade or business for which the seller is required to hold a sales tax permit when the seller sells or otherwise transfers the trade or business to another person who shall engage in a similar trade or business.

(3) Notwithstanding subparagraph (1), the sale, furnishing, or performance of a service that is of a recurring nature by the owner if, at the time of the sale, all of the following apply:

(a) The seller is not engaged for profit in the business of the selling, furnishing, or performance of services taxed under section 423.2. For purposes of this subparagraph, the fact of the recurring nature of selling, furnishing, or performance of services does not constitute by itself engaging for profit in the business of selling, furnishing, or performance of services.

(b) The owner of the business is the only person performing the service.

(c) The owner of the business is a full-time student.

(d) The total gross receipts from the sales, furnishing, or performance of services during the calendar year does not exceed five thousand dollars.

b. The exemption under this subsection does not apply to vehicles subject to registration, all-terrain vehicles, snowmobiles, off-road motorcycles, off-road utility vehicles, aircraft, or commercial or pleasure watercraft or water vessels.

c. The exemption under this subsection does not apply to sales for which a person is required pursuant to section 423.14A to collect sales and use tax.

40. The sales price from the sale of automotive fluids to a retailer to be used either in providing a service which includes the installation or application of the fluids in or on a motor vehicle, which service is subject to section 423.2, subsection 6, or to be installed in or applied to a motor vehicle which the retailer intends to sell, which sale is subject to section 321.105A. For purposes of this subsection, automotive fluids are all those which are refined, manufactured, or otherwise processed and packaged for sale prior to their installation in or application to a motor vehicle. They include but are not limited to motor oil and other lubricants, hydraulic fluids, brake fluid, transmission fluid, sealants, undercoatings, antifreeze, and gasoline additives.

41. The sales price from the rental of motion picture films, video and audio tapes, video and audio discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard, or read, if either of the following conditions are met:

a. The lessee imposes a charge for the viewing of such media and the charge for the viewing is subject to taxation under this subchapter or is subject to use tax.

b. The lessee broadcasts the contents of such media for public viewing or listening.

42. The sales price from the sale of tangible personal property consisting of advertising material including paper to a person in Iowa if that person or that person's agent will, subsequent to the sale, send that advertising material outside this state and the material is subsequently used solely outside of Iowa. For the purpose of this subsection, *"advertising material"* means any brochure, catalog, leaflet, flyer, order form, return envelope, or similar item used to promote sales of property or services.

43. The sales price from the sale of property or of services performed on property which the retailer transfers to a carrier for shipment to a point outside of Iowa, places in the United States mail or parcel post directed to a point outside of Iowa, or transports to a point outside of Iowa by means of the retailer's own vehicles, and which is not thereafter returned to a point within Iowa, except solely in the course of interstate commerce or transportation. This exemption shall not apply if the purchaser, consumer, or their agent, other than a carrier, takes physical possession of the property in Iowa.

44. Reserved.

45. The sales price from the sale of property which is a container, label, carton, pallet, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

46. The sales price from sales or rentals to a printer or publisher of the following: acetate; anti-halation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; codas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models and modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, and paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and pasteups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan; typesetting; typography; varnishes; veloxes; wood mounts; and any other items used in a like capacity to any of the above enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies which are not enumerated in this subsection are excluded from the exemption. *"Printer"* means that portion of a person's business engaged in printing that completes a finished product for ultimate sale at retail or means that portion of a person's business used to complete a finished printed packaging material used to package a product for ultimate sale at retail. *"Printer"* does not mean an in-house printer who prints or copyrights its own materials.

47. *a.* The sales price from the sale or rental of computers, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, machinery, equipment, replacement parts, and supplies, if such items are any of the following:

(1) Directly and primarily used in processing by a manufacturer.

(2) Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

(3) Directly and primarily used in research and development of new products or processes of processing.

(4) Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

(5) Directly and primarily used in recycling or reprocessing of waste products.

(6) Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, machinery, or equipment used in an exempt manner described in paragraph *"a"*, subparagraph (1), (2), (3), (5), or (6).

c. The sales price from the sale or rental of the following shall not be exempt from the tax imposed by this subchapter:

(1) Hand tools.
(2) Point-of-sale equipment and computers.
(3) The following within the scope of section 427A.1, subsection 1, paragraphs *"h"* and *"i"*:
(a) Computers.
(b) Machinery.
(c) Equipment, including pollution control equipment.
(d) Replacement parts.
(e) Supplies.
(f) Materials used to construct or self-construct the following:
(i) Computers.
(ii) Machinery.
(iii) Equipment, including pollution control equipment.
(iv) Replacement parts.
(v) Supplies.
(4) Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.
d. As used in this subsection:
(1) *"Commercial enterprise"* means businesses and manufacturers conducted for profit, for-profit and nonprofit insurance companies, and for-profit and nonprofit financial institutions, but excludes other nonprofits and professions and occupations.
(2) *"Financial institution"* means as defined in section 527.2.
(3) *"Insurance company"* means an insurer organized or operating under chapter 508, 514, 515, 518, 518A, 519, or 520, or authorized to do business in Iowa as an insurer or an insurance producer under chapter 522B.
(4) (a) *"Manufacturer"* means a business that primarily purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing with a view to selling the property for gain or profit.
(b) *"Manufacturer"* includes contract manufacturers. A contract manufacturer is a manufacturer that otherwise falls within the definition of manufacturer, except that a contract manufacturer does not sell the tangible personal property the contract manufacturer processes on behalf of other manufacturers.
(c) *"Manufacturer"* does not include persons who are not commonly understood as manufacturers, including but not limited to persons primarily engaged in any of the following activities:
(i) Construction contracting.
(ii) Repairing tangible personal property or real property.
(iii) Providing health care.
(iv) Farming, including cultivating agricultural products and raising livestock.
(v) Transporting for hire.
(d) For purposes of this subparagraph:
(i) *"Business"* means those businesses conducted for profit, but excludes professions and occupations and nonprofit organizations.
(ii) *"Manufacturing"* means those activities commonly understood within the ordinary meaning of the term, and shall include:
(A) Refining.
(B) Purifying.
(C) Combining of different materials.
(D) Packing of meats.
(E) Activities subsequent to the extractive process of quarrying or mining, such as crushing, washing, sizing, or blending of aggregate materials.
(iii) *"Manufacturing"* does not include activities occurring on premises primarily used to make retail sales.
(5) *"Processing"* means a series of operations in which materials are manufactured, refined, purified, created, combined, or transformed by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the

receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes but is not limited to refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components, or products; quality control activities; and construction of packaging and shipping devices, placement into shipping containers or any type of shipping devices or medium, and the movement of materials, components, or products until shipment from the processor.

(6) *"Receipt or producing of raw materials"* means activities performed upon tangible personal property only. With respect to raw materials produced from or upon real estate, the receipt or producing of raw materials is deemed to occur immediately following the severance of the raw materials from the real estate.

(7) *"Replacement part"* means tangible personal property other than computers, machinery, equipment, or supplies, regardless of the cost or useful life of the tangible personal property, that meets all of the following conditions:

(a) The tangible personal property replaces a component of a computer, machinery, or equipment, which component is capable of being separated from the computer, machinery, or equipment.

(b) The tangible personal property performs the same or similar function as the component it replaced.

(c) The tangible personal property restores the computer, machinery, or equipment to an operational condition, or upgrades or improves the efficiency of the computer, machinery, or equipment.

(8) *"Supplies"* means tangible personal property, other than computers, machinery, equipment, or replacement parts, that meets one of the following conditions:

(a) The tangible personal property is to be connected to a computer, machinery, or equipment and requires regular replacement because the property is consumed or deteriorates during use, including but not limited to saw blades, drill bits, filters, and other similar items with a short useful life.

(b) The tangible personal property is used in conjunction with a computer, machinery, or equipment and is specially designed for use in manufacturing specific products and may be used interchangeably and intermittently on a particular computer, machine, or piece of equipment, including but not limited to jigs, dies, tools, and other similar items.

(c) The tangible personal property comes into physical contact with other tangible personal property used in processing and is used to assist with or maintain conditions necessary for processing, including but not limited to cutting fluids, oils, coolants, lubricants, and other similar items with a short useful life.

(d) The tangible personal property is directly and primarily used in an activity described in paragraph *"a"*, subparagraphs (1) through (6), including but not limited to prototype materials and testing materials.

47A. The sales price from the sale or rental of central office equipment or transmission equipment primarily used by local exchange carriers and competitive local exchange service providers as defined in section 476.96*; by franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in chapter 476; by long distance companies as defined in section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. §20.3 in the furnishing of telecommunications services on a commercial basis. For the purposes of this subsection, *"central office equipment"* means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services. *"Transmission equipment"* means equipment utilized in the process of sending information from one location to another location. *"Central office equipment"* and *"transmission equipment"* also include ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

48. The sales price from the furnishing of the design and installation of new industrial machinery or equipment, including electrical and electronic installation.

49. The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form,

electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce marketable food products for human consumption, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.

50. The sales price of sales of electricity, steam, or any taxable service when purchased and used in the processing of tangible personal property intended to be sold ultimately at retail or of any fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

51. The sales price of tangible personal property sold for processing. Tangible personal property is sold for processing within the meaning of this subsection only when it is intended that the property will, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail; or for generating electric current; or the property is a chemical, solvent, sorbent, or reagent, which is directly used and is consumed, dissipated, or depleted, in processing tangible personal property which is intended to be sold ultimately at retail or consumed in the maintenance or repair of fabric or clothing, and which may not become a component or integral part of the finished product. The distribution to the public of free newspapers or shoppers guides is a retail sale for purposes of the processing exemption set out in this subsection and in subsection 50.

52. The sales price from the sale of argon and other similar gases to be used in the manufacturing process.

53. The sales price from the sale of electricity to water companies assessed for property tax pursuant to sections 428.24, 428.26, and 428.28 which is used solely for the purpose of pumping water from a river or well.

54. *a.* The sales price from the sale of wind energy conversion property or hydroelectricity conversion property to be used as an electric power source and the sale of the materials used to manufacture, install, or construct wind energy conversion property or hydroelectricity conversion property used or to be used as an electric power source.

b. For purposes of this subsection:

(1) "*Wind energy conversion property*" means any device, including but not limited to a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation, which converts wind energy to a form of usable energy.

(2) "*Hydroelectricity conversion property*" means any device, including but not limited to a generator, turbine, powerhouse, intake, coffer dam, walls, water conduit, tailrace, any other concrete components, electrical equipment substation, poles, wires, transformers, breakers, and switches used to convert water, water power, or hydroelectricity to a form of usable energy.

55. The sales price from the sales of newspapers, free newspapers, or shoppers guides and the printing and publishing of such newspapers and shoppers guides, and envelopes for advertising.

56. The sales price from the sale of motor fuel and special fuel consumed for highway use or in watercraft or aircraft where the fuel tax has been imposed and paid and no refund has been or will be allowed and the sales price from the sales of ethanol blended gasoline, as defined in section 214A.1.

57. The sales price from all sales of food and food ingredients. However, as used in this subsection, a sale of "*food and food ingredients*" does not include a sale of alcoholic beverages, candy, or dietary supplements; food sold through vending machines; or sales of prepared food, soft drinks, or tobacco. For the purposes of this subsection:

a. *"Alcoholic beverages"* means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.

b. *"Candy"* means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration.

c. *"Dietary supplement"* means any product, other than tobacco, intended to supplement the diet that meets all of the following criteria:

(1) The product contains one or more of the following dietary ingredients:

(a) A vitamin.

(b) A mineral.

(c) An herb or other botanical.

(d) An amino acid.

(e) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(f) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraph divisions (a) through (e).

(2) The product is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet.

(3) The product is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label and as required pursuant to 21 C.F.R. §101.36.

d. *"Food and food ingredients"* means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. *"Food and food ingredients"* includes beverage-grade carbon dioxide gas.

e. *"Food sold through vending machines"* means food dispensed from a machine or other mechanical device that accepts payment, other than food which would be qualified for exemption under subsection 58 if purchased with a coupon described in subsection 58.

f. *"Prepared food"* means any of following:

(1) Food sold in a heated state or heated by the seller, including food sold by a caterer.

(2) Two or more food ingredients mixed or combined by the seller for sale as a single item.

(3) *"Prepared food"*, for the purposes of this paragraph, does not include food that is any of the following:

(a) Only cut, repackaged, or pasteurized by the seller.

(b) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States food and drug administration, ch. 3, part 401.11 of its food code, so as to prevent foodborne illnesses.

(c) Bakery items sold by the seller which baked them. The words *"bakery items"* includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.

(d) Food sold without eating utensils provided by the seller in an unheated state as a single item which is priced by weight or volume.

(e) Food sold that ordinarily requires additional cooking by the consumer prior to consumption.

(4) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

g. *"Soft drinks"* means nonalcoholic beverages that contain natural or artificial sweeteners. *"Soft drinks"* does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

h. *"Tobacco"* means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

58. The sales price from the sale of items purchased with coupons, food stamps, electronic benefits transfer cards, or other methods of payment authorized by the United

States department of agriculture, and issued under the federal Food Stamp Act of 1977, 7 U.S.C. §2011 et seq. or under the federal supplemental nutritional assistance program established in 7 U.S.C. §2013.

59. In transactions in which tangible personal property is traded toward the sales price of other tangible personal property, that portion of the sales price which is not payable in money to the retailer is exempted from the taxable amount if the following conditions are met:

a. The tangible personal property traded to the retailer is the type of property normally sold in the regular course of the retailer's business.

b. The tangible personal property traded to the retailer is intended by the retailer to be ultimately sold at retail or is intended to be used by the retailer or another in the remanufacturing of a like item.

60. The sales price from the sale or rental of prescription drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, and other medical devices intended for human use or consumption. For the purposes of this subsection:

a. *"Drug"* means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages, which is any of the following:

(1) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, and supplement to any of them.

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

(3) Intended to affect the structure or any function of the body.

b. *"Durable medical equipment"* means equipment, including repair and replacement parts, and all components or attachments, but does not include mobility enhancing equipment, to which all of the following apply:

(1) Can withstand repeated use.

(2) Is primarily and customarily used to serve a medical purpose.

(3) Generally is not useful to a person in the absence of illness or injury.

(4) Is not worn in or on the body.

(5) Is for home use only.

(6) Is prescribed by a practitioner.

c. *"Mobility enhancing equipment"* means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

(1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.

(2) Is not generally used by persons with normal mobility.

(3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(4) Is prescribed by a practitioner.

d. *"Other medical device"* means equipment or a supply that is not a drug, durable medical equipment, mobility enhancing equipment, or prosthetic device. *"Other medical devices"* includes but is not limited to ostomy, urological, and tracheostomy supplies, diabetic testing materials, hypodermic syringes and needles, anesthesia trays, biopsy trays and biopsy needles, cannula systems, catheter trays and invasive catheters, fistula sets, irrigation solutions, intravenous administering solutions and stopcocks, myelogram trays, small vein infusion kits, spinal puncture trays, and venous blood sets intended to be dispensed for human use with or without a prescription to an ultimate user.

e. *"Practitioner"* means a practitioner as defined in section 155A.3, or a person licensed to prescribe drugs.

f. *"Prescription"* means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner.

g. *"Prescription drug"* means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

h. (1) *"Prosthetic device"* means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

(a) Artificially replace a missing portion of the body.

(b) Prevent or correct physical deformity or malfunction.

(c) Support a weak or deformed portion of the body.

(2) *"Prosthetic device"* includes but is not limited to orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

i. *"Ultimate user"* means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual's own use or for the use of a member of the individual's household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed, or prescribed.

61. The sales price from services furnished by aerial commercial and charter transportation services.

62. The sales price from the sale of raffle tickets for a raffle licensed and conducted at a fair pursuant to section 99B.24.

63. The sales price from the sale of tangible personal property, specified digital products, or services which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in chapter 99B.

64. The sales price from the sale of a modular home, as defined in section 435.1, to the extent of the portion of the purchase price of the modular home which is not attributable to the cost of the tangible personal property used in the processing of the modular home. For purposes of this exemption, the portion of the purchase price which is not attributable to the cost of the tangible personal property used in the processing of the modular home is forty percent.

65. Reserved.

66. Reserved.

67. Reserved.

68. *a.* The sales price from the sale of an article of clothing designed to be worn on or about the human body if all of the following apply:

(1) The sales price of the article is less than one hundred dollars.

(2) The sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Saturday.

b. This subsection does not apply to any of the following:

(1) Sport or recreational equipment and protective equipment.

(2) Clothing accessories or equipment.

(3) The rental of clothing.

c. For purposes of this subsection:

(1) *"Clothing"* means all human wearing apparel suitable for general use.

(a) *"Clothing"* includes but is not limited to the following: aprons, household and shop; athletic supporters; baby receiving blankets; bathing suits and caps; beach capes and coats; belts and suspenders; boots; coats and jackets; costumes; diapers (children and adults, including disposable diapers); earmuffs; footlets; formal wear; garters and garter belts; girdles; gloves and mittens for general use; hats and caps; hosiery; insoles for shoes; lab coats; neckties; overshoes; pantyhose; rainwear; rubber pants; sandals; scarves; shoes and shoelaces; slippers; sneakers; socks and stockings; steel-toed shoes; underwear; uniforms, athletic and nonathletic; and wedding apparel.

(b) *"Clothing"* does not include the following: belt buckles sold separately; costume masks sold separately; patches and emblems sold separately; sewing equipment and supplies (including but not limited to knitting needles, patterns, pins, scissors, sewing machines, sewing needles, tape measures, and thimbles); and sewing materials that become part of clothing (including but not limited to buttons, fabric, lace, thread, yarn, and zippers).

(2) *"Clothing accessories or equipment"* means incidental items worn on the person or in conjunction with clothing. *"Clothing accessories or equipment"* includes but is not limited to the following: briefcases; cosmetics; hair notions (including but not limited to barrettes, hair bows, and hair nets); handbags; handkerchiefs; jewelry; sunglasses, nonprescription; umbrellas; wallets; watches; and wigs and hairpieces.

(3) *"Protective equipment"* means items for human wear and designed as protection for the wearer against injury or disease or as protection against damage or injury of other persons or property but not suitable for general use. *"Protective equipment"* includes but is not limited to the following: breathing masks; clean room apparel and equipment; ear and hearing protectors; face shields; hard hats; helmets; paint or dust respirators; protective gloves; safety glasses and goggles; safety belts; tool belts; and welders gloves and masks.

(4) *"Sport or recreational equipment"* means items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use. *"Sport or recreational equipment"* includes but is not limited to the following: ballet and tap shoes; cleated or spiked athletic shoes; gloves (including but not limited to baseball, bowling, boxing, hockey, and golf); goggles; hand and elbow guards; life preservers and vests; mouth guards; roller and ice skates; shin guards; shoulder pads; ski boots; waders; and wetsuits and fins.

69. The sales price from charges paid for the delivery of electricity or natural gas if the sale or furnishing of the electricity or natural gas or its use is exempt from the tax on sales prices imposed under this subchapter or from the use tax imposed under subchapter III.

69A. The sales price from surcharges paid for 911 service and wireless 911 service pursuant to chapter 34A.

70. The sales price of delivery charges. This exemption does not apply to the delivery of electric energy or natural gas.

71. The sales price from sales of tangible personal property used or to be used as railroad rolling stock for transporting persons or property, or as materials or parts therefor.

72. The sales price from the sales of special fuel for diesel engines consumed or used in the operation of ships, barges, or waterborne vessels which are used primarily in or for the transportation of property or cargo, or the conveyance of persons for hire on rivers bordering on the state if the fuel is delivered by the seller to the purchaser's barge, ship, or waterborne vessel while it is afloat upon such a river.

73. The sales price from sales of vehicles subject to registration or subject only to the issuance of a certificate of title and sales of aircraft subject to registration under section 328.20.

74. The sales price from the sale of aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

75. The sales price from the sale or rental of aircraft; the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

76. The sales price from the sale or rental of tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and the sales price of all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

77. *a.* The sales price from the sale of aircraft to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

(1) The aircraft is kept in the inventory of the dealer for sale at all times.

(2) The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

(3) The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

b. If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraph *"a"*, subparagraphs (1), (2), and (3), are not continuously met, the dealer claiming the exemption under this subsection is liable for the

tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

78. *a.* The sales price from the sale of tangible personal property, specified digital products, or services rendered by any entity where the profits from the sale of the tangible personal property, specified digital products, or services rendered, are used by or donated to a nonprofit entity that is exempt from federal income taxation pursuant to section 501(c)(3) of the Internal Revenue Code, a government entity, or a nonprofit private educational institution, and where the entire proceeds from the sale or services are expended for any of the following purposes:

(1) Educational.

(2) Religious.

(3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add to or to improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

b. For purposes of this exemption, an organization that meets the requirements of paragraph "*a*" and which is created for the sole or primary purpose of providing athletic activities to youth shall be considered created for an educational purpose.

c. Except as otherwise provided in subsection 97, this exemption does not apply to the sales price from games of skill, games of chance, raffles, and bingo games as defined in chapter 99B. This exemption is disallowed on the amount of the sales price only to the extent the profits from the sales, rental, or services are not used by or donated to the appropriate entity and expended for educational, religious, or charitable purposes.

79. The sales price from the sale of tangible personal property or specified digital products, or from services furnished, to a recognized community action agency as provided in section 216A.93 to be used for the purposes of the agency.

80. *a.* For purposes of this subsection, "*designated exempt entity*" means any of the following:

(1) An entity which is designated in section 423.4, subsection 1 or 6.

(2) An entity which is an instrumentality of a county or municipal government, including an agent of such entity, if the entity was created for the purpose of owning, including pursuant to a lease-purchase agreement, real property located within a reinvestment district established under chapter 15J.

b. Subject to the limitations in paragraph "*c*", if a contractor, subcontractor, or builder is to use building materials, supplies, and equipment in the performance of a construction contract with a designated exempt entity, the person shall purchase such items of tangible personal property without liability for the tax if such property will be used in the performance of the construction contract and a purchasing agent authorization letter and an exemption certificate, issued by the designated exempt entity, are presented to the retailer.

c. (1) With regard to a construction contract with a designated exempt entity described in paragraph "*a*", subparagraph (1), the sales price of building materials, supplies, or equipment is exempt from tax by this subsection only to the extent the building materials, supplies, or equipment are completely consumed in the performance of the construction contract with the designated exempt entity.

(2) With regard to a construction contract with a designated exempt entity described in paragraph "*a*", subparagraph (2), the sales price of building materials, supplies, or equipment is exempt from tax by this subsection only to the extent the building materials, supplies, or equipment are completely consumed in the performance of a construction contract to construct a project, as defined in section 15J.2, subsection 10, which project has been approved by the economic development authority board in accordance with chapter 15J.

d. Subject to the limitations in paragraph "*c*", where the owner, contractor, subcontractor, or builder is also a retailer holding a retail sales tax permit and transacting retail sales of building materials, supplies, and equipment, the tax shall not be due when materials are withdrawn from inventory for use in construction performed for a designated exempt entity if an exemption certificate is received from such entity.

e. Subject to the limitations in paragraph "*c*", tax shall not apply to tangible personal

property purchased and consumed by a manufacturer as building materials, supplies, or equipment in the performance of a construction contract for a designated exempt entity, if a purchasing agent authorization letter and an exemption certificate are received from such entity and presented to a retailer.

81. The sales price from the sales of lottery tickets or shares pursuant to chapter 99G.

82. *a.* The sales price from the sale or rental of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used in the mold-making process by a foundry.

b. The sales price from the sale of fuel used in creating heat, power, steam, or for generating electric current, or from the sale of electricity, consumed by core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

c. The sales price from the furnishing of the design and installation, including electrical and electronic installation, of core-making, mold-making, and sand-handling machinery and equipment used directly and primarily in the mold-making process by a foundry.

83. The sales price from noncustomer point of sale or noncustomer automated teller machine access or service charges assessed by a financial institution. For purposes of this subsection, "*financial institution*" means the same as defined in section 527.2.

84. *a.* Subject to paragraph "*b*", the sales price from the sale or furnishing of metered gas, electricity, and fuel, including propane and heating oil, to residential customers which is used to provide energy for residential dwellings and units of apartment and condominium complexes used for human occupancy.

b. The exemption in this subsection shall be phased in by means of a reduction in the tax rate as follows:

(1) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2004, through December 31, 2004, the rate of tax is two percent of the sales price.

(2) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale or furnishing of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2005, through December 31, 2005, the rate of tax is one percent of the sales price.

(3) If the date of the utility billing or meter reading cycle of the residential customer for the sale or furnishing of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occurs on or after January 1, 2006, the rate of tax is zero percent of the sales price.

c. The exemption in this subsection does not apply to local option sales and services tax imposed pursuant to chapters 423B and 423E.

85. The sales price from the sale of the following items: self-propelled building equipment, pile drivers, motorized scaffolding, or attachments customarily drawn or attached to self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety, operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

86. *a.* The sales price from services performed on a vessel if all of the following apply:

(1) The vessel is a licensed vessel under the laws of the United States coast guard.

(2) The service is used to repair or restore a defect in the vessel.

(3) The vessel is engaged in interstate commerce and will continue in interstate commerce once the repairs or restoration is completed.

(4) The vessel is in navigable water that borders a boundary of this state.

b. For purposes of this exemption, "*vessel*" includes a ship, barge, or other waterborne vessel.

87. The sales price from the sales of toys to a nonprofit organization exempt from federal

income tax under section 501 of the Internal Revenue Code that purchases the toys from donations collected by the nonprofit organization and distributes the toys to children at no cost.

88. The sales price from the sale of building materials, supplies, goods, wares, or merchandise sold to a nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for use by low-income families and where the building materials, supplies, goods, wares, or merchandise are used in the construction, remodeling, or rehabilitation of such dwellings.

89. *a.* The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the original construction of a building or structure to be used as a collaborative educational facility.

b. The sales price of all goods, wares, or merchandise sold, or of services furnished, which are used in the fulfillment of a written construction contract for the construction of additions or modifications to a building or structure used as part of a collaborative educational facility.

c. To receive the exemption provided in paragraph "*a*" or "*b*", a collaborative educational facility must meet all of the criteria in paragraph "*d*" or "*e*":

d. (1) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(2) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(3) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(4) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

e. (1) The contract for construction of the building or structure is entered into on or after May 15, 2007.

(2) The sole purpose of the building or structure is to provide facilities for a regional academy under a collaborative of public and private educational institutions that includes a community college established under chapter 260C that provide education to students.

(3) The owner of the building or structure is a qualified charitable nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

f. References to "*building*" or "*structure*" in paragraphs "*d*" and "*e*" include any additions or modifications to the building or structure.

90. The sales price from the sale of solar energy equipment. For purposes of this subsection, "*solar energy equipment*" means equipment that is primarily used to collect and convert incident solar radiation into thermal, mechanical, or electrical energy or equipment that is primarily used to transform such converted solar energy to a storage point or to a point of use.

91. *a.* The sales price from the sale of coins, currency, or bullion.

b. For purposes of this subsection:

(1) "*Bullion*" means bars, ingots, or commemorative medallions of gold, silver, platinum, palladium, or a combination of these where the value of the metal depends on its content and not the form.

(2) "*Coins*" or "*currency*" means a coin or currency made of gold, silver, or other metal or paper which is or has been used as legal tender.

92. *a.* (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a web search portal and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and

related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal.

(2) The sales price of backup power generation fuel, that is purchased by a web search portal business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use in providing a web search portal.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The business of the purchaser or renter shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in the state that is used for the operations and maintenance of the web search portal site on the internet including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the web search portal facility as described in paragraph *"b"*. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates. This exemption applies to affiliates of the web search portal business.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph *"b"* within the first six years of operation from the date the web search portal business initiates site preparation activities will result in the web search portal business losing the right to claim this exemption and the web search portal business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) *"Affiliate"* means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

(2) *"Control"* means any of the following:

(a) In the case of a United States corporation, the ownership, directly or indirectly, of fifty percent or more of the voting power to elect directors.

(b) In the case of a foreign corporation, if the voting power to elect the directors is less than fifty percent, the maximum amount allowed by applicable law.

(c) In the case of an entity other than a corporation, fifty percent or more ownership interest in the entity, or the power to direct the management of the entity.

(3) *"Web search portal business"* means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

93. *a.* (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a web search portal business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the web search portal business, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the web search portal business.

(2) The sales price of backup power generation fuel, that is purchased by a web search portal business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use by a web search portal business.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The purchaser or renter shall be a web search portal business.

(2) The web search portal business shall have a physical location in the state that is used for the operations and maintenance of the web search portal business.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the web search portal facility as described in paragraph *"b"*. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates. This exemption applies to affiliates of the web search portal business.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph *"b"* within the first six years of operation from the date the web search portal business initiates site preparation activities will result in the web search portal business losing the right to claim this web search portal business exemption and the web search portal business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) *"Affiliate"* means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

(2) *"Control"* means any of the following:

(a) In the case of a United States corporation, the ownership, directly or indirectly, of fifty percent or more of the voting power to elect directors.

(b) In the case of a foreign corporation, if the voting power to elect the directors is less than fifty percent, the maximum amount allowed by applicable law.

(c) In the case of an entity other than a corporation, fifty percent or more ownership interest in the entity, or the power to direct the management of the entity.

(3) *"Web search portal business"* means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; or to provide internet access, navigation, or search functionalities.

94. Water use permit fees paid pursuant to section 455B.265.

95. *a.* (1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a data center business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the data center business, including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the data center business.

(2) The sales price of backup power generation fuel that is purchased by a data center business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use by a data center business.

b. For the purpose of claiming this exemption, all of the following requirements shall be met:

(1) The purchaser or renter shall be a data center business.

(2) The data center business shall have a physical location in the state that is, in the aggregate, at least five thousand square feet in size that is used for the operations and maintenance of the data center business.

(3) The data center business shall make a minimum investment in an Iowa physical location of two hundred million dollars within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. This exemption applies from the date of the initial investment in or the initiation of site preparation activities for the data center business facility as described in paragraph *"b"*.

d. Failure to meet eighty percent of the minimum investment amount requirement specified in paragraph *"b"* within the first six years of operation from the date the data center business initiates site preparation activities will result in the data center business losing the right to claim this data center business exemption and the data center business shall pay all sales or use tax that would have been due on the purchase or rental or use of the items listed in this exemption, plus any applicable penalty and interest imposed by statute.

e. For purposes of this subsection:

(1) *"Data center"* means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge. A data center business's facility typically includes the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems. A data center business's facility also includes a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(2) *"Data center business"* means an entity whose business among other businesses, is to operate a data center.

96. The sale price of fees charged for the release of medical records as described in section 622.10.

97. The sales price from raffles, as raffle is defined in section 99B.1, if the raffle provides for educational scholarships and is conducted by a qualified organization representing veterans as defined in section 99B.27.

98. The sales price from the sale of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax, which vehicle wash and wax service is subject to section 423.2, subsection 6.

99. *a.* The sales price from the sale of chemicals, solvents, sorbents, reagents, or other tangible personal property used in providing a vehicle repair service subject to section 423.2, subsection 6, if all of the following conditions are met:

(1) The chemicals, solvents, sorbents, reagents, or other tangible personal property are directly and primarily used in providing the vehicle repair service.

(2) The chemicals, solvents, sorbents, reagents, or other tangible personal property are consumed or dissipated in providing the vehicle repair service.

(3) The chemicals, solvents, sorbents, reagents, or other tangible personal property will come into physical contact with the vehicle upon which the vehicle repair service is performed.

b. The exemption under this subsection does not apply to tangible personal property that can be used to provide multiple vehicle repair services, including but not limited to machinery, tools, and equipment.

100. The sales price from services furnished by forestry consultants and forestry vendors engaged in forestry practices on private or public land.

101. The sales price for the use of a self-pay washer or dryer.

102. The sales price from the furnishing of environmental testing services performed at a laboratory, in the field, or by a mobile testing service. For purposes of this subsection, "*environmental testing*" means the physical or chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

103. *a.* The sales price from the sale or furnishing by a water utility of a water service in the state to consumers or users.

b. For purposes of this subsection:

(1) "*Water service*" means the delivery of water by piped distribution system.

(2) "*Water utility*" means a public utility as defined in section 476.1 that furnishes water by piped distribution system to the public for compensation.

104. *a.* The sales price of specified digital products and of prewritten computer software sold, and of enumerated services described in section 423.2, subsection 1, paragraph *"a"*, subparagraph (5), or section 423.2, subsection 6, paragraphs *"bq"*, *"br"*, *"bs"*, and *"bu"* furnished, to a commercial enterprise for use exclusively by the commercial enterprise. The use of prewritten computer software, a specified digital product, or service fails to qualify as a use exclusively by the commercial enterprise if its use for noncommercial purposes is more than de minimis.

b. For purposes of this subsection:

(1) *"Commercial enterprise"* means the same as defined in section 423.3, subsection 47, paragraph *"d"*, subparagraph (1), but also includes professions and occupations.

(2) *"De minimis"* and *"noncommercial purposes"* shall be defined by the director by rule.

105. The sales price of specified digital products sold to a non-end user. For purposes of this subsection, *"non-end user"* means a person who receives by contract a specified digital product for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product, in whole or in part, to another person.

106. The sales price for transportation services furnished by emergency or nonemergency medical transportation, by a paratransit service, and by a public transit system as defined in section 324A.1.

2003 Acts, 1st Ex, ch 2, §96, 205; 2004 Acts, ch 1022, §4; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1073, §26, 27; 2004 Acts, ch 1086, §105; 2004 Acts, ch 1133, §1; 2004 Acts, ch 1175, §320, 394; 2005 Acts, ch 71, §1; 2005 Acts, ch 134, §1; 2005 Acts, ch 140, §6 – 11, 16, 30, 44 – 46, 72, 73; 2006 Acts, ch 1001, §1, 2, 4, 5; 2006 Acts, ch 1134, §1; 2006 Acts, ch 1158, §40 – 44; 2006 Acts, ch 1161, §5, 7; 2006 Acts, ch 1162, §1; 2006 Acts, ch 1185, §128; 2007 Acts, ch 22, §74, 75; 2007 Acts, ch 186, §21, 22; 2007 Acts, ch 199, §1; 2007 Acts, ch 215, §112, 125; 2008 Acts, ch 1006, §1; 2008 Acts, ch 1163, §1; 2008 Acts, ch 1184, §55, 56; 2009 Acts, ch 133, §144; 2009 Acts, ch 179, §136, 197, 218 – 220; 2010 Acts, ch 1031, §388; 2010 Acts, ch 1148, §1; 2011 Acts, ch 25, §41, 42, 85 – 87, 143; 2011 Acts, ch 92, §6; 2012 Acts, ch 1019, §131; 2012 Acts, ch 1104, §1; 2012 Acts, ch 1110, §18, 19; 2012 Acts, ch 1121, §13, 14; 2012 Acts, ch 1125, §1; 2012 Acts, ch 1139, §2, 3, 6; 2013 Acts, ch 11, §1; 2013 Acts, ch 70, §12 – 15; 2013 Acts, ch 92, §1; 2013 Acts, ch 138, §59; 2013 Acts, ch 140, §127, 128; 2014 Acts, ch 1026, §89; 2014 Acts, ch 1050, §1; 2014 Acts, ch 1093, §22; 2014 Acts, ch 1127, §2, 3; 2014 Acts, ch 1129, §1; 2015 Acts, ch 30, §120; 2015 Acts, ch 94, §1; 2015 Acts, ch 99, §54; 2015 Acts, ch 114, §2; 2015 Acts, ch 116, §15, 16, 19, 20; 2016 Acts, ch 1007, §8, 9; 2016 Acts, ch 1128, §6, 16, 18, 27; 2018 Acts, ch 1001, §10, 27; 2018 Acts, ch 1026, §132, 133; 2018 Acts, ch 1155, §1; 2018 Acts, ch 1161, §175 – 188, 229, 230; 2019 Acts, ch 59, §125; 2019 Acts, ch 141, §1; 2019 Acts, ch 152, §22 – 24, 32, 34, 54 – 56

Referred to in §2.48, 8G.4, 123.173A, 321.105A, 423.1, 423.2, 423.4, 423.6, 423.33, 423C.3, 423G.2, 423G.4, 427.1(35)(a), 427.1(35)(b), 427.1(36)(a), 427.1(36)(b), 427.1(37)(a), 622.10

Subsection 3A takes effect June 18, 2015, and applies retroactively to July 1, 2005; refunds prohibited for sales occurring between July 1, 2005, and December 31, 2015; 2015 Acts, ch 116, §18 – 20

2016 amendment to subsection 80 takes effect May 27, 2016, applies to purchases made on or after that date, and applies retroactively to January 1, 2015, for construction contracts entered into on or after that date; 2016 Acts, ch 1128, §16, 18, 27

*Section 476.96 repealed by 2018 Acts, ch 1160, §32; corrective legislation is pending

For future amendment to subsection 56, effective July 1, 2023, see 2019 Acts, ch 151, §20, 46

2019 amendment to subsection 47, paragraph c, subparagraph (3), applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2019 Acts, ch 152, §34

2019 amendment to subsection 47, paragraph d, subparagraph (4), subparagraph division (c), unnumbered paragraph 1, applies retroactively to May 30, 2018; 2019 Acts, ch 152, §56
NEW subsection 16A
Subsection 26A stricken and rewritten
Subsection 46 amended
Subsection 47, paragraph c, subparagraph (3) stricken and rewritten
Subsection 47, paragraph d, subparagraph (4), subparagraph division (c), unnumbered paragraph 1 amended
Subsection 104, paragraph a amended

423.4 Refunds.

1. A private nonprofit educational institution in this state, nonprofit Iowa affiliate of a nonprofit international organization whose primary activity is the promotion of the construction, remodeling, or rehabilitation of one-family or two-family dwellings for low-income families, nonprofit private museum in this state, tax-certifying or tax-levying body or governmental subdivision of the state, including the state board of regents, state department of human services, state department of transportation, a municipally owned solid waste facility which sells all or part of its processed waste as fuel to a municipally owned public utility, and all divisions, boards, commissions, agencies, or instrumentalities of state, federal, county, or municipal government which do not have earnings going to the benefit of an equity investor or stockholder, may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written contract with the state of Iowa, any political subdivision of the state, or a division, board, commission, agency, or instrumentality of the state or a political subdivision, a private nonprofit educational institution in this state, a nonprofit Iowa affiliate described in this subsection, or a nonprofit private museum in this state if the property becomes an integral part of the project under contract and at the completion of the project becomes public property, is devoted to educational uses, becomes part of a low-income one-family or two-family dwelling in the state, or becomes a nonprofit private museum; except goods, wares, or merchandise, or services furnished which are used in the performance of any contract in connection with the operation of any municipal utility engaged in selling gas, electricity, or heat to the general public or in connection with the operation of a municipal pay television system; and except goods, wares, and merchandise used in the performance of a contract for a "project" under chapter 419 as defined in that chapter other than goods, wares, or merchandise used in the performance of a contract for a "project" under chapter 419 for which a bond issue was approved by a municipality prior to July 1, 1968, or for which the goods, wares, or merchandise becomes an integral part of the project under contract and at the completion of the project becomes public property or is devoted to educational uses.

a. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit, private nonprofit educational institution, nonprofit Iowa affiliate, or nonprofit private museum which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum before final settlement is made.

b. Such governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the governmental unit, educational institution, nonprofit Iowa affiliate, or nonprofit private museum in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

c. Refunds authorized under this subsection shall accrue interest in accordance with section 421.60, subsection 2, paragraph *"e"*.

d. Any contractor who willfully makes a false report of tax paid under the provisions of this

subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

2. The refund of sales and use tax paid on transportation construction projects let by the state department of transportation is subject to the special provisions of this subsection.

a. A contractor awarded a contract for a transportation construction project is considered the consumer of all building materials, building supplies, and equipment and shall pay sales tax to the supplier or remit consumer use tax directly to the department.

b. The contractor is not required to file information with the state department of transportation stating the amount of goods, wares, or merchandise, or services rendered, furnished, or performed and used in the performance of the contract or the amount of sales or use tax paid.

c. The state department of transportation shall file a refund claim based on a formula that considers the following:

(1) The quantity of material to complete the contract, and quantities of items of work.

(2) The estimated cost of these materials included in the items of work, and the state sales or use tax to be paid on the tax rate in effect in section 423.2. The quantity of materials shall be determined after each letting based on the contract quantities of all items of work let to contract. The quantity of individual component materials required for each item shall be determined and maintained in a database. The total quantities of materials shall be determined by multiplying the quantities of component materials for each contract item of work by the total quantities of each contract item for each letting. Where variances exist in the cost of materials, the lowest cost shall be used as the base cost.

d. Only the state sales or use tax is refundable. Local option taxes paid by the contractor are not refundable.

3. A relief agency may apply to the director for refund of the amount of sales or use tax imposed and paid upon sales to it of any tangible personal property or specified digital products, or services furnished, used for free distribution to the poor and needy.

a. The refunds may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department, and filed within the time as the director shall provide by rule, the relief agency shall report to the department the total amount or amounts, valued in money, expended directly or indirectly for tangible personal property or specified digital products, or services furnished, used for free distribution to the poor and needy.

(2) On these forms the relief agency shall separately list the persons making the sales to it or to its order, together with the dates of the sales, and the total amount so expended by the relief agency.

(3) The relief agency must prove to the satisfaction of the director that the person making the sales has included the amount thereof in the computation of the sales price of such person and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the relief agency.

4. A person in possession of a wind energy production tax credit certificate pursuant to chapter 476B or a renewable energy tax credit certificate issued pursuant to chapter 476C may apply to the director for refund of the amount of sales or use tax imposed and paid upon purchases made by the applicant.

a. The refunds may be obtained only in the following manner and under the following conditions:

(1) On forms furnished by the department and filed by January 31 after the end of the calendar year in which the tax credit certificate is to be applied, the applicant shall report to the department the total amount of sales and use tax paid during the reporting period on purchases made by the applicant.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) If required by the department, the applicant shall prove that the person making the sales has included the amount thereof in the computation of the sales price of such person

and that such person has paid the tax levied by this subchapter or subchapter III, based upon such computation of the sales price.

(4) The applicant shall provide the tax credit certificates issued pursuant to chapter 476B or 476C to the department with the forms required by this paragraph "*a*".

b. If satisfied that the foregoing conditions and requirements have been complied with, the director shall refund the amount claimed by the applicant for an amount not greater than the amount of tax credits issued in tax credit certificates pursuant to chapter 476B or 476C.

5. *a.* For purposes of this subsection:

(1) "*Automobile racetrack facility*" means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility but excluding any restaurant, and which facility is located, on a maximum of two hundred thirty-two acres, in a city with a population of at least fourteen thousand five hundred but not more than sixteen thousand five hundred residents, which city is located in a county with a population of at least thirty-five thousand but not more than forty thousand residents and where the construction on the racetrack facility commenced not later than July 1, 2006, and the cost of the construction upon completion was at least thirty-five million dollars.

(2) "*Change of control*" means any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the automobile racetrack facility such that less than twenty-five percent of the equity interests in the legal entity is owned by individuals who are residents of Iowa, an Iowa business, or combination of both.

(3) "*Iowa business*" means a corporation or limited liability company incorporated or formed under the laws of Iowa.

(4) "*Owner or operator*" means a for-profit legal entity where at least twenty-five percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa business, or combination of both and that is the owner or operator of an automobile racetrack facility and is primarily a promoter of motor vehicle races.

(5) "*Population*" means the population based upon the 2000 certified federal census.

b. The owner or operator of an automobile racetrack facility may apply to the department for a rebate of sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the automobile racetrack facility.

c. The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided by the department by rule, which time period shall not be longer than quarterly.

(2) The owner or operator shall provide information as deemed necessary by the department.

(3) The transactions for which sales tax was collected and the rebate is sought occurred on or after January 1, 2006, but before January 1, 2026. However, not more than twelve million five hundred thousand dollars in total rebates shall be provided pursuant to this subsection.

(4) Notwithstanding subparagraph (3), the rebate of sales tax shall cease for transactions occurring on or after the date of the change of control of the automobile racetrack facility.

(5) The automobile racetrack facility has not received or shall not receive any grants under the community attraction and tourism program pursuant to chapter 15F, subchapter II, or the vision Iowa program pursuant to chapter 15F, subchapter III.

d. To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the automobile racetrack facility who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the automobile racetrack facility regardless of where the transactions actually occur.

e. Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant to the owner or operator in the amount equal to the amount claimed and verified by the department.

f. Notwithstanding the state sales tax imposed in section 423.2, a rebate issued pursuant to this subsection shall not exceed an amount equal to five percent of the sales price of the

tangible personal property or services furnished to purchasers at the automobile racetrack facility. Any local option taxes paid and collected shall not be subject to rebate under this subsection.

g. This subsection is repealed June 30, 2026, or thirty days following the date on which twelve million five hundred thousand dollars in total rebates have been provided, or thirty days following the date on which rebates cease as provided in paragraph "*c*", subparagraph (4), whichever is the earliest.

6. *a.* (1) The owner of a collaborative educational facility in this state may make application to the department for the refund of the sales or use tax upon the sales price of all sales of goods, wares, or merchandise, or from services furnished to a contractor, used in the fulfillment of a written construction contract with the owner of the collaborative educational facility for the original construction, or additions or modifications to, a building or structure to be used as part of the collaborative educational facility.

(2) To receive the refund under this subsection, a collaborative educational facility must meet all of the following criteria:

(a) The contract for construction of the building or structure is entered into on or after April 1, 2003.

(b) The building or structure is located within the corporate limits of a city in the state with a population in excess of one hundred ninety-five thousand residents.

(c) The sole purpose of the building or structure is to provide facilities for a collaborative of public and private educational institutions that provide education to students.

(d) The owner of the building or structure is a nonprofit corporation governed by chapter 504 or former chapter 504A which is exempt from federal income tax pursuant to section 501(a) of the Internal Revenue Code.

(3) References to "*building*" or "*structure*" in subparagraph (2), subparagraph divisions (a) through (d) include any additions or modifications to the building or structure.

b. Such contractor shall state under oath, on forms provided by the department, the amount of such sales of goods, wares, or merchandise, or services furnished and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the owner of the collaborative educational facility which has made any written contract for performance by the contractor.

c. (1) The owner of the collaborative educational facility shall, not more than one year after the final settlement has been made, make application to the department for any refund of the amount of the sales or use tax which shall have been paid upon any goods, wares, or merchandise, or services furnished, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit the claim and, if approved, issue a warrant to the owner of the collaborative educational facility in the amount of the sales or use tax which has been paid to the state of Iowa under the contract.

(2) Refunds authorized under this subsection shall accrue interest in accordance with section 421.60, subsection 2, paragraph "*e*".

d. Any contractor who willfully makes a false report of tax paid under the provisions of this subsection is guilty of a simple misdemeanor and in addition shall be liable for the payment of the tax and any applicable penalty and interest.

7. *a.* The owner of a data center business, as defined in section 423.3, subsection 95, located in this state may make an annual application for up to five consecutive years to the department for the refund of fifty percent of the sales or use tax upon the sales price of all sales of fuel used in creating heat, power, and steam for processing or generating electrical current, or from the sale of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility.

b. A data center business shall qualify for the refund in this subsection if all of the following criteria are met:

(1) The data center business shall make an investment in an Iowa physical location within the first three years of operation in Iowa beginning with the date on which the data center business initiates site preparation activities.

(2) The amount of the investment in an Iowa physical location, including the value of a lease agreement, or an investment in land or buildings, and the capital expenditures for

computers, machinery, and other equipment used in the operation of the data center business shall equal at least one million dollars, but shall not exceed ten million dollars for a newly constructed building or five million dollars for a rehabilitated building.

(3) If the data center business is leasing a building to house operations, the data center business shall enter into a lease that is at least five years in duration.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. The refund may be obtained only in the following manner and under the following conditions:

(1) The applicant shall use forms furnished by the department.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) The applicant may request when the refund begins, but it must start on the first day of a month and proceed for a continuous twelve-month period.

d. In determining the amount to be refunded, if the dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded. In determining the amount to be refunded, if the dates of the sale or furnishing of fuel for purposes of commercial energy and the delivery of the fuel are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded.

e. To receive refunds during the five-year period, the applicant shall file a refund claim within three months after the end of each refund year.

f. The refund in this subsection applies only to state sales and use tax paid and does not apply to local option sales and services taxes imposed pursuant to chapter 423B. Notwithstanding the state sales tax imposed in section 423.2, a refund issued pursuant to this section shall not exceed an amount equal to five percent of the sales price of the fuel used to create heat, power, and steam for processing or generating electrical current or from the sale price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility.

8. *a.* The owner of a data center business, as defined in section 423.3, subsection 95, paragraph "*e*", located in this state that is not eligible for the exemption under section 423.3, subsection 95, may make an annual application to the department for the refund of fifty percent of the sales or use tax upon all of the following:

(1) The sales price from the sale or rental of computers and equipment that are necessary for the maintenance and operation of a data center business and property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity used for the maintenance and operation of the data center business including but not limited to exterior dedicated business-owned substations, backup power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays, which are necessary for the maintenance and operation of the data center business.

(2) The sales price of backup power generation fuel that is purchased by a data center business for use in the items listed in subparagraph (1).

(3) The sales price of electricity purchased for use in providing data center services.

b. A data center business shall qualify for the partial refund in this subsection if all of the following criteria are met:

(1) The data center business shall have a physical location in the state which is at least five thousand square feet in size.

(2) The data center business shall make a minimum investment of at least ten million dollars, in the case of new construction, or at least five million dollars in the case of a rehabilitated building, in an Iowa physical location within the first six years of operation in Iowa, beginning with the date on which the data center business initiates site preparation activities. The minimum investment includes the initial investment, including the value of

a lease agreement or the amount invested in land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(3) If the data center business is leasing a building to house operations, the data center business shall enter into a lease that is at least five years in duration.

(4) The data center business shall comply with the sustainable design and construction standards established by the state building code commissioner pursuant to section 103A.8B.

c. The refund allowed under this subsection shall be available for the following periods of time:

(1) For an investment of at least ten million dollars, in the case of new construction, or at least five million dollars, in the case of a rehabilitated building, but less than one hundred thirty-six million dollars, ten years.

(2) For an investment of at least one hundred thirty-six million dollars, but less than two hundred million dollars, seven years.

d. The refund may be obtained only in the following manner and under the following conditions:

(1) The applicant shall use forms furnished by the department.

(2) The applicant shall separately list the amounts of sales and use tax paid during the reporting period.

(3) The applicant may request when the refund begins, but it must start on the first day of a month and proceed for a continuous twelve-month period.

e. In determining the amount to be refunded, if the dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded. In determining the amount to be refunded, if the dates of the sale or furnishing of fuel for purposes of commercial energy and the delivery of the fuel are on or after the first day of the first month through the last day of the last month of the refund year, fifty percent of the amount of tax charged in the billings shall be refunded.

f. To receive refunds during the applicable refund period, the applicant shall file a refund claim within three months after the end of each refund year.

g. The refund in this subsection applies only to state sales and use tax paid and does not apply to local option sales and services taxes imposed pursuant to chapter 423B. Notwithstanding the state sales tax imposed in section 423.2, a refund issued pursuant to this section shall not exceed an amount equal to five percent of the sales price of the items listed in paragraph *"a"*, subparagraphs (1), (2), and (3).

9. A person who qualifies as a biodiesel producer as provided in this subsection may apply to the director for a refund of the amount of the sales or use tax imposed and paid upon purchases made by the person.

a. The person must be engaged in the manufacturing of biodiesel who has registered with the United States environmental protection agency as a manufacturer according to the requirements in 40 C.F.R. §79.4. The biodiesel must be for use in biodiesel blended fuel in conformance with section 214A.2. The person must comply with the requirements of this subsection and rules adopted by the department pursuant to this subsection.

b. The amount of the refund shall be calculated by multiplying a designated rate by the total number of gallons of biodiesel produced by the biodiesel producer in this state during each quarter of a calendar year. The designated rate shall be two cents.

c. A biodiesel producer shall not be eligible to receive a refund under this subsection on more than twenty-five million gallons of biodiesel produced each calendar year by the biodiesel producer at each facility where the biodiesel producer manufactures biodiesel.

d. A person shall obtain a refund by completing forms furnished by the department and filed by the person on a quarterly basis as required by the department. The department shall refund the amount claimed by the person after subtracting any amount owing from the sales or use taxes imposed and paid upon purchases made by the person.

e. This subsection is repealed on January 1, 2025.

10. *a.* For purposes of this subsection:

(1) *"Baseball and softball complex"* means a baseball and softball complex located in

this state that has a project completion date that is after July 1, 2016, and that has a cost of construction upon completion that is at least ten million dollars.

(2) *"Change of control"* means any of the following:

(a) Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the baseball and softball complex such that more than fifty-one percent of the equity interests or voting interest in the legal entity ceases to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

(b) The original owners of the legal entity that is the owner or operator of the baseball and softball complex shall collectively cease to own or control more than fifty percent of the voting equity interests or voting interest of such legal entity or shall otherwise cease to have effective control of such legal entity.

(3) *"Iowa corporation"* means a corporation incorporated under the laws of Iowa where more than fifty-one percent of the corporation's equity interests or voting interest are owned or controlled by individuals who are residents of Iowa.

(4) *"Owner or operator"* means a legal entity where more than fifty-one percent of its equity interests or voting interest is owned or controlled by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of a baseball and softball complex and is primarily a promoter of baseball or softball tournaments, or both.

(5) *"Project completion date"* means the date on which a baseball and softball complex is placed into service.

b. The owner or operator of a baseball and softball complex that has received an award under section 15F.207, Code 2019, shall be entitled to a rebate of sales tax imposed and collected by retailers upon sales of any goods, wares, merchandise, admission tickets, or services furnished to purchasers at the baseball and softball complex.

c. The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided by the department by rule, which time period shall not be longer than quarterly.

(2) The owner or operator shall provide information as deemed necessary by the department.

(3) The transactions for which sales tax was collected and the rebate is sought occurred on or after the baseball and softball complex's project completion date or the date on which the award under section 15F.207, Code 2019, was made, whichever is later, but before the date which is ten years after the project completion date. However, the amount of rebates provided to a baseball and softball complex shall not exceed the amount of the award under section 15F.207, Code 2019, and not more than five million dollars in total rebates shall be provided pursuant to this subsection.

(4) Notwithstanding subparagraph (3), the rebate of sales tax to a baseball and softball complex shall cease for transactions occurring on or after the date of the change of control of the baseball and softball complex.

d. To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the baseball and softball complex who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the baseball and softball complex regardless of where the transactions actually occur.

e. There is established within the state treasury under the control of the department a baseball and softball complex sales tax rebate fund consisting of the amount of state sales tax revenues transferred pursuant to section 423.2A, subsection 2, paragraph "*d*". An account is created within the fund for each baseball and softball complex receiving an award under section 15F.207, Code 2019, and meeting the qualifications of this subsection. Moneys in the fund shall only be used to provide rebates of state sales tax pursuant to this subsection, and only the state sales tax revenues in the baseball and softball complex rebate fund are subject to rebate under this subsection. The amount of rebates paid from each baseball and softball complex's account within the fund shall not exceed the amount of the award under section

15F.207, Code 2019, and not more than five million dollars in total rebates shall be paid from the fund. Any moneys in the fund which represent state sales tax revenue for which the time period in paragraph "*c*" for receiving a rebate has expired, or which otherwise represent state sales tax revenue that has become ineligible for rebate pursuant to this subsection, shall immediately revert to the general fund of this state.

f. Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant from the applicable account within the baseball and softball complex rebate fund to the owner or operator in the amount equal to the amount claimed and verified by the department.

g. This subsection is repealed thirty days following the date on which five million dollars in total rebates have been provided. The director of revenue shall notify the Iowa Code editor upon occurrence of this condition.

11. *a.* For purposes of this subsection:

(1) "*Change of control*" means a change in ownership such that the fair that was the owner or operator on July 1, 2014, ceases to own a majority of the equity interests in the raceway facility.

(2) "*Fair*" means the same as defined in section 174.1.

(3) "*Owner or operator*" means a fair that is the owner or operator of a raceway facility and is a promoter of races.

(4) "*Population*" means the population based upon the 2010 certified federal census.

(5) "*Raceway facility*" means a raceway facility located as part of a racetrack and entertainment complex and located on fairgrounds, as defined in section 174.1, in a city with a population of at least seven thousand but not more than seven thousand five hundred residents, which city is located in a county with a population of at least thirty-three thousand but not more than thirty-three thousand four hundred fifty residents, and which facility was placed in service before July 1, 2014.

b. The owner or operator of a raceway facility may apply to the department for a rebate of the sales tax imposed and collected by retailers upon sales of tangible personal property or services furnished to purchasers at the raceway facility. Notwithstanding the state sales tax imposed in section 423.2, a sales tax rebate issued pursuant to this paragraph shall not exceed the amounts transferred to the raceway facility tax rebate fund pursuant to section 423.2A, subsection 2, paragraph "*g*".

c. The rebate may be obtained only in the following amounts and manner and only under the following conditions:

(1) On forms furnished by the department within the time period provided in this subparagraph. As prescribed in subparagraph (3), subparagraph division (a), the amount of a rebate shall be limited by and calculated according to the amount of project costs incurred and paid by the owner or operator on or after May 16, 2018. A rebate claim calculated according to an amount of project costs shall be considered timely only if the form upon which the rebate is requested is filed with the department within ninety days of the date the project cost is paid by the owner or operator.

(2) The owner or operator shall provide information as deemed necessary by the department, including but not limited to information to substantiate the project costs incurred and paid by the owner or operator.

(3) The transactions described in paragraph "*b*" for which sales or use tax was collected and the rebate is sought occurred on or after January 1, 2015, but before January 1, 2025. However, the total amount of rebates provided pursuant to this subsection shall not exceed the lesser of the following amounts:

(a) The amount of project costs incurred and paid by the owner or operator on or after May 16, 2018. For purposes of this subsection, "*project costs*" means costs incurred and paid by the owner or operator in connection with the construction and installation of new property or of modifications to existing property if such property upon completion of one or more projects becomes or remains part of the raceway facility and constitutes the renovation, remodeling, reconstruction, expansion, equipping, or improvement of real property that comprises the raceway facility. "*Project costs*" does not include any amount of cost that is not substantiated

to the department pursuant to subparagraphs (1) and (2) within ninety days of the date it is paid by the owner or operator.

(b) One million eight hundred thousand dollars.

(4) Notwithstanding subparagraph (3), the rebate of sales tax shall cease for transactions occurring on or after the date of the change of control of the raceway facility.

(5) The raceway facility has not received or shall not receive any grants under the community attraction and tourism program pursuant to chapter 15F, subchapter II, or the vision Iowa program pursuant to chapter 15F, subchapter III.

d. To assist the department in determining the amount of the rebate, the owner or operator shall identify to the department retailers located at the raceway facility who will be collecting sales tax. The department shall verify such identity and ensure that all proper permits have been issued. For purposes of this subsection, advance ticket and admissions sales shall be considered occurring at the raceway facility regardless of where the transactions actually occur.

e. There is established within the state treasury under the control of the department a raceway facility tax rebate fund consisting of the amount of state sales tax revenues transferred pursuant to section 423.2A, subsection 2, paragraph "*g*". An account is created within the fund for each raceway facility meeting the qualifications of this subsection. Moneys in the fund shall only be used to provide rebates of state sales tax pursuant to paragraph "*b*". The total amount of rebates paid from the fund shall not exceed the amount specified in paragraph "*c*", subparagraph (3), subparagraph division (a) or (b), whichever is less. Any moneys in the fund which represent state sales tax revenue that has become ineligible for rebate pursuant to this subsection shall immediately revert to the general fund of the state.

f. Upon determining that the conditions and requirements of this subsection and the department are met, the department shall issue a warrant to the owner or operator in the amount equal to the amount claimed and verified by the department.

g. This subsection is repealed June 30, 2025, or thirty days following the date on which one million eight hundred thousand dollars in total rebates have been provided and no overpayment of rebates exists, or thirty days following the date on which rebates cease as provided in paragraph "*c*", subparagraph (4), and no overpayment of rebates exists, whichever is earliest.

h. If the amount of rebates issued to an owner or operator under this subsection exceeds the amount allowed under this subsection, the department shall seek repayment of such excess amount. The repayment of rebates pursuant to this paragraph shall be considered a tax payment due and payable to the department by any person who has received such rebates, and the failure to make such a repayment may be treated by the department in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. In addition, the amount of rebates required to be repaid shall constitute a lien upon the real property that comprises the raceway facility that was the subject of the rebate regardless of the identity of the owner or operator of said raceway facility, and the liability shall be collected in the same manner as provided in section 422.26. Amounts required to be repaid pursuant to this paragraph shall accrue interest at the rate in effect under section 421.7 from the date of the warrant issued under paragraph "*f*".

i. The director shall adopt rules for the administration of this subsection.

2003 Acts, 1st Ex, ch 2, §97, 205; 2005 Acts, ch 110, §2; 2005 Acts, ch 134, §2; 2005 Acts, ch 160, §4, 14; 2006 Acts, ch 1001, §3; 2006 Acts, ch 1136, §3; 2006 Acts, ch 1185, §128; 2007 Acts, ch 126, §69; 2007 Acts, ch 199, §2; 2008 Acts, ch 1004, §3, 7; 2008 Acts, ch 1032, §52; 2008 Acts, ch 1128, §2, 15; 2009 Acts, ch 41, §253; 2009 Acts, ch 60, §7; 2009 Acts, ch 179, §39, 198, 199, 202, 211, 212; 2010 Acts, ch 1061, §87, 181; 2011 Acts, ch 25, §143; 2011 Acts, ch 113, §59, 60; 2011 Acts, ch 131, §66, 78; 2012 Acts, ch 1098, §3; 2014 Acts, ch 1051, §1 – 5; 2014 Acts, ch 1102, §2; 2014 Acts, ch 1104, §18; 2016 Acts, ch 1106, §11; 2016 Acts, ch 1117, §4; 2018 Acts, ch 1146, §2 – 4; 2018 Acts, ch 1161, §11, 12, 15, 16, 189 – 194, 229

Referred to in §2.48, 8G.3, 357A.15, 357E.15, 422.7(54), 422.35, 423.2A, 423.3, 476B.8, 476C.6

Legislative findings regarding rebate of state sales tax collected at an automobile racetrack facility under subsection 5; 2005 Acts, ch 110, §1

Legislative findings regarding rebate of state sales tax collected at a baseball and softball complex under subsection 10; 2012 Acts, ch 1098, §1; 2016 Acts, ch 1117, §4

2018 amendment to subsection 1, paragraph c, applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

2018 amendment to subsection 6, paragraph c, subparagraph (2), applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

2018 amendment to subsection 11, paragraphs b, c, d, e, and g, applies retroactively to January 1, 2015, for sales occurring on or after that date; 2018 Acts, ch 1146, §4

Section not amended; editorial change applied

SUBCHAPTER III

USE TAX

Referred to in §29C.24, 423.1, 423.3, 423.4, 423.19, 423.22, 423.24, 423.25, 423.36, 423.40, 423.42, 423.43, 423B.5, 423C.3, 423F.1, 423F.2, 453A.47C, 455G.9

423.5 Imposition of tax.

1. Except as provided in paragraph "*c*", an excise tax at the rate of six percent of the purchase price or installed purchase price is imposed on the following:

a. The use in this state of tangible personal property as defined in section 423.1, including aircraft subject to registration under section 328.20, purchased for use in this state. For the purposes of this subchapter, the furnishing or use of the following services is also treated as the use of tangible personal property: optional service or warranty contracts, except residential service contracts regulated under chapter 523C, vulcanizing, recapping, or retreading services, engraving, printing, or binding services, and communication service when furnished or delivered to consumers or users within this state.

b. The use of manufactured housing in this state, on the purchase price if the manufactured housing is sold in the form of tangible personal property or on the installed purchase price if the manufactured housing is sold in the form of realty.

c. An excise tax at the rate of five percent is imposed on the use of vehicles subject only to the issuance of a certificate of title and the use of manufactured housing, and on the use of leased vehicles, if the lease transaction does not require titling or registration of the vehicle, on the amount subject to tax as calculated pursuant to section 423.26, subsection 2.

d. Purchases of tangible personal property or specified digital products made from the government of the United States or any of its agencies by ultimate consumers shall be subject to the tax imposed by this section. Services purchased from the same source or sources shall be subject to the service tax imposed by this subchapter and apply to the user of the services.

e. The use in this state of services enumerated in section 423.2. This tax is applicable where the service is first used in this state.

f. (1) The use in this state of specified digital products. The tax applies whether the purchaser obtains permanent use or less than permanent use of the specified digital product, whether the use is conditioned or not conditioned upon continued payment from the purchaser, and whether the use is on a subscription basis or is not on a subscription basis.

(2) The use of a digital code that may be used to obtain or access a specified digital product shall be taxed in the same manner as the specified digital product. For purposes of this subparagraph, "*digital code*" means the same as defined in section 423.2, subsection 10.

2. The excise tax is imposed upon every person using the property within this state until the tax has been paid directly to the county treasurer, the state department of transportation, a retailer, or the department. This tax is imposed on every person using the services or the product of the services in this state until the user has paid the tax either to an Iowa use tax permit holder or to the department.

3. For the purpose of the proper administration of the use tax and to prevent its evasion, evidence that tangible personal property or specified digital products were sold by any person for delivery in this state shall be prima facie evidence that such tangible personal property or specified digital products were sold for use in this state.

4. The use tax rate of six percent is reduced to five percent on January 1, 2051.

2003 Acts, 1st Ex, ch 2, §98, 205; 2005 Acts, ch 140, §47; 2008 Acts, ch 1113, §112, 124, 129; 2008 Acts, ch 1134, §11, 13; 2008 Acts, ch 1191, §87; 2010 Acts, ch 1145, §10, 17; 2011 Acts,

ch 92, §7; 2013 Acts, ch 30, §94; 2018 Acts, ch 1161, §195 – 199, 229, 231; 2019 Acts, ch 166, §9

Referred to in §29C.15, 328.26, 423.2, 423.14, 423.14A, 423C.3

Subsection 4 amended

423.6 Exemptions.

The use in this state of the following tangible personal property, specified digital products, and services is exempted from the tax imposed by this subchapter:

1. Tangible personal property, specified digital products, and enumerated services, the sales price from the sale of which are required to be included in the measure of the sales tax, if that tax has been paid to the department or the retailer. This exemption does not include vehicles subject to registration or subject only to the issuance of a certificate of title.

2. The sale of tangible personal property, specified digital products, or the furnishing of services in the regular course of business.

3. Property used in processing. The use of property in processing within the meaning of this subsection shall mean and include any of the following:

a. Any tangible personal property including containers which it is intended shall, by means of fabrication, compounding, manufacturing, or germination, become an integral part of other tangible personal property intended to be sold ultimately at retail, and containers used in the collection, recovery, or return of empty beverage containers subject to chapter 455C.

b. Fuel which is consumed in creating power, heat, or steam for processing or for generating electric current.

c. Chemicals, solvents, sorbents, or reagents, which are directly used and are consumed, dissipated, or depleted in processing tangible personal property which is intended to be sold ultimately at retail, and which may not become a component or integral part of the finished product.

d. The distribution to the public of free newspapers or shoppers guides shall be deemed a retail sale for purposes of the processing exemption in this subsection.

4. All articles of tangible personal property and all specified digital products brought into the state of Iowa by a nonresident individual for the individual's use or enjoyment while within the state.

5. Services exempt from taxation by the provisions of section 423.3.

6. Tangible personal property, specified digital products, or services the sales price of which is exempt from the sales tax under section 423.3, except section 423.3, subsections 39 and 73, as it relates to the sale, but not the lease or rental, of vehicles subject only to the issuance of a certificate of title and as it relates to aircraft subject to registration under section 328.20.

7. Advertisement and promotional material and matter, seed catalogs, envelopes for same, and other similar material temporarily stored in this state which are acquired outside of Iowa and which, subsequent to being brought into this state, are sent outside of Iowa, either singly or physically attached to other tangible personal property sent outside of Iowa.

8. Tangible personal property which, by means of fabrication, compounding, or manufacturing, becomes an integral part of vehicles, as defined in section 321.1, subsections 41, 64A, 71, 85, and 88, manufactured for lease and actually leased to a lessee for use outside the state of Iowa and the subsequent sole use in Iowa is in interstate commerce or interstate transportation. Vehicles subject to registration which are designed primarily for carrying persons are excluded from this subsection.

9. Mobile homes and manufactured housing the use of which has previously been subject to the tax imposed under this subchapter and for which that tax has been paid.

10. Mobile homes to the extent of the portion of the purchase price of the mobile home which is not attributable to the cost of the tangible personal property used in the processing of the mobile home, and manufactured housing to the extent of the purchase price or the installed purchase price of the manufactured housing which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing. For purposes of this exemption, the portion of the purchase price which is not attributable to

the cost of the tangible personal property used in the processing of the mobile home is eighty percent and the portion of the purchase price or installed purchase price which is not attributable to the cost of the tangible personal property used in the processing of the manufactured housing is eighty percent.

11. Tangible personal property used or to be used as a ship, barge, or waterborne vessel which is used or to be used primarily in or for the transportation of property or cargo for hire on the rivers bordering the state or as materials or parts of such ship, barge, or waterborne vessel.

12. Aircraft for use in a scheduled interstate federal aviation administration certificated air carrier operation.

13. Aircraft; tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a scheduled interstate federal aviation administration certificated air carrier operation.

14. Tangible personal property permanently affixed or attached as a component part of the aircraft, including but not limited to repair or replacement materials or parts; and all services used for aircraft repair, remodeling, and maintenance services when such services are performed on aircraft, aircraft engines, or aircraft component materials or parts. For the purposes of this exemption, *"aircraft"* means aircraft used in a nonscheduled interstate federal aviation administration certificated air carrier operation operating under 14 C.F.R. ch. 1, pt. 135.

15. *a.* Aircraft sold to an aircraft dealer who in turn rents or leases the aircraft if all of the following apply:

(1) The aircraft is kept in the inventory of the dealer for sale at all times.

(2) The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.

(3) The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

b. If an aircraft exempt under this subsection is used for any purpose other than leasing or renting, or the conditions in paragraph *"a"*, subparagraphs (1), (2), and (3), are not continuously met, the dealer claiming the exemption under this subsection is liable for the tax that would have been due except for this subsection. The tax shall be computed upon the original purchase price.

16. The use in this state of building materials, supplies, or equipment, the sale or use of which is not treated as a retail sale or a sale at retail under section 423.2, subsection 1.

17. Tangible personal property exempt from the use tax as provided in section 29C.24.

2003 Acts, 1st Ex, ch 2, §99, 205; 2006 Acts, ch 1158, §45, 46; 2008 Acts, ch 1113, §41, 42; 2008 Acts, ch 1191, §64; 2011 Acts, ch 25, §88; 2013 Acts, ch 30, §95; 2016 Acts, ch 1095, §9, 14; 2018 Acts, ch 1161, §200, 201, 229

Referred to in §423C.3

SUBCHAPTER IV

UNIFORM SALES AND USE TAX ADMINISTRATION ACT

Referred to in §423.1

423.7 Title.

This subchapter shall be known and may be cited as the *"Uniform Sales and Use Tax Administration Act"*.

2003 Acts, 1st Ex, ch 2, §100, 205

423.7A Motor vehicle lease tax. Repealed by 2003 Acts, 1st Ex, ch 2, §151, 205. See §423.26.

423.8 Legislative finding and intent.

1. The general assembly finds that Iowa should enter into an agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

2. It is the intent of the general assembly that entering into this agreement will lead to simplification and modernization of the sales and use tax law and not to the imposition of new taxes or an increase or decrease in the existing number of exemptions, unless such a result is unavoidable under the terms of the agreement. Entering into this agreement should not cause businesses to sustain additional administrative burden.

3. It is the intent of the general assembly to provide Iowa sellers impacted by the agreement with the assistance necessary to alleviate administrative burdens that result in participation in the agreement.

2003 Acts, 1st Ex, ch 2, §101, 205; 2006 Acts, ch 1158, §47; 2018 Acts, ch 1026, §134

423.9 Authority to enter agreement — representatives on governing board.

1. The director is authorized and directed to enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

2. The director is further authorized to take other actions reasonably required to implement the provisions set forth in this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

3. Four representatives are authorized to be members of the governing board established pursuant to the agreement and to represent Iowa before that body as one vote. The legislator representatives shall serve terms as provided in section 69.16B. The representatives shall be appointed as follows:

a. One representative shall be a member of the house of representatives who is appointed by the speaker of the house of representatives or the delegate's designee who shall also be a member of the house of representatives.

b. One representative shall be a member of the senate who is appointed by the majority leader of the senate or the delegate's designee who shall also be a member of the senate.

c. Two representatives from the executive branch shall be appointed by the governor, one of whom shall be the director, or each delegate's designee who shall also be employed by the executive branch.

2003 Acts, 1st Ex, ch 2, §102, 205; 2006 Acts, ch 1158, §48; 2008 Acts, ch 1156, §46, 58
Referred to in §423.9A

423.9A Iowa streamlined sales tax advisory council.

1. An Iowa streamlined sales tax advisory council is created. The advisory council shall review, study, and submit recommendations to the Iowa streamlined sales and use tax representatives appointed pursuant to section 423.9, subsection 3, regarding the streamlined sales and use tax agreement formalized by the project's member states on November 12, 2002, agreement amendments, proposed language conforming Iowa's sales and use tax to the national agreement, and the following issues:

a. Uniform definitions proposed in the current agreement and future proposals.

b. Effects upon taxability of items newly defined in Iowa.

c. Impacts upon business as a result of the agreement.

d. Technology implementation issues.

e. Any other issues that are brought before the streamlined sales and use tax member states or the streamlined sales and use tax governing board.

2. The department shall provide administrative support to the Iowa streamlined sales tax advisory council. The advisory council shall be representative of Iowa's business community and economy when reviewing and recommending solutions to streamlined sales and use tax issues. The advisory council shall provide the general assembly and the governor with final

recommendations made to the Iowa streamlined sales and use tax representatives upon the conclusion of each calendar year.

3. The director, in consultation with the Iowa taxpayers association, Iowa retail federation, and the Iowa association of business and industry, shall appoint members to the Iowa streamlined sales tax advisory council, which shall consist of the following members:

a. One member from the department.

b. Three members representing small Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.

c. Three members representing medium Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.

d. Three members representing large Iowa businesses, at least one of whom shall be a retailer, and at least one of whom shall be a supplier.

e. One member representing taxpayers as a whole.

f. One member representing the retail community as a whole.

g. Any other member representative of business the director deems appropriate.

2006 Acts, ch 1158, §49; 2007 Acts, ch 22, §76

423.10 Relationship to state law.

Entry into the agreement by the director does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, shall be by action of the general assembly.

2003 Acts, 1st Ex, ch 2, §103, 205

423.11 Agreement requirements.

The director shall not enter into the agreement unless the agreement requires each state to abide by the following requirements:

1. *Uniform state rate.* The agreement must set restrictions to achieve more uniform state rates through the following:

a. Limiting the number of state rates.

b. Limiting the application of maximums on the amount of state tax that is due on a transaction.

c. Limiting the application of thresholds on the application of state tax.

2. *Uniform standards.* The agreement must establish uniform standards for the following:

a. The sourcing of transactions to taxing jurisdictions.

b. The administration of exempt sales.

c. The allowances a seller can take for bad debts.

d. Sales and use tax returns and remittances.

3. *Uniform definitions.* The agreement must require states to develop and adopt uniform definitions of sales and use tax terms. The definitions must enable a state to preserve its ability to make policy choices not inconsistent with the uniform definitions.

4. *Central registration.* The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all member states.

5. *No nexus attribution.* The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the member states must not be used as a factor in determining whether the seller has nexus with a state for any tax.

6. *Local sales and use taxes.* The agreement must provide for reduction of the burdens of complying with local sales and use taxes through the following:

a. Restricting variances between the state and local tax bases.

b. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes must not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.

c. Restricting the frequency of changes in the local sales and use tax rates and setting

effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.

d. Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

7. *Monetary allowances.* The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers.

8. *State compliance.* The agreement must require each state to certify compliance with the terms of the agreement prior to joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

9. *Consumer privacy.* The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

10. *Advisory councils.* The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

2003 Acts, 1st Ex, ch 2, §104, 205

Referred to in §423.1

423.12 Limited binding and beneficial effect.

1. The agreement binds and inures only to the benefit of Iowa and the other member states. A person, other than a member state, is not an intended beneficiary of the agreement. Any benefit to a person other than a member state is established by the law of Iowa and not by the terms of the agreement.

2. A person shall not have any cause of action or defense under the agreement or by virtue of this state's entry into the agreement. A person may not challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

3. A law of this state, or the application of it, shall not be declared invalid as to any such person or circumstance on the ground that the provision or application is inconsistent with the agreement.

2003 Acts, 1st Ex, ch 2, §105, 205

SUBCHAPTER V

SALES AND USE TAX ACT ADMINISTRATION — RETAILERS NOT REGISTERED UNDER AGREEMENT — CONSUMERS OBLIGATED TO PAY USE TAX DIRECTLY

423.13 Purpose of this subchapter.

The purpose of this subchapter is to provide for the administration and collection of sales or use tax on the part of retailers who are not registered under the agreement and for the collection of use tax on the part of consumers who are obligated to pay that tax directly. Any application of the sections of this subchapter to retailers registered under the agreement is only by way of incorporation by reference into subchapter VI of this chapter.

2003 Acts, 1st Ex, ch 2, §106, 205

423.13A Administration — effectiveness of agreements with retailers.

1. Notwithstanding any provision of this chapter to the contrary, any ruling, agreement, or contract, whether written or oral, express or implied, entered into after July 1, 2013, between a retailer and a state agency that provides that a retailer is not required to collect sales and use tax in this state despite the presence in this state of a warehouse, distribution center, or fulfillment center that is owned and operated by the retailer or an affiliate of the retailer shall

be null and void unless such ruling, agreement, or contract is approved, by resolution, by a majority vote of each house of the general assembly.

2. For purposes of this section, *"state agency"* means the executive branch, including any executive department, commission, board, institution, division, bureau, office, agency, or other entity of state government. *"State agency"* does not mean the general assembly, or the judicial branch as provided in section 602.1102.

2013 Acts, ch 122, §2

423.14 Sales and use tax collection.

1. *a.* Sales tax, other than that described in paragraph *"c"*, shall be collected by sellers who are retailers or by their agents. Sellers or their agents shall, as far as practicable, add the sales tax, or the average equivalent thereof, to the sales price or charge, less trade-ins allowed and taken and when added such tax shall constitute a part of the sales price or charge, shall be a debt from consumer or user to seller or agent until paid, and shall be recoverable at law in the same manner as other debts.

b. In computing the tax to be collected as the result of any transaction, the tax computation must be carried to the third decimal place. Whenever the third decimal place is greater than four, the tax must be rounded up to the next whole cent; whenever the third decimal place is four or less, the tax must be rounded downward to a whole cent. Sellers may elect to compute the tax due on transactions on an item or invoice basis. Sellers are not required to use a bracket system.

c. The tax imposed upon those sales of motor fuel which are subject to tax and refund under chapter 452A shall be collected by the state treasurer by way of deduction from refunds otherwise allowable under that chapter. The treasurer shall transfer the amount of such deductions from the motor vehicle fuel tax fund to the special tax fund.

2. Use tax shall be collected in the following manner:

a. The tax upon the use of all vehicles subject only to the issuance of a certificate of title shall be collected by the county treasurer or the state department of transportation pursuant to section 423.26, subsection 1. The county treasurer shall retain one dollar from each tax payment collected, to be credited to the county general fund.

b. The tax upon the use of all tangible personal property and specified digital products other than that enumerated in paragraph *"a"*, which is sold by a seller who is a retailer or its agent that is not otherwise required to collect sales tax under the provisions of this chapter, shall be collected by the retailer or agent and remitted to the department, pursuant to the provisions of paragraph *"e"*, and sections 423.24, 423.29, 423.30, 423.32, and 423.33.

c. The tax upon the use of all tangible personal property and specified digital products not paid pursuant to paragraphs *"a"* and *"b"* shall be paid to the department directly by any person using the property within this state, pursuant to the provisions of section 423.34.

d. The tax imposed on the use of services enumerated in section 423.5 shall be collected, remitted, and paid to the department of revenue in the same manner as use tax on tangible personal property is collected, remitted, and paid under this subchapter.

e. All persons obligated by paragraph *"a"*, *"b"*, or *"d"*, to collect use tax shall, as far as practicable, add that tax, or the average equivalent thereof, to the purchase price, less trade-ins allowed and taken, and when added the tax shall constitute a part of the purchase price. Use tax which this section requires to be collected by a retailer and any tax collected pursuant to this section by a retailer shall constitute a debt owed by the retailer to this state. Tax which must be paid directly to the department, pursuant to paragraph *"c"* or *"d"*, is to be computed and added by the consumer or user to the purchase price in the same manner as this paragraph requires a seller to compute and add the tax. The tax shall be a debt from the consumer or user to the department until paid, and shall be recoverable at law in the same manner as other debts.

2003 Acts, 1st Ex, ch 2, §107, 205; 2006 Acts, ch 1142, §83; 2008 Acts, ch 1113, §43; 2010 Acts, ch 1108, §5, 15; 2018 Acts, ch 1161, §202, 229

Referred to in §99G.30A, 321.105A, 331.557, 421.26, 423.14A, 423.33, 423.35, 423.57, 423.58, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.14A Persons required to collect sales and use tax — supplemental conditions, requirements, and responsibilities.

1. For purposes of this section:

a. *"Iowa sales"* means sales of tangible personal property, services, or specified digital products sourced to this state pursuant to section 423.15, 423.16, 423.17, 423.19, or 423.20, or that are otherwise sold in this state or for delivery into this state.

b. (1) *"Marketplace facilitator"* means a person, including any affiliate of the person, who facilitates a retail sale by satisfying subparagraph divisions (a) and (b) as follows:

(a) The person directly or indirectly does any of the following:

(i) Lists, makes available, or advertises tangible personal property, services, or specified digital products for sale by a marketplace seller in a marketplace owned, operated, or controlled by the person.

(ii) Facilitates the sale of a marketplace seller's product through a marketplace by transmitting or otherwise communicating an offer or acceptance of a retail sale of tangible personal property, services, or specified digital products between a marketplace seller and a purchaser in a forum including a shop, store, booth, catalog, internet site, or similar forum.

(iii) Owns, rents, licenses, makes available, or operates any electronic or physical infrastructure or any property, process, method, copyright, trademark, or patent that connects marketplace sellers to purchasers for the purpose of making retail sales of tangible personal property, services, or specified digital products.

(iv) Provides a marketplace for making retail sales of tangible personal property, services, or specified digital products, or otherwise facilitates retail sales of tangible personal property, services, or specified digital products, regardless of ownership or control of the tangible personal property, services, or specified digital products that are the subject of the retail sale.

(v) Provides software development or research and development activities related to any activity described in this subparagraph division (a), if such software development or research and development activities are directly related to the physical or electronic marketplace provided by a marketplace provider.

(vi) Provides or offers fulfillment or storage services for a marketplace seller.

(vii) Sets prices for a marketplace seller's sale of tangible personal property, services, or specified digital products.

(viii) Provides or offers customer service to a marketplace seller or a marketplace seller's customers, or accepts or assists with taking orders, returns, or exchanges of tangible personal property, services, or specified digital products sold by a marketplace seller.

(ix) Brands or otherwise identifies sales as those of the marketplace facilitator.

(b) The person directly or indirectly does any of the following:

(i) Collects the sales price or purchase price of a retail sale of tangible personal property, services, or specified digital products.

(ii) Provides payment processing services for a retail sale of tangible personal property, services, or specified digital products.

(iii) Charges, collects, or otherwise receives selling fees, listing fees, referral fees, closing fees, fees for inserting or making available tangible personal property, services, or specified digital products on a marketplace, or other consideration from the facilitation of a retail sale of tangible personal property, services, or specified digital products, regardless of ownership or control of the tangible personal property, services, or specified digital products that are the subject of the retail sale.

(iv) Through terms and conditions, agreements, or arrangements with a third party, collects payment in connection with a retail sale of tangible personal property, services, or specified digital products from a purchaser and transmits that payment to the marketplace seller, regardless of whether the person collecting and transmitting such payment receives compensation or other consideration in exchange for the service.

(v) Provides a virtual currency that purchasers are allowed or required to use to purchase tangible personal property, services, or specified digital products.

(2) *"Marketplace facilitator"* includes but is not limited to a person who satisfies the

requirements of this paragraph through the ownership, operation, or control of a digital distribution service, digital distribution platform, online portal, or application store.

(3) A person who is not required to collect and remit automobile rental excise tax pursuant to section 423C.3, subsection 3, shall not be considered a *"marketplace facilitator"* with respect to any sale of a transportation service under section 423.2, subsection 6, paragraph *"bf"*, or section 423.5, subsection 1, paragraph *"e"*, consisting of the rental of vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less.

c. *"Marketplace seller"* means any of the following:

(1) A seller that makes retail sales through any physical or electronic marketplace owned, operated, or controlled by a marketplace facilitator, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such marketplace.

(2) A seller that makes retail sales resulting from a referral by a referrer, even if such seller would not have been required to collect and remit sales and use tax had the sale not been made through such referrer.

2. In addition to and not in lieu of any application of this chapter to sellers who are retailers and sellers who are retailers maintaining a place of business in this state, any person described in subsection 3, or the person's agents, shall be considered a retailer in this state and a retailer maintaining a place of business in this state for purposes of this chapter on or after January 1, 2019, and shall be subject to all requirements of this chapter imposed on retailers and retailers maintaining a place of business in this state, including but not limited to the requirement to collect and remit sales and use taxes pursuant to sections 423.14 and 423.29, and local option taxes under chapter 423B.

3. *a.* A retailer that has gross revenue from Iowa sales equal to or exceeding one hundred thousand dollars for an immediately preceding calendar year or a current calendar year.

b. (1) A retailer that owns, licenses, or uses software or data files that are installed or stored on property used in this state. For purposes of this subparagraph, *"software or data files"* include but are not limited to software that is affirmatively downloaded by a user, software that is downloaded as a result of the use of a website, preloaded software, and cookies.

(2) A retailer that uses in-state software to make Iowa sales. For purposes of this subparagraph, *"in-state software"* means computer software that is installed or stored on property located in this state or that is distributed within this state for the purpose of facilitating a sale by the retailer.

(3) A retailer that provides, or enters into an agreement with another person to provide, a content distribution network in this state to facilitate, accelerate, or enhance the delivery of the retailer's internet site to purchasers. For purposes of this subparagraph, *"content distribution network"* means a system of distributed servers that deliver internet sites and other internet content to a user based on the geographic location of the user, the origin of the internet site or internet content, and a content delivery server.

(4) This paragraph *"b"* shall not apply to a retailer that has gross revenue from Iowa sales of less than one hundred thousand dollars for an immediately preceding calendar year or a current calendar year.

c. (1) A marketplace facilitator that makes or facilitates Iowa sales on its own behalf or for one or more marketplace sellers equal to or exceeding one hundred thousand dollars for an immediately preceding calendar year or a current calendar year.

(2) A marketplace facilitator shall collect sales and use tax on the entire sales price or purchase price paid by a purchaser on each Iowa sale subject to sales and use tax that is made or facilitated by the marketplace facilitator, regardless of whether the marketplace seller for whom an Iowa sale is made or facilitated has or is required to have a retail sales tax permit or would have been required to collect sales and use tax had the sale not been facilitated by the marketplace facilitator, and regardless of the amount of the sales price or purchase price that will ultimately accrue to or benefit the marketplace facilitator, the marketplace seller, or any other person. This sales and use tax collection responsibility of a marketplace facilitator

applies but shall not be limited to sales facilitated through a computer software application, commonly referred to as in-app purchases, or through another specified digital product.

(3) A marketplace facilitator shall be relieved of liability under this paragraph "*c*" for failure to collect and remit sales and use tax on an Iowa sale made or facilitated for a marketplace seller under the following circumstances and up to the amounts permitted under the following circumstances:

(a) If the marketplace facilitator demonstrates to the satisfaction of the department that the marketplace facilitator has made a reasonable effort to obtain accurate information from the marketplace seller about a retail sale and that the failure to collect and remit the correct tax was due to incorrect information provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator shall be relieved of liability for that retail sale. This subparagraph division does not apply with regard to a retail sale for which the marketplace facilitator is the seller or if the marketplace facilitator and the seller are affiliates. For Iowa sales for which a marketplace facilitator is relieved of liability under this subparagraph division, the marketplace seller and purchaser are liable for any amount of uncollected, unpaid, or unremitted tax.

(b) (i) Subject to the limitation in subparagraph subdivision (ii), if the marketplace facilitator demonstrates to the satisfaction of the department that the Iowa sale was made or facilitated for a marketplace seller prior to January 1, 2026, through a marketplace of the marketplace facilitator, that the marketplace facilitator is not the seller and that the marketplace facilitator and the seller are not affiliates, and that the failure to collect sales and use tax was due to an error other than an error in sourcing the sale. To the extent that a marketplace facilitator is relieved of liability for collection of sales and use tax under this subparagraph division, the marketplace seller for whom the marketplace facilitator has made or facilitated the Iowa sale is also relieved of liability. The department may determine the manner in which a marketplace facilitator or marketplace seller shall claim the liability relief provided in this subparagraph division.

(ii) The liability relief provided in subparagraph subdivision (i) shall not exceed the following percentage of the total sales and use tax due on Iowa sales made or facilitated by a marketplace facilitator for marketplace sellers and sourced to this state during a calendar year, which Iowa sales shall not include sales by the marketplace facilitator or affiliates of the marketplace facilitator:

(A) For Iowa sales made or facilitated during the 2019 calendar year, ten percent.

(B) For Iowa sales made or facilitated during calendar years 2020 through 2024, five percent.

(C) For Iowa sales made or facilitated during the 2025 calendar year, three percent.

(c) Nothing in this subparagraph (3) shall be construed to relieve any person of liability for collecting but failing to remit to the department sales and use tax.

(d) A marketplace facilitator is deemed to be an agent of any marketplace seller making retail sales through a marketplace of the marketplace facilitator.

d. (1) A referrer if, for any immediately preceding calendar year or a current calendar year, one hundred thousand dollars or more in Iowa sales result from referrals from a platform of the referrer. A referrer is not required to collect and remit sales and use tax pursuant to this paragraph if the referrer does all of the following:

(a) The referrer posts a conspicuous notice on each platform of the referrer that includes all of the following:

(i) A statement that sales or use tax is due on certain purchases.

(ii) A statement that the marketplace seller from whom the person is purchasing on the platform may or may not collect and remit sales and use tax on a purchase.

(iii) A statement that Iowa requires the purchaser to pay sales or use tax and file sales or use tax returns if sales or use tax is not collected at the time of the sale by the marketplace seller.

(iv) Information informing the purchaser that the notice is provided under the requirements of this subparagraph.

(v) Instructions for obtaining additional information from the department regarding whether and how to remit sales and use tax to the state of Iowa.

(b) The referrer provides a monthly notice to each marketplace seller to whom the referrer made a referral of a potential customer located in Iowa during the previous calendar year, which monthly notice shall contain all of the following:

(i) A statement that Iowa imposes a sales or use tax on Iowa sales.

(ii) A statement that a marketplace facilitator or other retailer making Iowa sales must collect and remit sales and use tax.

(iii) Instructions for obtaining additional information from the department regarding the collection and remittance of Iowa sales and use tax.

(c) The referrer provides the department with annual reports in an electronic format and in the manner prescribed by the department, which annual reports contain all of the following:

(i) A list of marketplace sellers who received the referrer's notice under subparagraph division (b).

(ii) A list of marketplace sellers that collect and remit Iowa sales and use tax and that list or advertise the marketplace seller's products for sale on a platform of the referrer.

(iii) An affidavit signed under penalty of perjury from an officer of the referrer affirming that the referrer made reasonable efforts to comply with the applicable sales and use tax notice and reporting requirements of this subparagraph.

(2) A referrer is deemed to be an agent of any marketplace seller making retail sales resulting from a referral of the referrer.

(3) For purposes of this paragraph:

(a) *"Platform"* means an electronic or physical medium, including but not limited to an internet site or catalog, that is owned, operated, or controlled by a referrer.

(b) *"Referral"* means the transfer through telephone, internet link, or other means by a referrer of a potential customer to a retailer or seller who advertises or lists products for sale on a platform of the referrer.

(c) (i) *"Referrer"* means a person who does all of the following:

(A) Contracts or otherwise agrees with a retailer, seller, or marketplace facilitator to list or advertise for sale a product of the retailer, seller, or marketplace facilitator on a platform, provided such listing or advertisement identifies whether or not the retailer, seller, or marketplace facilitator collects sales and use tax.

(B) Receives a commission, fee, or other consideration from the retailer, seller, or marketplace facilitator for the listing or advertisement.

(C) Provides referrals to a retailer, seller, or marketplace facilitator, or an affiliate of a retailer, seller, or marketplace facilitator.

(D) Does not collect money or other consideration from the customer for the transaction.

(ii) *"Referrer"* does not include any of the following:

(A) A person primarily engaged in the business of printing or publishing a newspaper.

(B) A person who does not provide the retailer's, seller's, or marketplace facilitator's shipping terms and who does not advertise whether a retailer, seller, or marketplace facilitator collects sales or use tax.

(4) This paragraph only applies to referrals by a referrer and shall not preclude the applicability of other provisions of this section to a person who is a referrer and is also a retailer, a marketplace facilitator, or a marketplace seller.

(5) This paragraph is subject to implementation by the department by rule and shall not require a referrer to collect tax or comply with the notice and reporting requirements and other provisions of this paragraph unless and until such administrative rules take effect.

e. (1) A retailer that makes Iowa sales through the use of a solicitor. For purposes of this paragraph, *"solicitor"* means a person that directly or indirectly solicits business for a retailer.

(2) (a) A retailer is deemed to have a solicitor in this state if the retailer enters into an agreement with a resident under which the resident, for a commission, fee, or other similar consideration, directly or indirectly refers potential customers, whether by link on an internet site, or otherwise, to the retailer. This determination may be rebutted by a showing of proof that the resident with whom the retailer has an agreement did not engage in any solicitation in this state on behalf of the retailer that would satisfy the nexus requirement of the United States Constitution during the calendar year in question.

(b) This subparagraph (2) shall not apply to a retailer that has Iowa gross revenue from Iowa sales of ten thousand dollars or less for an immediately preceding calendar year or a current calendar year.

(c) For purposes of this subparagraph (2):

(i) *"Iowa gross revenue"* means gross revenue from Iowa sales to purchasers who were referred to the retailer by all solicitors who are residents.

(ii) *"Resident"* includes an individual who is a resident of this state, as defined in section 422.4, and any business that owns any tangible or intangible property with a situs in this state, or that has one or more employees performing or providing services for the business in this state.

(d) This paragraph *"e"* does not apply to chapter 422 and does not expand or contract the state's jurisdiction to tax a trade or business under chapter 422.

f. A retailer that owns, controls, rents, licenses, makes available, or uses any tangible or intangible property in this state or with a situs in this state, to make or otherwise facilitate a retail sale.

g. (1) Any person that enters into a contract or agreement with a governmental entity, including but not limited to contracts for the provision of financial assistance or incentives such as a tax credit, forgivable loan, grant, tax rebate, or any other thing of value. For purposes of this subparagraph, *"governmental entity"* means any unit of government in the executive, legislative, or judicial branch, or any political subdivision of the state, including but not limited to a city, county, township, or school district.

(2) Every bid submitted and each contract or agreement executed by a state agency shall contain a certification by the bidder or contractor stating that the bidder or contractor is registered with the department pursuant to this chapter and will collect and remit Iowa sales and use tax due under this chapter. In the certification, the bidder or contractor shall also acknowledge that the state agency may declare the contractor or bid void if the certification is false or becomes false. Fraudulent certification, by act or omission, may result in the state agency or its representative filing for damages for breach of contract.

h. Any affiliate of any person that is required to collect and remit sales and use tax under this chapter, provided the affiliate makes retail sales.

2018 Acts, ch 1161, §203, 229; 2019 Acts, ch 152, §25 – 29, 35
Referred to in §421.26, 423.1, 423.3, 423.14B, 423.15, 423.33, 423.57, 423.58, 423B.6
Subsection 1, paragraph b, subparagraph (3) amended
Subsection 3 amended

423.14B Sales and use tax reporting requirements — penalties.

1. For purposes of this section, *"Iowa sales"* and *"marketplace facilitator"* all mean the same as defined in section 423.14A.

2. The department may, in its discretion, adopt rules pursuant to chapter 17A establishing and imposing notice and reporting requirements related to Iowa sales for retailers, including but not limited to marketplace facilitators, who do not collect and remit sales and use tax under this chapter. The rules may include but are not limited to rules requiring retailers, including but not limited to marketplace facilitators, to do any of the following:

a. Notify purchasers at the time of an Iowa sales transaction of sales and use tax obligations under this chapter.

b. Provide purchasers with periodic reports of purchases that are Iowa sales.

c. Provide the department with annual reports that include but are not limited to information relating to purchases, purchasers, and Iowa sales.

3. *a.* The department may adopt rules pursuant to chapter 17A establishing and imposing penalties as described in and subject to the dollar limitations of paragraph *"b"*, provided that any such penalty shall include a procedure for waiver of the penalty upon a showing of reasonable cause for such failure.

b. (1) The department may impose penalties for failure to provide a notification to a purchaser in the manner and form prescribed by the department by rule. Such penalties shall not exceed five dollars for each failure.

(2) The department may impose penalties for failure to provide a purchaser with a

periodic report of purchases in the manner and form prescribed by the department by rule. Such penalties shall not exceed ten dollars for each failure.

(3) The department may impose penalties for failure to provide the department with an annual report in the manner and form prescribed by the department. Such penalties shall not exceed an amount per annual report equal to ten dollars multiplied by the number of purchasers for whom information should have been but was not included in the annual report.

2018 Acts, ch 1161, §204, 229

Referred to in §423.57, 423.58

423.15 General sourcing rules.

All sales of tangible personal property, services, or specified digital products, except those sales enumerated in section 423.16, shall be sourced according to this section by sellers obligated to collect Iowa sales and use tax. The sourcing rules described in this section apply to sales of tangible personal property, specified digital products, and all services other than telecommunications services. This section only applies to determine a seller's obligation to pay or collect and remit Iowa sales or use tax with respect to the seller's sale of a product. This section does not affect the obligation of a purchaser or lessee to remit tax on the use of the product to the taxing jurisdictions in which the use occurs. A seller's obligation to collect Iowa sales tax or Iowa use tax only occurs if the sale is sourced to this state. Iowa sales tax applies to a sale sourced to Iowa made by a seller subject to section 423.1, subsection 48, or section 423.14A.

1. Sales, excluding leases or rentals, of products shall be sourced as follows:

a. When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

b. When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

c. When paragraphs "*a*" and "*b*" do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

d. When paragraphs "*a*", "*b*", and "*c*" do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

e. When paragraphs "*a*", "*b*", "*c*", and "*d*" do not apply, including the circumstance where the seller is without sufficient information to apply the previous rules, then the location will be determined by the address from which tangible personal property was shipped, from which the specified digital product or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided disregarding for these purposes any location that merely provided the digital transfer of the product sold.

2. The lease or rental of tangible personal property, other than property identified in subsection 3 or section 423.16, shall be sourced as follows:

a. For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with the provisions of subsection 1. Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection 1.

c. This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

3. The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection 1, notwithstanding the exclusion of lease or rental in that subsection. *"Transportation equipment"* means any of the following:

a. Locomotives or railcars that are utilized for the carriage of persons or property in interstate commerce.

b. Trucks and truck-tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that meet both of the following requirements:

(1) Are registered through the international registration plan.

(2) Are operated under authority of a carrier authorized and certificated by the United States department of transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.

c. Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.

d. Containers designed for use on and component parts attached or secured on the items set forth in paragraphs *"a"* through *"c"*.

2003 Acts, 1st Ex, ch 2, §108, 205; 2005 Acts, ch 140, §12; 2011 Acts, ch 92, §8; 2018 Acts, ch 1161, §205, 206, 229

Referred to in §99G.30A, 423.14A, 423.16, 423.17, 423.19, 423.20, 423.57, 423B.5, 423B.6, 423C.4

423.16 Transactions to which the general sourcing rules do not apply.

Section 423.15 does not apply to sales or use taxes levied on the following:

1. The retail sale or transfer of watercraft, modular homes, or mobile homes, and the retail sale, excluding lease or rental, of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3.

2. The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3, which shall be sourced in accordance with section 423.17.

3. Transactions to which direct mail sourcing is applicable, which shall be sourced in accordance with section 423.19.

4. Telecommunications services, as set out in section 423.20, which shall be sourced in accordance with section 423.20, subsection 2.

2003 Acts, 1st Ex, ch 2, §109, 205; 2007 Acts, ch 179, §2; 2010 Acts, ch 1108, §6, 15

Referred to in §423.14A, 423.15, 423.57

423.17 Sourcing rules for various types of leased or rented equipment which is not transportation equipment.

The lease or rental of motor vehicles, trailers, semitrailers, or aircraft that do not qualify as transportation equipment, as defined in section 423.15, subsection 3, shall be sourced as follows:

1. For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.

2. For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of section 423.15, subsection 1.

3. This section does not affect the imposition or computation of sales or use tax on leases

or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

2003 Acts, 1st Ex, ch 2, §110, 205
Referred to in §423.14A, 423.16, 423.57, 423B.5

423.18 Multiple points of use exemption forms. Repealed by 2007 Acts, ch 179, §9.

423.19 Direct mail sourcing.

1. Notwithstanding section 423.15, the following provisions apply to sales of advertising and promotional direct mail:

a. A purchaser of advertising and promotional direct mail may provide the seller with one of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

(3) Information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered to the recipient.

b. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph "*a*", subparagraph (1) or (2), then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving advertising and promotional direct mail to which the permit, certificate, or approved written statement applies. In such a transaction, the purchaser shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered to the recipient and shall report and pay any tax due accordingly.

(2) If the purchaser provides the seller information showing the jurisdiction to which the advertising and promotional direct mail is to be delivered pursuant to paragraph "*a*", subparagraph (3), the seller shall source the sale to the jurisdiction in which the advertising and promotional direct mail is to be delivered and shall collect and remit the tax due accordingly. If the seller has sourced the sale according to the delivery information provided by the purchaser, then, in the absence of bad faith, the seller is relieved of any further obligation to collect tax on the sale of the advertising and promotional direct mail.

c. (1) If the purchaser fails to provide the seller with one of the items listed in paragraph "*a*", the sale shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph "*e*".

(2) If a sale is sourced to this state pursuant to subparagraph (1), the full amount of the tax imposed by subchapter II or III, as applicable, is due from the purchaser, notwithstanding section 423.22.

2. Notwithstanding section 423.15, sales of other direct mail are subject to all of the following:

a. Except as otherwise provided in this subsection, the sale of other direct mail shall be sourced pursuant to the sourcing directive described in section 423.15, subsection 1, paragraph "*c*".

b. A purchaser of other direct mail may provide the seller with either of the following:

(1) A direct pay permit.

(2) An agreement certificate of exemption claiming to be direct mail, or a similar written statement, if the statement is approved, authorized, or accepted by the department.

c. (1) If the purchaser provides the seller a permit, a certificate of exemption, or an approved written statement pursuant to paragraph "*b*", then, in the absence of bad faith, the seller is relieved of the obligation to collect, pay, or remit tax on a transaction involving other direct mail to which the permit, certificate, or approved written statement applies.

(2) Notwithstanding paragraph "*a*", the sale of other direct mail under the circumstances described in subparagraph (1) shall be sourced to the jurisdiction in which the other direct mail is to be delivered to the recipient, and the purchaser shall report and pay any tax due accordingly.

2003 Acts, 1st Ex, ch 2, §112, 205; 2011 Acts, ch 92, §9
Referred to in §423.14A, 423.16, 423.57, 423B.5

423.20 Telecommunications service sourcing.

1. As used in this section:

a. *"Air-to-ground radiotelephone service"* means a radio service, as that term is used in 47 C.F.R. §22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

b. *"Call-by-call basis"* means any method of charging for the telecommunications service where the price is measured by individual calls.

c. *"Communications channel"* means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

d. *"Customer"* means the person or entity that contracts with the seller of the telecommunications service. If the end user of the telecommunications service is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service, but this sentence only applies for the purpose of sourcing sales of the telecommunications service under this section. *"Customer"* does not include a reseller of a telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

e. *"Customer channel termination point"* means the location where the customer either inputs or receives the communications.

f. *"End user"* means the person who utilizes the telecommunications service. In the case of an entity, *"end user"* means the individual who utilizes the service on behalf of the entity.

g. *"Home service provider"* means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §124(5).

h. *"Mobile telecommunications service"* means the same as that term is defined in the federal Mobile Telecommunications Sourcing Act, Pub. L. No. 106-252, 4 U.S.C. §124(7).

i. *"Place of primary use"* means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications service, *"place of primary use"* must be within the licensed service area of the home service provider.

j. *"Postpaid calling service"* means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A *"postpaid calling service"* includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

k. *"Prepaid calling service"* means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

l. *"Prepaid wireless calling service"* means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the amount declines with use in a known amount.

m. *"Private communication service"* means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

n. *"Service address"* means one of the following:

(1) The location of the telecommunications equipment to which a customer's call is

charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(2) If the location in subparagraph (1) is not known, *"service address"* means the origination point of the signal of the telecommunications service first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) If the locations in subparagraphs (1) and (2) are not known, the *"service address"* means the location of the customer's place of primary use.

2. Sales of telecommunications services shall be sourced in the following manner:

a. Except for the defined telecommunications services in paragraph "*c*", the sale of telecommunications services sold on a call-by-call basis shall be sourced to one of the following:

(1) Each level of taxing jurisdiction where the call originates and terminates in that jurisdiction.

(2) Each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

b. Except for the defined telecommunications services in paragraph "*c*", a sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

c. Sale of the following telecommunications services shall be sourced to each level of taxing jurisdiction as follows:

(1) A sale of mobile telecommunications services other than air-to-ground radiotelephone service, prepaid calling service, or prepaid wireless calling service is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

(2) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either of the following:

(a) The seller's telecommunications system.

(b) Information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) A sale of prepaid calling service or a sale of prepaid wireless calling service is sourced in accordance with section 423.15. However, in the case of a sale of a prepaid wireless calling service, the rule provided in section 423.15, subsection 1, paragraph "*e*", shall include as an option the location associated with the mobile telephone number.

(4) A sale of a private telecommunications service is sourced as follows:

(a) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(b) Service where all customer termination points are located entirely within one jurisdiction or level of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(c) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of a channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(d) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in such jurisdiction by the total number of customer channel termination points.

2003 Acts, 1st Ex, ch 2, §113, 205; 2006 Acts, ch 1158, §72 – 74, 80

Referred to in §34A.7B, 423.14A, 423.16, 423.57, 423B.5

423.21 Bad debt deductions.

1. For the purposes of this section, *"bad debt"* means an amount properly calculated pursuant to section 166 of the Internal Revenue Code then adjusted to exclude financing charges or interest, sales or use taxes charged on the purchase price, uncollectible amounts

on property that remain in the possession of the seller until the full purchase price is paid, expenses incurred in attempting to collect any debt, and repossessed property.

2. In computing the amount of tax due, a seller may deduct bad debts from the total amount upon which the tax is calculated for any return. Any deduction taken or refund paid which is attributed to bad debts shall not include interest.

3. A seller may deduct bad debts on the return for the period during which the bad debt is written off as uncollectible in the seller's books and records and is eligible to be deducted for federal income tax purposes. For purposes of this subsection, a seller who is not required to file federal income tax returns may deduct a bad debt on a return filed for the period in which the bad debt is written off as uncollectible in the seller's books and records and would be eligible for a bad debt deduction for federal income tax purposes if the seller were required to file a federal income tax return.

4. If a deduction is taken for a bad debt and the seller subsequently collects the debt in whole or in part, the tax on the amount so collected must be paid and reported on the return filed for the period in which the collection is made.

5. A seller may obtain a refund of tax on any amount of bad debt that exceeds the amount of taxable sales within the period allowed for refund claims by section 423.47. However, the period allowed for refund claims shall be measured from the due date of the return on which the bad debt could first be claimed.

6. For the purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payments made on a debt or account shall be applied first to the price of the property or service and tax thereon, proportionally, and secondly to interest, service charges, and any other charges.

2003 Acts, 1st Ex, ch 2, §114, 205
Referred to in §423.53, 423.57

423.22 Taxation in another state.

If any person who causes tangible personal property or specified digital products to be brought into this state or who uses in this state services enumerated in section 423.2 has already paid a tax in another state in respect to the sale or use of the property or the performance of the service, or an occupation tax in respect to the property or service, in an amount less than the tax imposed by subchapter II or III, the provisions of those subchapters shall apply, but at a rate measured by the difference only between the rate fixed by subchapter II or III and the rate by which the previous tax on the sale or use, or the occupation tax, was computed. If the tax imposed and paid in the other state is equal to or more than the tax imposed by those subchapters, then a tax is not due in this state on the personal property or service.

2003 Acts, 1st Ex, ch 2, §115, 205; 2018 Acts, ch 1161, §207, 229
Referred to in §423.19, 423.26A, 423.57

423.23 Sellers' agreements.

Agreements between competing sellers, or the adoption of appropriate rules and regulations by organizations or associations of sellers to provide uniform methods for adding sales or use tax or the average equivalent thereof, and which do not involve price-fixing agreements otherwise unlawful, are expressly authorized and shall be held not in violation of chapter 553 or other antitrust laws of this state. The director shall cooperate with sellers, organizations, or associations in formulating agreements and rules.

2003 Acts, 1st Ex, ch 2, §116, 205
Referred to in §99G.30A, 321.105A, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.24 Absorbing tax prohibited.

A seller shall not advertise or hold out or state to the public or to any purchaser, consumer, or user, directly or indirectly, that the taxes or any parts thereof imposed by subchapter II or III will be assumed or absorbed by the seller or the taxes will not be added to the sales price of the property sold, or if added that the taxes or any part thereof will be refunded. Any

person violating any of the provisions of this section within this state is guilty of a simple misdemeanor.

2003 Acts, 1st Ex, ch 2, §117, 205

Referred to in §99G.30A, 321.105A, 423.14, 423.40, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.24A Reimbursement for the primary road fund. Repealed by 2003 Acts, 1st Ex, ch 2, §151, 205. See §321.145.

423.25 Director's power to adopt rules.

The director shall have the power to adopt rules for adding the taxes imposed by subchapters II and III, or the average equivalents thereof, by providing different methods applying uniformly to retailers within the same general classification for the purpose of enabling the retailers to add and collect, as far as practicable, the amounts of those taxes.

2003 Acts, 1st Ex, ch 2, §118, 205

Referred to in §99G.30A, 321.105A, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.26 Vehicles subject only to the issuance of title — vehicle lease transactions not requiring title or registration.

1. *a.* The use tax imposed upon the use of vehicles subject only to the issuance of a certificate of title shall be paid by the owner of the vehicle to the county treasurer or the state department of transportation from whom the certificate of title is obtained. A certificate of title shall not be issued until the tax has been paid. The county treasurer or the state department of transportation shall require every applicant for a certificate of title to supply information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, and other information relative to the purchase of the vehicle. On or before the tenth day of each month, the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

b. A person who willfully makes a false statement in regard to the purchase price of a vehicle subject to taxation under this subsection is guilty of a fraudulent practice. A person who willfully makes a false statement in regard to the purchase price of such a vehicle with the intent to evade the payment of tax shall be assessed a penalty of seventy-five percent of the amount of tax unpaid and required to be paid on the actual purchase price less trade-in allowance.

2. *a.* The use tax imposed upon the use of leased vehicles if the lease transaction does not require titling or registration of the vehicle shall be remitted to the department. Tax and the reporting of tax due to the department shall be remitted on or before fifteen days from the last day of the month that the tax becomes due. Failure to timely report or remit any of the tax when due shall result in a penalty and interest being imposed on the tax due pursuant to section 423.40, subsection 1, and section 423.42, subsection 1.

b. The amount subject to tax shall be computed on each separate lease transaction by taking the total of the lease payments, plus the down payment, and excluding all of the following:

(1) Title fee.

(2) Registration fees.

(3) Use tax pursuant to this subsection.

(4) Federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner.

(5) Optional service or warranty contracts subject to tax pursuant to section 423.2, subsection 1.

(6) Insurance.

(7) Manufacturer's rebate.

(8) Refundable deposit.

(9) Finance charges, if any, on items listed in subparagraphs (1) through (8).

c. If any or all of the items in paragraph "*b*", subparagraphs (1) through (8) are excluded from the taxable lease price, the owner shall maintain adequate records of the amounts of those items. If the parties to a lease enter into an agreement providing that the tax imposed

under this subsection is to be paid by the lessee or included in the monthly lease payments to be paid by the lessee, the total cost of the tax shall not be included in the computation of lease price for the purpose of taxation under this subsection.

2003 Acts, 1st Ex, ch 2, §119, 205; 2008 Acts, ch 1113, §44; 2010 Acts, ch 1108, §7, 15

Referred to in §312.1, 321.20, 331.557, 423.5, 423.14, 423.36, 423.43

Fraudulent practices, see §714.8 – 714.14

423.26A Manufactured housing — collection of use tax — certificate of title.

1. Except as provided in subsection 3, the use tax imposed upon the use of manufactured housing shall be paid by the owner of the manufactured housing to the manufactured home retailer licensed under chapter 103A. The owner of the manufactured housing shall also provide to the manufactured home retailer all information necessary to complete and submit an application for a certificate of title.

2. Use tax collected by the manufactured home retailer shall be forwarded to the county treasurer or the state department of transportation. The county treasurer shall retain one dollar from each tax payment collected by a manufactured home retailer and paid to the county treasurer, to be credited to the county general fund. The manufactured home retailer shall submit an application for certificate of title on behalf of the owner of the manufactured housing.

3. The use tax imposed upon the use of manufactured housing brought into the state of Iowa which has not previously been subject to the tax imposed under this subchapter and for which that tax has not been paid, shall be paid by the owner of the manufactured housing to the county treasurer or the state department of transportation from whom the certificate of title is obtained. The owner of the manufactured housing shall submit an application for a certificate of title. Section 423.22 shall apply in the case where the owner has paid tax in another state.

4. The county treasurer or the state department of transportation shall require every application for a certificate of title to include information as the county treasurer or the director deems necessary as to the time of purchase, the purchase price, installed purchase price, and other information relative to the purchase of the manufactured housing.

5. A certificate of title shall not be issued until the tax has been paid. A certificate of title shall be delivered to the owner of the manufactured housing by the county treasurer or state department of transportation who received the use tax.

6. On or before the tenth day of each month, the county treasurer or the state department of transportation shall remit to the department the amount of the taxes collected during the preceding month.

7. A person who willfully makes a false statement in regard to taxation under this section is guilty of a fraudulent practice. A person who willfully makes a false statement in regard to taxation under this section with the intent to evade the payment of tax shall be assessed a penalty of seventy-five percent of the amount of tax unpaid and required to be paid.

2010 Acts, ch 1108, §8, 15

Referred to in §103A.55, 312.1, 321.20, 331.557, 423.36, 423.43

Fraudulent practices, see §714.8 – 714.14

423.27 Motor vehicle lease tax. Repealed by 2008 Acts, ch 1113, §46. See §423.26.

423.28 Sales tax report — deduction. Repealed by 2012 Acts, ch 1110, §23.

423.29 Collections by sellers.

1. Every seller who is a retailer and who is making taxable sales of tangible personal property or specified digital products in Iowa shall, at the time of making the sale, collect the sales tax. Every seller who is a retailer that is not otherwise required to collect sales tax under the provisions of this chapter and who is selling tangible personal property or specified digital products for use in Iowa shall, at the time of making the sale, whether within or without the state, collect the use tax. Sellers required to collect sales or use tax shall give to any purchaser a receipt for the tax collected in the manner and form prescribed by the director.

2. Every seller who is a retailer furnishing taxable services in Iowa and every seller who

is a retailer maintaining a place of business in this state and furnishing taxable services in Iowa or services outside Iowa if the product or result of the service is used in Iowa shall be subject to the provisions of subsection 1.

2003 Acts, 1st Ex, ch 2, §122, 205; 2015 Acts, ch 29, §55; 2018 Acts, ch 1161, §208, 229
Referred to in §421.26, 423.14, 423.14A, 423.33, 423.57, 423.58

423.30 Foreign sellers not registered under the agreement.

1. The director may, upon application, authorize the collection of the use tax by any seller who is a retailer not maintaining a place of business within this state and not registered under the agreement, who, to the satisfaction of the director, furnishes adequate security to ensure collection and payment of the tax. Such sellers shall be issued, without charge, permits to collect tax subject to any regulations which the director shall prescribe. When so authorized, it shall be the duty of foreign sellers to collect the tax upon all tangible personal property and specified digital products sold, to the retailer's knowledge, for use within this state, in the same manner and subject to the same requirements as a retailer maintaining a place of business within this state. The authority and permit may be canceled when, at any time, the director considers the security inadequate, or that tax can more effectively be collected from the person using property in this state.

2. The discretionary power granted in subsection 1 is extended to apply in the case of foreign retailers furnishing services enumerated in section 423.2.

2003 Acts, 1st Ex, ch 2, §123, 205; 2015 Acts, ch 30, §121; 2018 Acts, ch 1161, §209, 229
Referred to in §423.14, 423.32

423.31 Filing of sales tax returns and payment of sales tax.

1. Each person subject to this section and section 423.36 and in accordance with the provisions of this section and section 423.36 shall, on or before the last day of the month following the close of each calendar quarter during which such person is or has become or ceased being subject to the provisions of this section and section 423.36, make, sign, and file a return for the calendar quarter in the form as may be required. Returns shall show information relating to sales prices including tangible personal property, specified digital products, and services converted to the use of such person, the amounts of sales prices excluded and exempt from the tax, the amounts of sales prices subject to tax, a calculation of tax due, and any other information for the period covered by the return as may be required. Returns shall be signed by the retailer or the retailer's authorized agent and must be certified by the retailer to be correct in accordance with forms and rules prescribed by the director.

2. Persons required to file, or committed to file by reason of voluntary action or by order of the department, deposits of taxes due under this subchapter shall be entitled to take credit against the total quarterly amount of tax due such amount as shall have been deposited by such persons during that calendar quarter. The balance remaining due after such credit for deposits shall be entered on the return. However, such person may be granted an extension of time not exceeding thirty days for filing the quarterly return, upon a proper showing of necessity. If an extension is granted, such person shall have paid by the twentieth day of the month following the close of such quarter ninety percent of the estimated tax due.

3. The sales tax forms prescribed by the director shall be referred to as "retailers tax deposit". Deposit forms shall be signed by the retailer or the retailer's duly authorized agent, and shall be duly certified by the retailer or agent to be correct. The director may authorize incorporated banks and trust companies or other depositories authorized by law which are depositories or financial agents of the United States, or of this state, to receive any sales tax imposed under this chapter, in the manner, at the times, and under the conditions the director prescribes. The director shall prescribe the manner, times, and conditions under which the receipt of the tax by those depositories is to be treated as payment of the tax to the department.

4. Every retailer at the time of making any return required by this section shall compute and pay to the department the tax due for the preceding period. The tax on sales prices from the sale or rental of tangible personal property under a consumer rental purchase agreement as defined in section 537.3604, subsection 8, is payable in the tax period of receipt.

5. *a.* Upon making application and receiving approval from the director, a person and its

affiliates that make retail sales of tangible personal property, specified digital products, or taxable enumerated services may make deposits and file a consolidated sales tax return for the affiliated group, pursuant to rules adopted by the director. A person and each affiliate that files a consolidated return are jointly and severally liable for all tax, penalty, and interest found due for the tax period for which a consolidated return is filed or required to be filed.

b. A business required to file a consolidated sales tax return shall file a form entitled "schedule of consolidated business locations" with its quarterly sales tax return that shows the taxpayer's consolidated permit number, the permit number for each Iowa business location, the state sales tax amount by business location, and the amount of state sales tax due on goods consumed that are not assigned to a specific business location. Consolidated quarterly sales tax returns that are not accompanied by the schedule of consolidated business locations form are considered incomplete and are subject to penalty under section 421.27.

6. If necessary or advisable in order to insure the payment of the tax, the director may require returns and payment of the tax to be made for other than quarterly periods, the provisions of this section or other provision to the contrary notwithstanding.

7. Notwithstanding any other provision of the Code to the contrary, the department shall not attempt to collect delinquent sales tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years from the date of an audit.

8. Persons required to file a return under this section may instead file a simplified electronic return pursuant to section 423.49.

2003 Acts, 1st Ex, ch 2, §124, 205; 2008 Acts, ch 1172, §23; 2012 Acts, ch 1066, §3; 2018 Acts, ch 1161, §210, 211, 229

Referred to in §99G.30A, 421.26, 423.33, 423.36, 423.45, 423.57, 423.58, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.32 Filing of use tax returns and payment of use tax.

1. *a.* A retailer maintaining a place of business in this state who is required to collect or a user who is required to pay the use tax or a foreign retailer authorized, pursuant to section 423.30, to collect the use tax, shall remit to the department the amount of tax on or before the last day of the month following each calendar quarterly period. However, a retailer who collects or owes more than fifteen hundred dollars in use taxes in a month shall deposit with the department or in a depository authorized by law and designated by the director, the amount collected or owed, with a deposit form for the month as prescribed by the director.

b. The deposit form is due on or before the twentieth day of the month following the month of collection, except a deposit is not required for the third month of the calendar quarter, and the total quarterly amount, less the amounts deposited for the first two months of the quarter, is due with the quarterly report on the last day of the month following the month of collection. At that time, the retailer shall file with the department a return for the preceding quarterly period in the form prescribed by the director showing the purchase price of the tangible personal property, specified digital products, and services sold by the retailer during the preceding quarterly period, the use of which is subject to the use tax imposed by this chapter, and other information the director deems necessary for the proper administration of the use tax.

c. The return shall be accompanied by a remittance of the use tax for the period covered by the return. If necessary in order to ensure payment to the state of the tax, the director may in any or all cases require returns and payments to be made for other than quarterly periods. The director, upon request and a proper showing of necessity, may grant an extension of time not to exceed thirty days for making any return and payment. Returns shall be signed, in accordance with forms and rules prescribed by the director, by the retailer or the retailer's authorized agent, and shall be certified by the retailer or agent to be correct.

2. If it is reasonably expected, as determined by rules prescribed by the director, that a retailer's annual sales or use tax liability will not exceed one hundred twenty dollars for a calendar year, the retailer may request and the director may grant permission to the retailer, in lieu of the quarterly filing and remitting requirements set out elsewhere in this section, to file the return required by and remit the sales or use tax due under this section

on a calendar-year basis. The return and tax are due and payable no later than January 31 following each calendar year in which the retailer carries on business.

3. The director, in cooperation with the department of management, may periodically change the filing and remittance thresholds by administrative rule if in the best interests of the state and taxpayer to do so.

2003 Acts, 1st Ex, ch 2, §125, 205; 2015 Acts, ch 29, §56; 2018 Acts, ch 1161, §212, 229
Referred to in §99G.30A, 321.105A, 421.26, 423.14, 423.33, 423.34, 423.45, 423.57, 423.58, 423B.6, 423D.4, 423G.5

423.33 Liability of persons other than retailers for payment of sales or use tax.

1. *Liability of purchaser for sales tax.* If a purchaser fails to pay sales tax to the retailer required to collect the tax, then in addition to all of the rights, obligations, and remedies provided, the tax is payable by the purchaser directly to the department, and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the purchaser. For failure to pay, the retailer and purchaser are liable, unless the circumstances described in section 29C.24, subsection 3, paragraph "*a*", subparagraph (2), section 421.60, subsection 2, paragraph "*m*", section 423.34A, or section 423.45, subsection 4, paragraph "*b*" or "*e*", or subsection 5, paragraph "*c*" or "*e*", are applicable.

2. *Immediate successor liability for sales or use tax.* If a retailer sells the retailer's business or stock of goods or quits the business, the retailer shall prepare a final return and pay all sales or use tax due within the time required by law. The immediate successor to the retailer, if any, shall withhold a sufficient portion of the purchase price, in money or money's worth, to pay the amount of delinquent tax, interest, or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold the amount due from the purchase price as provided in this subsection, the immediate successor is personally liable for the payment of delinquent taxes, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate former retailer, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this section. The department may waive the liability of the immediate successor under this subsection if the immediate successor exercised good faith in establishing the amount of the previous liability.

3. *Event sponsor's liability for sales tax.* A person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event shall obtain from every retailer selling tangible personal property, specified digital products, or taxable services at the event proof that the retailer possesses a valid sales tax permit or secure from the retailer a statement, taken in good faith, that tangible personal property, specified digital products, or services offered for sale are not subject to sales tax. Failure to do so renders a sponsor of the event liable for payment of any sales tax, interest, and penalty due and owing from any retailer selling property or services at the event. Sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 apply to the sponsors. For purposes of this subsection, a "*person sponsoring a flea market or a craft, antique, coin, or stamp show or similar event*" does not include an organization which sponsors an event determined to qualify as an event involving casual sales pursuant to section 423.3, subsection 39, or the state fair or a fair as defined in section 174.1.

4. *Liability of affiliates.*

a. Notwithstanding any other provision of law to the contrary, if any retailer required to collect and remit sales and use tax pursuant to sections 423.14, 423.14A, and 423.29, or any other provision of this chapter, fails to do so, all affiliates that directly, indirectly, or constructively control the retailer shall be jointly and severally liable for any tax, penalty, and interest under this chapter, regardless of whether the affiliate is a retailer.

b. Pursuant to paragraph "*a*", the department may elect to assess the full amount of any tax, penalty, and interest against the retailer, an affiliate of the retailer described in paragraph "*a*", or any combination of the retailer and the retailer's affiliates described in paragraph "*a*".

c. Notwithstanding any other provision of law to the contrary, the department has the discretion to deem an affiliate of a retailer an agent or alter ego of that retailer.

d. Notwithstanding any other provision of law to the contrary, the department has the

discretion to disregard or look through any organizational structure of an enterprise in order to assess and collect any tax, penalty, and interest against an affiliate that is acting to benefit an affiliate or an enterprise of which the affiliate is a part.

2003 Acts, 1st Ex, ch 2, §126, 205; 2005 Acts, ch 19, §55; 2006 Acts, ch 1158, §50; 2007 Acts, ch 179, §3, 10; 2016 Acts, ch 1095, §10, 14; 2018 Acts, ch 1161, §213, 214, 229

Referred to in §99G.30A, 321.105A, 421.26, 421.28, 423.14, 423.34, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.34 Liability of user.

Any person who uses any tangible personal property, specified digital products, or services enumerated in section 423.2 upon which the use tax has not been paid, either to the county treasurer or to a retailer or direct to the department as required by this subchapter, shall be liable for the payment of tax, and shall on or before the last day of the month next succeeding each quarterly period pay the use tax upon all tangible personal property, specified digital products, or services used by the person during the preceding quarterly period in the manner and accompanied by such returns as the director shall prescribe. All of the provisions of sections 423.32 and 423.33 with reference to the returns and payments shall be applicable to the returns and payments required by this section.

2003 Acts, 1st Ex, ch 2, §127, 205; 2018 Acts, ch 1161, §215, 229; 2019 Acts, ch 59, §126

Referred to in §99G.30A, 421.26, 423.14, 423.57, 423B.6, 423D.4, 423G.5

Section amended

423.34A Exclusion from liability for purchasers.

A purchaser is relieved of liability for payment of state sales or use tax, for payment of any local option sales tax, for payment of interest, or for payment of any penalty for nonpayment of tax which nonpayment is not fraudulent, willful, or intentional, under the following circumstances:

1. The purchaser, the purchaser's seller or certified service provider, or the purchaser holding a direct pay permit relied on erroneous data contained in this state's taxability matrix completed pursuant to the agreement.

2. The purchaser, the purchaser's seller or certified service provider, or the purchaser holding a direct pay permit relied on erroneous data provided by the state with regard to tax rates, boundaries, or taxing jurisdiction assignments.

3. The purchaser used a database described in section 423.52, subsection 1, or section 423.55 and relied on erroneous data about tax rates, boundaries, or taxing jurisdiction assignments contained in that database.

2007 Acts, ch 179, §4, 10

Referred to in §99G.30A, 423.33, 423.57, 423B.6, 423D.4, 423G.5

423.35 Posting of bond to secure payment.

The director may, when necessary and advisable in order to secure the collection of the sales or use tax, authorize any person subject to either tax, and any retailer required or authorized to collect those taxes pursuant to the provisions of section 423.14, to file with the department a bond, issued by a surety company authorized to transact business in this state and approved by the insurance commissioner as to solvency and responsibility, in an amount as the director may fix, to secure the payment of any tax, interest, or penalties due or which may become due from such person. In lieu of a bond, securities approved by the director, in an amount which the director may prescribe, may be deposited with the department, which securities shall be kept in the custody of the department and may be sold by the director at public or private sale, without notice to the depositor, if it becomes necessary to do so in order to recover any tax, interest, or penalties due. Upon the sale, the surplus, if any, above the amounts due under this chapter shall be returned to the person who deposited the securities.

2003 Acts, 1st Ex, ch 2, §128, 205

Referred to in §99G.30A, 321.105A, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 452A.66

423.36 Permits required to collect sales or use tax — applications — revocation.

1. A person shall not engage in or transact business as a retailer making taxable sales of tangible personal property, specified digital products, or furnishing services within this state or as a retailer making taxable sales of tangible personal property, specified digital products,

or furnishing services for use within this state, unless a permit has been issued to the retailer under this section, except as provided in subsection 7. Every person desiring to engage in or transact business as a retailer shall file with the department an application for a permit to collect sales or use tax. Every application for a sales or use tax permit shall be made upon a form prescribed by the director and shall set forth any information the director may require. The application shall be signed by an owner of the business if a natural person; in the case of a retailer which is an association or partnership, by a member or partner; and in the case of a retailer which is a corporation, by an executive officer or some person specifically authorized by the corporation to sign the application, to which shall be attached the written evidence of the person's authority.

2. *a.* Notwithstanding subsection 1, if any person will make taxable sales of tangible personal property, specified digital products, or furnish services to any state agency, that person shall, prior to the sale, apply for and receive a permit to collect sales or use tax pursuant to this section. A state agency shall not purchase tangible personal property, specified digital products, or services from any person unless that person has a valid, unexpired permit issued pursuant to this section and is in compliance with all other requirements in this chapter imposed upon retailers, including but not limited to the requirement to collect and remit sales and use tax and file sales and use tax returns.

b. For purposes of this subsection, "*state agency*" means any executive, judicial, or legislative department, commission, board, institution, division, bureau, office, agency, or other entity of state government.

3. To collect sales or use tax, the applicant must have a permit for each place of business in the state of Iowa. The department may deny a permit to an applicant who is substantially delinquent in paying a tax due, or the interest or penalty on the tax, administered by the department at the time of application or if the applicant had a previous delinquent liability with the department. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent in paying any delinquent tax, penalty, or interest or if a partner had a previous delinquent liability with the department. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest or if any officer having a substantial legal or equitable interest in the ownership of the corporation had a previous delinquent liability with the department.

4. *a.* The department shall grant and issue to each applicant a permit for each place of business in this state where sales or use tax is collected. A permit is not assignable and is valid only for the person in whose name it is issued and for the transaction of business at the place designated or at a place of relocation within the same county if the ownership remains the same.

b. If an applicant is making sales outside Iowa for use in this state or furnishing services outside Iowa, the product or result of which will be used in this state, that applicant shall be issued one use tax permit by the department applicable to these out-of-state sales or services.

5. Permits issued under this section are valid and effective until revoked by the department.

6. If the holder of a permit fails to comply with any of the provisions of this subchapter or of subchapter II or III or any order or rule of the department adopted under those subchapters or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the director may revoke the permit. The director shall send notice by mail to a permit holder informing that person of the director's intent to revoke the permit and of the permit holder's right to a hearing on the matter. If the permit holder petitions the director for a hearing on the proposed revocation, after giving ten days' notice of the time and place of the hearing in accordance with section 17A.18, subsection 3, the matter may be heard and a decision rendered. The director may restore permits after revocation. The director shall adopt rules setting forth the period of time a retailer must wait before a permit may be

restored or a new permit may be issued. The waiting period shall not exceed ninety days from the date of the revocation of the permit.

7. *a.* Sellers who are not regularly engaged in selling at retail and do not have a permanent place of business, but who are temporarily engaged in selling from trucks, portable roadside stands, concessionaires at state, county, district, or local fairs, carnivals, or the like, shall report and remit the sales tax on a temporary basis, under rules the director shall provide for the efficient collection of the sales tax. This subsection applies to sellers who are temporarily engaged in furnishing services.

b. Persons engaged in selling tangible personal property, specified digital products, or furnishing services shall not be required to obtain or retain a sales tax permit for a place of business at which taxable sales of tangible personal property, specified digital products, or taxable performance of services will not occur.

8. The provisions of subsection 1, dealing with the lawful right of a retailer to transact business, as applicable, apply to persons having receipts from furnishing services enumerated in section 423.2, except that a person holding a permit pursuant to subsection 1 shall not be required to obtain any separate sales tax permit for the purpose of engaging in business involving the services.

9. *a.* Except as provided in paragraph "*b*", purchasers, users, and consumers of tangible personal property, specified digital products, or enumerated services taxed pursuant to subchapter II or III of this chapter or chapter 423B may be authorized, pursuant to rules adopted by the director, to remit tax owed directly to the department instead of the tax being collected and paid by the seller. To qualify for a direct pay tax permit, the purchaser, user, or consumer must accrue a tax liability of more than four thousand dollars in tax under subchapters II and III in a semimonthly period and make deposits and file returns pursuant to section 423.31. This authority shall not be granted or exercised except upon application to the director and then only after issuance by the director of a direct pay tax permit.

b. The granting of a direct pay tax permit is not authorized for any of the following:

(1) Taxes imposed on the sales, furnishing, or service of gas, electricity, water, heat, pay television service, and communication service.

(2) Taxes imposed under section 423.26, section 423.26A, and chapter 423C.

2003 Acts, 1st Ex, ch 2, §129, 205; 2008 Acts, ch 1113, §113; 2008 Acts, ch 1134, §66; 2008 Acts, ch 1184, §57; 2010 Acts, ch 1108, §9, 15; 2012 Acts, ch 1110, §20; 2013 Acts, ch 122, §3; 2018 Acts, ch 1161, §216 – 219, 229

Referred to in §423.31, 423.40, 423.58, 423B.5, 423E.3

423.37 Failure to file sales or use tax returns — incorrect returns.

1. As soon as practicable after a return is filed and in any event within three years after the return is filed, the department shall examine it, assess and determine the tax due if the return is found to be incorrect, and give notice to the person liable for the tax of the assessment and determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

2. If a return required by this subchapter is not filed, or if a return when filed is incorrect or insufficient, the department shall determine the amount of tax due from information as the department may be able to obtain and, if necessary, may estimate the tax on the basis of external indices, such as number of employees of the person concerned, rentals paid by the person, stock on hand, or other factors. The determination may be made using any generally recognized valid and reliable sampling technique, whether or not the person being audited has complete records, as mutually agreed upon by the department and the taxpayer. The department shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing, evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax.

3. The three-year period of limitation provided in subsection 1 may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2003 Acts, 1st Ex, ch 2, §130, 205; 2006 Acts, ch 1158, §51; 2013 Acts, ch 110, §2
Referred to in §99G.30A, 321.105A, 421.10, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.38 Judicial review.

1. Judicial review of actions of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk a bond for the use of the respondent, with sureties approved by the clerk, in the amount of tax appealed from, conditioned that the petitioner shall perform the orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court of this state irrespective of the amount involved.

2003 Acts, ch 44, §114; 2003 Acts, 1st Ex, ch 2, §131, 205
Referred to in §99G.30A, 321.105A, 421B.11, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 425.31
Filing petition on appeal, R.C.P. 1.1803

423.39 Service of notices.

1. A notice authorized or required under this subchapter may be given by mailing the notice to the person for whom it is intended, addressed to that person at the address given in the last return filed by the person pursuant to this subchapter, or if no return has been filed, then to any address obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the person to whom addressed. Any period of time which is determined according to this subchapter by the giving of notice commences to run from the date of mailing of the notice.

2. The provisions of the Code relative to the limitation of time for the enforcement of a civil remedy shall not apply to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty provided by this chapter.

2003 Acts, 1st Ex, ch 2, §132, 205
Referred to in §99G.30A, 321.105A, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 425.30

423.40 Penalties — offenses — limitation.

1. In addition to the sales or use tax or additional sales or use tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the sales or use tax or additional sales or use tax at the rate in effect under section 421.7 for each month counting each fraction of a month as an entire month, computed from the date the semimonthly or monthly tax deposit form or return was required to be filed. The penalty and interest shall be paid to the department and disposed of in the same manner as other receipts under this subchapter. Unpaid penalties and interest may be enforced in the same manner as the taxes imposed by this chapter.

2. *a.* Any person who knowingly sells tangible personal property, specified digital products, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state without procuring a permit to collect tax, as provided in section 423.36, or who violates section 423.24 and the officers of any corporation who so act are guilty of a serious misdemeanor.

b. A person who knowingly sells tangible personal property, specified digital products, tickets or admissions to places of amusement and athletic events, or gas, water, electricity, or communication service at retail, or engages in the furnishing of services enumerated in section 423.2, in this state after the person's sales tax permit has been revoked and before it has been restored as provided in section 423.36, subsection 6, and the officers of any corporation who so act are guilty of an aggravated misdemeanor.

3. A person who willfully attempts in any manner to evade any tax imposed by this chapter

or the payment of the tax or a person who makes or causes to be made a false or fraudulent semimonthly or monthly tax deposit form or return with intent to evade any tax imposed by subchapter II or III or the payment of the tax is guilty of a class "D" felony.

4. The certificate of the director to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to the provisions of this subchapter shall be prima facie evidence thereof.

5. A person required to pay sales or use tax, or to make, sign, or file a tax deposit form or return or supplemental return, who willfully makes a false or fraudulent tax deposit form or return, or willfully fails to pay at least ninety percent of the tax or willfully fails to make, sign, or file the tax deposit form or return, at the time required by law, is guilty of a fraudulent practice.

6. A prosecution for an offense specified in this section shall be commenced within six years after its commission.

2003 Acts, 1st Ex, ch 2, §133, 205; 2018 Acts, ch 1161, §220, 229
Referred to in §99G.30A, 321.105A, 423.26, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.41 Books — examination.

Every retailer required or authorized to collect taxes imposed by this chapter and every person using in this state tangible personal property, specified digital products, services, or the product of services shall keep records, receipts, invoices, and other pertinent papers as the director shall require, in the form that the director shall require, for as long as the director has the authority to examine and determine tax due. The director or any duly authorized agent of the department may examine the books, papers, records, and equipment of any person selling tangible personal property, specified digital products, or services or liable for the tax imposed by this chapter, and investigate the character of the business of any person in order to verify the accuracy of any return made, or if a return was not made by the person, ascertain and determine the amount due under this chapter. These books, papers, and records shall be made available within this state for examination upon reasonable notice when the director deems it advisable and so orders. If the taxpayer maintains any records in an electronic format, the taxpayer shall comply with reasonable requests by the director or the director's authorized agents to provide those electronic records in a standard record format. The preceding requirements shall likewise apply to users and persons furnishing services enumerated in section 423.2.

2003 Acts, 1st Ex, ch 2, §134, 205; 2007 Acts, ch 186, §23; 2018 Acts, ch 1161, §221, 229
Referred to in §99G.30A, 321.105A, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.42 Statutes applicable.

1. The director shall administer the taxes imposed by subchapters II and III in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in, section 422.25, subsection 4, section 422.30, and sections 422.67 through 422.75.

2. All the provisions of section 422.26 shall apply in respect to the taxes and penalties imposed by subchapters II and III and this subchapter, except that, as applied to any tax imposed by subchapters II and III, the lien provided in section 422.26 shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as provided in section 422.26. The requirements for recording shall, as applied to the taxes imposed by subchapters II and III, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform that person as to the amount of unpaid taxes due by such taxpayer under the provisions of subchapters II and III. The giving of this information under these circumstances shall not be deemed a violation of section 422.72 as applied to subchapters II and III.

2003 Acts, 1st Ex, ch 2, §135, 205
Referred to in §99G.30A, 321.105A, 421.17, 423.26, 423.33, 423.45, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5

423.43 Deposit of revenues.

1. *a.* Except as provided in subsection 2, all revenue arising under the operation of the use tax under subchapter III shall be deposited into the general fund of the state.

b. Subsequent to the deposit into the general fund of the state and after the transfer of such revenues collected under chapter 423B, the department shall transfer one-sixth of such remaining revenues to the secure an advanced vision for education fund created in section 423F.2. This paragraph is repealed January 1, 2051.

2. All revenue derived from the use tax imposed pursuant to sections 423.26 and 423.26A shall be credited to the statutory allocations fund created under section 321.145, subsection 2.

2003 Acts, 1st Ex, ch 2, §136, 205; 2005 Acts, ch 140, §13; 2008 Acts, ch 1113, §45, 125, 129; 2010 Acts, ch 1108, §10, 15; 2019 Acts, ch 166, §10

Referred to in §321.145, 423.57

Subsection 1, paragraph b amended

423.44 Reimbursement for primary road fund. Repealed by 2008 Acts, ch 1113, §123. See §321.145.

423.45 Refunds — exemption certificates.

1. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon a sales price that is not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon notification to the retailer by the department that an excess payment exists.

2. If an amount of tax represented by a retailer to a consumer or user as constituting tax due is computed upon a sales price that is not taxable or the amount represented is in excess of the actual taxable amount and the amount represented is actually paid by the consumer or user to the retailer, the excess amount of tax paid shall be returned to the consumer or user upon proper notification to the retailer by the consumer or user that an excess payment exists. *"Proper"* notification is written notification which allows a retailer at least sixty days to respond and which contains enough information to allow a retailer to determine the validity of a consumer's or user's claim that an excess amount of tax has been paid. No cause of action shall accrue against a retailer for excess tax paid until sixty days after proper notice has been given the retailer by the consumer or user.

3. In the circumstances described in subsections 1 and 2, a retailer has the option to either return any excess amount of tax paid to a consumer or user, or to remit the amount which a consumer or user has paid to the retailer to the department.

4. *a.* The department shall issue or the seller may separately provide exemption certificates in the form prescribed by the director, including certificates not made of paper, which conform to the requirements of paragraph "*c*", to assist retailers in properly accounting for nontaxable sales of tangible personal property, specified digital products, or services to purchasers for a nontaxable purpose. The department shall also allow the use of exemption certificates for those circumstances in which a sale is taxable but the seller is not obligated to collect tax from the buyer.

b. The sales tax liability for all sales of tangible personal property and specified digital products and all sales of services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for a nontaxable purpose and is not a retail sale as defined in section 423.1, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate pursuant to subsection 5. If the tangible personal property, specified digital products, or services are purchased tax free pursuant to a valid exemption certificate and the tangible personal property, specified digital products, or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 shall apply to the purchaser.

c. A valid exemption certificate is an exemption certificate which is complete and correct according to the requirements of the director.

d. The protection afforded a seller by paragraph *"b"* does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claim of an exemption.

e. If the circumstances change and as a result the tangible personal property, specified digital products, or services are used or disposed of by the purchaser in a nonexempt manner or the purchaser becomes obligated to pay the tax, the purchaser is liable solely for the taxes and shall remit the taxes directly to the department in accordance with this subsection.

5. *a.* The department shall issue or the seller may separately provide fuel exemption certificates in the form prescribed by the director.

b. For purposes of this subsection:

(1) *"Fuel"* includes gas, electricity, water, heat, steam, and any other tangible personal property consumed in creating heat, power, or steam.

(2) *"Fuel consumed in processing"* means fuel used or consumed for processing including grain drying, for providing heat or cooling for livestock buildings or for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business, for use in aquaculture production, or for generating electric current, or in implements of husbandry engaged in agricultural production.

(3) *"Fuel exemption certificate"* means an exemption certificate given by the purchaser under penalty of perjury to assist retailers in properly accounting for nontaxable sales of fuel consumed in processing.

(4) *"Substantial change"* means a change in the use or disposition of tangible personal property and services by the purchaser such that the purchaser pays less than ninety percent of the purchaser's actual sales tax liability. A change includes a misstatement of facts in an application made pursuant to paragraph *"d"* or in a fuel exemption certificate.

c. The seller may accept a completed fuel exemption certificate, as prepared by the purchaser, for three years unless the purchaser files a new completed exemption certificate. If the fuel is purchased tax free pursuant to a fuel exemption certificate which is taken by the seller, and the fuel is used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes, and shall remit the taxes directly to the department and sections 423.31, 423.32, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42 shall apply to the purchaser.

d. The purchaser may apply to the department for its review of the fuel exemption certificate. In this event, the department shall review the fuel exemption certificate within twelve months from the date of application and determine the correct amount of the exemption. If the amount determined by the department is different than the amount that the purchaser claims is exempt, the department shall promptly notify the purchaser of the determination. Failure of the department to make a determination within twelve months from the date of application shall constitute a determination that the fuel exemption certificate is correct as submitted. A determination of exemption by the department is final unless the purchaser appeals to the director for a revision of the determination within sixty days after the date of the notice of determination. The director shall grant a hearing, and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision of the director is final unless the purchaser seeks judicial review of the director's decision under section 423.38 within sixty days after the date of the notice of the director's decision. Unless there is a substantial change, the department shall not impose penalties pursuant to section 423.40 both retroactively to purchases made after the date of application and prospectively until the department gives notice to the purchaser that a tax or additional tax is due, for failure to remit any tax due which is in excess of a determination made under this section. A determination made by the department pursuant to this subsection does not constitute an audit for purposes of section 423.37.

e. If the circumstances change and the fuel is used or disposed of by the purchaser in

a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department in accordance with paragraph "*c*".

f. The purchaser shall attach documentation to the fuel exemption certificate which is reasonably necessary to support the exemption for fuel consumed in processing. If the purchaser files a new exemption certificate with the seller, documentation shall not be required if the purchaser previously furnished the seller with this documentation and substantial change has not occurred since that documentation was furnished or if fuel consumed in processing is separately metered and billed by the seller.

6. Nothing in this section authorizes any cause of action by any person to recover sales or use taxes directly from the state or extends any person's time to seek a refund of sales or use taxes which have been collected and remitted to the state.

2003 Acts, 1st Ex, ch 2, §138, 205; 2006 Acts, ch 1158, §75, 76, 80; 2018 Acts, ch 1161, §222, 229

Referred to in §321.105A, 423.33, 423.57, 423C.4

423.46 Rate and base changes — liability for failure to collect.

1. The department shall make a reasonable effort to provide sellers with as much advance notice as practicable of a rate change and to notify sellers of legislative changes in the tax base and amendments to sales and use tax rules. Except as provided in subsection 2, a seller shall not be relieved of the obligation to collect sales or use taxes for this state by either a failure to receive such notice or by a failure of the state to provide notice.

2. A seller will be relieved of liability for failing to collect sales or use taxes for this state at the new rate under all of the following conditions and to the following extent:

a. The department fails to provide for at least thirty days between the enactment of the statute providing for a rate change and the effective date of such rate change.

b. The seller continues to collect sales or use taxes at the rate in effect immediately prior to the rate change.

c. The erroneous collection described in paragraph "*b*" does not continue for more than thirty days after the effective date of the rate change.

3. The relief from the obligation to collect sales or use taxes described in subsection 2 shall not apply if a seller fraudulently fails to collect tax at the new rate or if a seller has solicited purchasers on the basis of the rate in effect immediately prior to the rate change.

2003 Acts, 1st Ex, ch 2, §139, 205; 2010 Acts, ch 1145, §11, 17

Referred to in §99G.30A, 423.57, 423B.6, 423C.4

423.47 Refunds and credits.

If it shall appear that, as a result of mistake, an amount of tax, penalty, or interest has been paid which was not due under the provisions of this chapter, such amount shall be credited against any tax due, or to become due, on the books of the department from the person who made the erroneous payment, or such amount shall be refunded to such person by the department. A claim for refund or credit that has not been filed with the department within three years after the tax payment for which a refund or credit is claimed became due, or one year after such tax payment was made, whichever time is the later, shall not be allowed by the director.

2003 Acts, 1st Ex, ch 2, §140, 205

Referred to in §99G.30A, 321.105A, 423.21, 423.57, 423A.6, 423B.6, 423C.4, 423D.4, 423G.5, 476B.2, 476B.7, 476C.6

SUBCHAPTER VI

SALES AND USE TAX ACT ADMINISTRATION — RETAILERS REGISTERED VOLUNTARILY UNDER AGREEMENT

Referred to in §423.13

423.48 Responsibilities and rights of sellers registered under the agreement.

1. By registering under the agreement, the seller agrees to collect and remit sales and use taxes for all its taxable Iowa sales. Iowa's withdrawal from the agreement or revocation of its membership in the agreement shall not relieve a seller from its responsibility to remit taxes previously collected on behalf of this state.

2. The following provisions apply to any seller who registers under the agreement:

a. The seller may register on-line.

b. Registration under the agreement and the collection of Iowa sales and use taxes shall not be used as factors in determining whether the seller has nexus with Iowa for any tax.

c. The seller is not required to pay registration fees or other charges.

d. A written signature from the seller is not required.

e. The seller may register by way of an agent. The agent's appointment shall be in writing and submitted to the department if requested by the department.

f. The seller may cancel its registration at any time under procedures adopted by the governing board established pursuant to the agreement. Cancellation does not relieve the seller of its liability for remitting any Iowa taxes collected.

g. Upon the registration of a seller, the department shall provide to the seller information regarding the options available for the filing of returns and remittances. Such information shall include information on the requirements of filing simplified electronic returns and remittances.

3. The following additional responsibilities and rights apply to model sellers:

a. A model 1 seller's obligation to calculate, collect, and remit sales and use taxes shall be performed by its certified service provider, except for the seller's obligation to remit tax on its own purchases. As the seller's agent, the certified service provider is liable for its model 1 seller's sales and use tax due Iowa on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresents the types of items or services it sells or commits fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A model 1 seller is subject to audit for transactions not processed by the certified service provider. The director is authorized to perform a system check of the model 1 seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

b. A model 2 seller shall calculate the amount of tax due on a transaction by the use of a certified automated system, but shall collect and remit tax on its own sales. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to this state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

c. A model 3 seller shall use its own proprietary automated system to calculate tax due and collect and remit tax on its own sales. A model 3 seller is liable for the failure of its proprietary automated system to meet the applicable performance standard.

d. A model 2, model 3, or model 4 seller making no sales sourced in the state in the preceding twelve months may elect to be registered in the state as a seller that anticipates making no sales sourced in the state. Making such an election shall not relieve the seller of the obligation to collect and remit sales or use taxes on sales sourced in the state.

4. The provisions of this section shall not be construed to relieve a seller of the obligation to register in the state if required to do so, and to collect and remit sales or use taxes for at least thirty-six months and to meet any other requirements necessary for amnesty in Iowa under the terms of an agreement as provided in section 423.54.

2003 Acts, 1st Ex, ch 2, §141, 205; 2010 Acts, ch 1145, §12 – 14, 17; 2019 Acts, ch 152, §30
Referred to in §423.49
Subsection 2, paragraph c stricken and former paragraphs d – h redesignated as c – g

423.49 Return requirements — electronic filing.

1. Except as provided in subsection 7, all sellers registered under the agreement shall file a single return per month for the state and all taxing jurisdictions within this state.

2. The director shall by rule determine the date on which returns shall be filed. The date shall not be earlier than the twentieth day of the following month.

3. The department shall provide to all registered and unregistered sellers, except sellers of products qualifying for exclusion from the provisions of section 308 of the agreement, a simplified return that can be filed electronically.

a. The simplified return shall be provided in a form approved by the governing board and shall not contain a field unless that field has been approved by the governing board.

b. The simplified return shall contain two parts. The first part shall contain information relating to remittances and allocations. The second part shall contain information relating to exempt sales.

c. The department shall notify the governing board if the submission of the second part of the return is no longer necessary.

d. The department shall not require a model 4 seller to submit the second part of the simplified return but may provide for another means of collecting the information contained in the second part of the return as described in subsection 4, paragraph "*e*".

4. *a.* A certified service provider shall file a simplified return electronically on behalf of a model 1 seller and shall file audit reports for the seller as provided for in article V of the rules and procedures of the agreement.

b. A certified service provider shall file the first part of the simplified return, as described in subsection 3, once per month, as required pursuant to subsection 1.

c. A model 1 seller may file both the first and second parts of the simplified return. Model 1 sellers filing both parts shall also file audit reports as described in paragraph "*a*".

d. A model 4 seller, or a seller not registered under the agreement who is otherwise registered in the state, may elect to file a simplified return. Model 4 sellers, or sellers not registered under the agreement who are otherwise registered in the state, electing to do so shall file the first part of the return each month.

e. A model 4 seller required to register in the state, or a seller not registered under the agreement who is otherwise registered in the state, may submit the information collected in the second part of the return in one of the following ways:

(1) By filing monthly both the first and second parts electronically on a simplified return as described in subsection 3.

(2) By filing the second part together with the required December filing of the first part. A seller filing the second part of a return pursuant to this subparagraph shall include information for all months of that calendar year and shall report the information in an annual rather than a monthly fashion.

(3) The department shall notify the governing board prior to requiring the submission of the second part of the simplified return pursuant to this paragraph "*e*".

5. The department shall adopt rules for the filing of returns by a model 4 seller electing not to file a simplified return pursuant to this section.

6. A seller which has previously elected to file a simplified return shall provide at least three months' notice of an intent to discontinue the filing of such returns.

7. *a.* A seller making the election under section 423.48, subsection 3, paragraph "*d*", is exempt from the requirements of this section and shall not be required to file a return.

b. The exemption allowed under paragraph "*a*" is only applicable as long as a seller makes

no taxable sales in this state. If a seller makes a taxable sale in this state, the seller shall file a return the month after such a sale is made.

8. A seller may file a return for more than one legal entity at the same time only if such entities are affiliated.

9. The department shall adopt a standardized process for the transmission and receipt of returns and related information. The adoption of a procedure pursuant to this subsection is subject to the approval of the governing board.

10. *a.* The department shall notify a seller registered under the agreement that has no obligation to register in this state of a failure to file a return required under this section and allow the seller at least thirty days after such notification to file the return.

b. A liability amount may be established for an assessment of taxes based solely on a seller's failure to timely file a return if such seller has a history of nonfiling or late filing.

2003 Acts, 1st Ex, ch 2, §142, 205; 2010 Acts, ch 1145, §15, 17; 2012 Acts, ch 1066, §4, 5
Referred to in §423.31

423.50 Remittance of funds.

1. Only one remittance of tax per return is required except as provided in this subsection. Sellers that collect more than thirty thousand dollars in sales and use taxes for this state during the preceding calendar year shall be required to make additional remittances as required under rules adopted by the director. The filing of a return is not required with an additional remittance.

2. All remittances shall be remitted electronically.

3. Electronic payments may be made either by automated clearinghouse credit or automated clearinghouse debit. Any data accompanying a remittance must be formatted using uniform tax type and payment codes approved by the governing board established pursuant to the agreement. An alternative method for making same-day payments shall be determined under rules adopted by the director.

4. If a due date falls on a Saturday, a Sunday, legal holiday, or a legal banking holiday in this state, the payment, including any related payment voucher information, is due on the next succeeding business day.

5. If the federal reserve bank is closed on the due date preventing a person from being able to make an automated payment, the payment shall be accepted as timely if made on the next day the federal reserve bank is open.

6. The department shall adopt a standardized process for the remittance of tax payments. The procedure shall have the capability of processing multiple payments and simplified returns by affiliated entities, certified service providers, or tax preparers. The process adopted pursuant to this subsection is subject to the approval of the governing board.

2003 Acts, 1st Ex, ch 2, §143, 205; 2010 Acts, ch 1145, §16, 17; 2011 Acts, ch 92, §10, 11

423.51 Administration of exemptions.

1. The following provisions shall apply when a purchaser claims an exemption:

a. The seller shall obtain identifying information of the purchaser and the reason for claiming a tax exemption at the time of the purchase as determined by the member states acting jointly.

b. A purchaser is not required to provide a signature to claim an exemption from tax unless a paper certificate is used.

c. The seller shall use the standard form for claiming an exemption electronically as adopted jointly by the member states.

d. The seller shall obtain the same information for proof of a claimed exemption regardless of the medium in which the transaction occurred.

e. The department may authorize a system wherein the purchaser exempt from the payment of the tax is issued an identification number which shall be presented to the seller at the time of the sale.

f. The seller shall maintain proper records of exempt transactions and provide them to the department when requested.

g. The department shall administer entity-based and use-based exemptions when

practicable through a direct pay tax permit, an exemption certificate, or another means that does not burden sellers. For the purposes of this paragraph:

(1) An "*entity-based exemption*" is an exemption based on who purchases the product or who sells the product.

(2) A "*use-based exemption*" is an exemption based on the purchaser's use of the product.

2. Sellers that follow the requirements of this section are relieved from any tax otherwise applicable if it is determined that the purchaser improperly claimed an exemption and that the purchaser is liable for the nonpayment of tax. This relief from liability does not apply to a seller who does any of the following:

a. Fraudulently fails to collect tax.

b. Solicits purchasers to participate in the unlawful claim of an exemption.

c. Accepts an exemption certificate when the purchaser claims an entity-based exemption when the following conditions are met:

(1) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller.

(2) The state provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in the state.

3. *a.* A seller otherwise obligated to collect tax from a purchaser is relieved of that obligation if the seller obtains a fully completed exemption certificate or secures the relevant data elements of a fully completed exemption certificate within ninety days after the date of sale.

b. If the seller has not obtained an exemption certificate or all relevant data elements as provided in paragraph "*a*", the seller may, within one hundred twenty days after a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

c. Nothing in this subsection shall affect the ability of the state to require purchasers to update exemption certificate information or to reapply with the state to claim certain exemptions.

d. Notwithstanding paragraphs "*a*", "*b*", and "*c*", a seller is relieved of its obligation to collect tax from a purchaser if the seller obtains a blanket exemption certificate from the purchaser, and the seller and purchaser have a recurring business relationship. For the purposes of this paragraph, a recurring business relationship exists when a period of no more than twelve months elapses between sales transactions. The department may not request from the seller renewal of blanket certificates or updates of exemption certificate information or data elements when there is a recurring business relationship between the purchaser and seller.

4. All relief that this section provides to sellers is also provided to certified service providers under this chapter.

2003 Acts, 1st Ex, ch 2, §144, 205; 2006 Acts, ch 1158, §77, 78, 80; 2007 Acts, ch 179, §7

423.52 Relief from liability for sellers and certified service providers.

1. Sellers and certified service providers using databases derived from zip codes or state or vendor provided address-based databases are relieved from liability to this state or its local taxing jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by this state on tax rates, boundaries, or taxing jurisdiction assignments. If this state provides an address-based system for assigning taxing jurisdictions, the director is not required to provide liability relief for errors resulting from reliance on a database derived from zip codes and provided by this state if the director has given adequate notice, as determined by the governing board, to affected parties of the decision to end this relief.

2. *a.* Model 2 sellers and certified service providers are relieved of liability to Iowa for any failure to charge and collect the correct amount of sales or use tax if this failure results from the model 2 seller's or the certified service provider's reliance upon this state's certification to the governing board that Iowa has accepted the governing board's certification of a piece of software as a certified automated system. The relief provided by this paragraph to a model 2

seller or certified service provider does not extend to a seller or provider who has incorrectly classified an item or transaction into the product-based exemptions portion of a certified automated system. However, any model 2 seller or certified service provider who has relied upon an individual listing of items or transactions within a product definition approved by the governing board or Iowa may claim the relief allowed by this paragraph.

b. If the department determines that an item or transaction is incorrectly classified as to its taxability, the department shall notify the model 2 seller or certified service provider of the incorrect classification. The model 2 seller or certified service provider shall have ten days to revise the classification after receipt of notice of the determination. Upon expiration of the ten days, the model 2 seller or certified service provider shall be liable for the failure to collect the correct amount of sales or use taxes due and owing to the member state.

3. *a.* Sellers and certified service providers are relieved from liability to this state or its local taxing jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided in the state's taxability matrix.

b. Sellers and certified service providers that rely upon a prior version of the state's taxability matrix shall be relieved of liability to the state and its local taxing jurisdictions until the first day of the calendar month that is at least thirty days after notice of a change to the taxability matrix is submitted by the state to the governing board.

2003 Acts, 1st Ex, ch 2, §145, 205; 2006 Acts, ch 1158, §79, 80; 2012 Acts, ch 1066, §6; 2015 Acts, ch 94, §2

Referred to in §423.34A

423.53 Bad debts and model 1 sellers.

A certified service provider may claim, on behalf of a model 1 seller, any bad debt deduction as provided in section 423.21. The certified service provider must credit or refund the full amount of any bad debt deduction or refund received to the seller.

2003 Acts, 1st Ex, ch 2, §146, 205

423.54 Amnesty for registered sellers.

1. Subject to the limitations in subsections 2 through 6, the following provisions apply:

a. Amnesty is provided for uncollected or unpaid sales or use tax to a seller who registers to pay or to collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the agreement, provided the seller was not so registered in this state in the twelve-month period preceding the commencement of Iowa's participation in the agreement.

b. Amnesty precludes assessment of the seller for uncollected or unpaid sales or use tax together with penalty or interest for sales made during the period the seller was not registered in this state, provided registration occurs within twelve months of the commencement of Iowa's participation in the agreement.

c. Amnesty shall be provided to any seller lawfully registered under the agreement by any other member state prior to the date of the commencement of Iowa's participation in the agreement.

2. Amnesty is not available to a seller with respect to any matter or matters for which the seller received notice of the commencement of an audit and which audit is not yet finally resolved, including any related administrative and judicial processes.

3. Amnesty is not available for sales or use taxes already paid or remitted or to taxes collected by the seller.

4. Amnesty is fully effective absent the seller's fraud or intentional misrepresentation of a material fact as long as the seller continues registration and continues payment or collection and remittance of applicable sales or use taxes for a period of at least thirty-six months. The statute of limitations applicable to asserting a tax liability is tolled during this thirty-six month period.

5. Amnesty is applicable only to sales or use taxes due from a seller in its capacity as a seller and not to sales or use taxes due from a seller in its capacity as a buyer.

6. The director may allow amnesty on terms and conditions more favorable to a seller than the terms required by this section.

2003 Acts, 1st Ex, ch 2, §147, 205

Referred to in §423.48

423.55 Databases.

The department shall provide and maintain databases required by the agreement for the benefit of sellers registered under the agreement.

2003 Acts, 1st Ex, ch 2, §148, 205

Referred to in §423.34A

423.56 Confidentiality and privacy protections under model 1.

1. As used in this section:

a. *"Anonymous data"* means information that does not identify a person.

b. *"Confidential taxpayer information"* means all information that is protected under this state's laws, rules, and privileges.

c. *"Personally identifiable information"* means information that identifies a person.

2. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

3. A certified service provider may perform its services in this state only if the certified service provider certifies that:

a. Its system has been designed and tested to ensure that the fundamental precept of anonymity is respected.

b. Personally identifiable information is only used and retained to the extent necessary for the administration of model 1 sellers with respect to exempt purchasers.

c. It provides consumers clear and conspicuous notice of its information practices, including what information it collects, how it collects the information, how it uses the information, how long, if at all, it retains the information, and whether it discloses the information to member states. This notice shall be satisfied by a written privacy policy statement accessible by the public on the official internet site of the certified service provider.

d. Its collection, use, and retention of personally identifiable information is limited to that required by the member states to ensure the validity of exemptions from taxation that are claimed by reason of a consumer's status or the intended use of the goods or services purchased.

e. It provides adequate technical, physical, and administrative safeguards so as to protect personally identifiable information from unauthorized access and disclosure.

4. The department shall provide public notification of its practices relating to the collection, use, and retention of personally identifiable information.

5. When any personally identifiable information that has been collected and retained by the department or certified service provider is no longer required for the purposes set forth in subsection 3, paragraph *"d"*, that information shall no longer be retained by the department or certified service provider.

6. When personally identifiable information regarding an individual is retained by or on behalf of this state, this state shall provide reasonable access by the individual to the individual's own information in the state's possession and a right to correct any inaccurately recorded information.

7. This privacy policy is subject to enforcement by the department and the attorney general.

8. This state's laws and rules regarding the collection, use, and maintenance of confidential taxpayer information remain fully applicable and binding. Without limitation, the agreement does not enlarge or limit the state's or department's authority to:

a. Conduct audits or other review as provided under the agreement and state law.

b. Provide records pursuant to its examination of public records law, disclosure laws of individual governmental agencies, or other regulations.

c. Prevent, consistent with state law, disclosures of confidential taxpayer information.

d. Prevent, consistent with federal law, disclosures or misuse of federal return information obtained under a disclosure agreement with the internal revenue service.

e. Collect, disclose, disseminate, or otherwise use anonymous data for governmental purposes.

9. This privacy policy does not preclude the certification of a certified service provider whose privacy policy is more protective of confidential taxpayer information or personally identifiable information than is required by the agreement.

2003 Acts, 1st Ex, ch 2, §149, 205; 2005 Acts, ch 3, §69; 2013 Acts, ch 90, §257

423.57 Statutes applicable.

The director shall administer this subchapter as it relates to the taxes imposed in this chapter in the same manner and subject to all the provisions of, and all of the powers, duties, authority, and restrictions contained in sections 423.14, 423.14A, 423.14B, 423.15, 423.16, 423.17, 423.19, 423.20, 423.21, 423.22, 423.23, 423.24, 423.25, 423.29, 423.31, 423.32, 423.33, 423.34, 423.34A, 423.35, 423.37, 423.38, 423.39, 423.40, 423.41, and 423.42, section 423.43, subsection 1, and sections 423.45, 423.46, and 423.47.

2003 Acts, 1st Ex, ch 2, §150, 205; 2007 Acts, ch 179, §5, 6, 10; 2008 Acts, ch 1113, §114, 122, 131; 2012 Acts, ch 1110, §21; 2018 Acts, ch 1161, §223, 229

423.58 Collection, permit, and tax return exemption for certain out-of-state businesses.

Notwithstanding sections 423.14, 423.14A, 423.14B, 423.29, 423.31, 423.32, and 423.36, a person meeting the requirements of section 29C.24 is not required to obtain a sales or use tax permit, collect and remit sales and use tax, or make and file applicable sales or use tax returns, as provided in section 29C.24, subsection 3, paragraph "*a*", subparagraph (2).

2016 Acts, ch 1095, §11, 14; 2018 Acts, ch 1161, §224, 229

CHAPTER 423A

HOTEL AND MOTEL TAX

Referred to in §303.52, 331.402, 421.26, 421.28, 421.71

Personal liability of officers and partners, see §421.26
Former ch 423A repealed;
continuation of hotel and motel taxes imposed under former ch 423A;
2005 Acts, ch 140, §28, 29

423A.1 Short title.
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423A.3 State-imposed hotel and motel tax.
423A.4 Locally imposed hotel and motel tax.
423A.5 Exemptions.
423A.5A Collection and remittance of hotel and motel tax.
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423A.7 Local transient guest tax fund.

423A.1 Short title.

This chapter may be cited as the "*Hotel and Motel Tax Act*".

2005 Acts, ch 140, §19, 28, 29

423A.2 Definitions.

1. For the purposes of this chapter, unless the context otherwise requires:

a. "*Affiliate*" means the same as defined in section 423.1.

b. "*Department*" means the department of revenue.

c. "*Facilitate*" or "*facilitation*" includes brokering, coordinating, or in any way arranging for the rental of lodging by users.

d. "*Facilitation fee*" means any consideration, by whatever name called, that a lodging facilitator or lodging platform charges to a user for facilitating the user's rental of lodging.

"Facilitation fee" does not include any commission a lodging provider pays to a lodging facilitator or a lodging platform for facilitating the rental of lodging.

e. "Lodging" means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, cabin, apartment, residential property, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. Lodging does not include conference, meeting, or banquet rooms that are not used for or offered as part of sleeping accommodations.

f. "Lodging facilitator" means a person or any affiliate of a person, other than a lodging provider or a lodging platform, that facilitates the renting of lodging and collects or processes the sales price charged to the user.

g. "Lodging platform" means a person or any affiliate of a person, other than a lodging provider, that facilitates the renting of lodging by doing all of the following:

(1) The person or an affiliate of the person owns, operates, or controls a lodging marketplace that allows a lodging provider who is not an affiliate of the person to offer or list lodging for rent on the marketplace. For purposes of this subparagraph, it is immaterial whether or not the lodging provider has a tax permit under this chapter or in what manner the lodging is classified for property tax or zoning purposes.

(2) The person or an affiliate of the person collects or processes the sales price charged to the user.

h. "Lodging provider" means any of the following:

(1) A person or any affiliate of a person that owns, operates, or manages lodging and makes the lodging available for rent through the person or any affiliate, or through a lodging platform or a lodging facilitator.

(2) A person or any affiliate of a person who possesses or acquires a right to or interest in any lodging with an intent to rent the lodging to another person through the person or any affiliate, or through a lodging platform or a lodging facilitator.

i. "Person" means the same as the term is defined in section 423.1.

j. "Renting", *"rental"*, or *"rent"* means a transfer of use, possession, or control of lodging for a fixed or indeterminate term for consideration.

k. "Sales price" means all consideration charged for the renting and facilitation of renting of lodging before taxes, including but not limited to facilitation fees, cleaning fees, linen fees, towel fees, nonrefundable deposits, and any other direct or indirect charge made or consideration provided in connection with the renting and facilitation of renting of lodging.

l. "User" means a person to whom lodging is rented.

2. All other words and phrases used in this chapter and defined in section 423.1 have the meaning given them by section 423.1 for the purposes of this chapter.

2005 Acts, ch 140, §20, 28, 29; 2009 Acts, ch 179, §137; 2011 Acts, ch 25, §143; 2018 Acts, ch 1161, §246, 255, 256

Referred to in §15J.2

Legislative intent regarding definition of lodging; 2018 Acts, ch 1161, §254

423A.3 State-imposed hotel and motel tax.

A tax of five percent is imposed upon the sales price for the renting of any lodging if the lodging is located in this state. The tax shall be collected and remitted as provided in section 423A.5A.

2005 Acts, ch 140, §21; 2006 Acts, ch 1010, §103; 2018 Acts, ch 1161, §247, 255

Referred to in §15J.2, 15J.5, 423A.5A

423A.4 Locally imposed hotel and motel tax.

1. A city, a county, or a land use district created under chapter 303, subchapter IV, may impose, by ordinance of the city council or by resolution of the board of supervisors or by ordinance of the board of trustees, a hotel and motel tax, at a rate not to exceed seven percent, which shall be imposed in increments of one or more full percentage points upon the sales price from the renting of lodging. The tax when imposed by a city shall apply only within the corporate boundaries of that city, when imposed by a county shall apply only outside incorporated areas within that county, and when imposed by a land use district shall apply

only within the corporate boundaries of that district. A hotel and motel tax imposed by a city or county shall not be imposed within the corporate boundaries of a land use district during any period of time that the land use district is imposing a hotel and motel tax.

2. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of the hotel and motel tax, the county auditor shall give written notice by sending a copy of the abstract of votes from the favorable election to the director of revenue.

3. A local hotel and motel tax shall be imposed on January 1 or July 1, following the notification of the director of revenue. Once imposed, the tax shall remain in effect at the rate imposed for a minimum of one year. A local hotel and motel tax shall terminate only on June 30 or December 31. At least forty-five days prior to the tax being effective or prior to a revision in the tax rate or prior to the repeal of the tax, a city, county, or land use district shall provide notice by mail of such action to the director of revenue. The director shall have the authority to waive the notice requirement.

4. *a.* A city, county, or land use district shall impose or repeal a hotel and motel tax or increase or reduce the tax rate only after an election at which a majority of those voting on the question favors imposition, repeal, or change in rate. However, a hotel and motel tax of a city or county shall not be repealed or reduced in rate if obligations are outstanding which are payable as provided in section 423A.7, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

b. If the tax applies only within the corporate boundaries of a city, only the registered voters of the city shall be permitted to vote. The election shall be held at the time of the regular city election or at a special election called for that purpose. If the tax applies only in the unincorporated areas of a county or only within the corporate boundaries of a land use district, only the registered voters of the unincorporated areas of the county or the registered voters of the land use district, as applicable, shall be permitted to vote. The election shall be held at the time of the general election or at a special election called for that purpose.

5. The locally imposed hotel and motel tax shall be collected and remitted as provided in section 423A.5A.

2005 Acts, ch 140, §22; 2007 Acts, ch 186, §24; 2008 Acts, ch 1115, §105; 2017 Acts, ch 158, §2; 2018 Acts, ch 1161, §248, 255

Referred to in §423A.5A, 423A.7

423A.5 Exemptions.

There are exempted from the provisions of this chapter and from the computation of any amount of tax imposed by this chapter all of the following:

1. The sales price from the renting of lodging which is rented by the same person for a period of more than thirty-one consecutive days.

2. The sales price from the renting of sleeping rooms in dormitories at all universities and colleges located in the state of Iowa.

3. The sales price of lodging furnished to the guests of a religious institution if the property is exempt under section 427.1, subsection 8, and the purpose of renting is to provide a place for a religious retreat or function and not a place for transient guests generally.

2005 Acts, ch 140, §23; 2008 Acts, ch 1184, §58, 59; 2009 Acts, ch 179, §138, 139; 2018 Acts, ch 1161, §249, 255

423A.5A Collection and remittance of hotel and motel tax.

1. For purposes of this section:

a. *"Discount room charge"* means the amount a lodging provider charges a lodging facilitator for lodging, excluding any applicable tax.

b. *"Travel package"* means lodging bundled with one or more separate components such as air transportation, car rental, or similar items and charged for a single retail price.

2. This section shall govern the collection and remittance of all taxes imposed under this chapter.

3. Unless otherwise provided in this section, the state-imposed tax under section 423A.3

and any locally imposed tax under section 423A.4 shall be collected by the lodging provider from the user of that lodging and shall be remitted to the department. The lodging provider shall add the state-imposed tax to the sales price of the lodging and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and from the locally imposed tax, if any. The lodging provider shall add the locally imposed tax, if any, to the sales price of the lodging and the tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and from the state-imposed tax.

4. If a transaction for the rental of lodging involves a lodging facilitator, all of the following shall occur in the order prescribed:

a. The lodging facilitator shall collect the taxes imposed under this chapter on any sales price that the user pays to the lodging facilitator in the same manner as a lodging provider under subsection 3.

b. (1) Unless otherwise required by rule or order of the department, the lodging facilitator shall remit to the lodging provider that portion of the taxes collected on the sales price that represents the discount room charge.

(2) No assessment shall be made against a lodging facilitator for tax due on a discount room charge if the lodging facilitator collected the tax and remitted it to a lodging provider that has a valid tax permit required under this chapter. This subparagraph shall not apply if the lodging facilitator and lodging provider are affiliates, or if the department requires the lodging facilitator to remit taxes collected on that portion of the sales price that represents the discount room charge directly to the department.

c. The lodging facilitator shall remit any remaining tax it collected to the department.

d. (1) The lodging provider shall collect and remit to the department any taxes the lodging facilitator remitted to the lodging provider, and shall collect and remit to the department any taxes due on any amount of sales price the user paid to the lodging provider.

(2) No assessment shall be made against a lodging provider for any tax due on a discount room charge that was not remitted to the lodging provider by a lodging facilitator. This subparagraph shall not apply if the lodging provider and lodging facilitator are affiliates.

e. Notwithstanding any other provision of this section to the contrary, if a lodging facilitator and its affiliates facilitate total rentals under this chapter and chapter 423C that are equal to or less than an aggregate amount of sales price and rental price of ten thousand dollars for an immediately preceding calendar year or a current calendar year, or in ten or fewer separate transactions for an immediately preceding calendar year or a current calendar year, the lodging facilitator shall not be required to collect tax on the amount of sales price that represents the lodging facilitator's facilitation fee.

5. If a transaction for the rental of lodging involves a lodging platform, the lodging platform shall collect and remit the taxes imposed under this chapter in the same manner as a lodging provider under subsection 3.

6. If a transaction for the rental of lodging is part of a travel package, the portion of the total price that represents the sales price for the rental of lodging may be determined by the person required under this section to collect the taxes from the person's books and records that are kept in the regular course of business including but not limited to books and records kept for non-tax purposes.

2018 Acts, ch 1161, §250, 255

Referred to in §423A.3, 423A.4

423A.6 Administration by director.

1. The director of revenue shall administer the state and local hotel and motel tax as nearly as possible in conjunction with the administration of the state sales tax law, except that portion of the law which implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting state and local hotel and motel tax liability. All moneys received or refunded one hundred eighty days after the date on which a city, county, or land use district terminates its local hotel and motel tax and all moneys received from the state hotel and motel tax shall be deposited in or withdrawn from the general fund of the state.

2. If a reinvestment district is established under chapter 15J, beginning the first day

of the calendar quarter beginning on the reinvestment district's commencement date, the director of revenue shall, subject to remittance limitations established by the economic development authority board pursuant to section 15J.4, subsection 3, transfer from the general fund of the state to a district account created in the state reinvestment district fund for each reinvestment district established under chapter 15J, the amount of the new state hotel and motel tax revenue, determined in section 15J.5, subsection 2, paragraph "*b*", in the district. Such transfers shall cease pursuant to section 15J.8.

3. The director, in consultation with local officials, shall collect and account for a local hotel and motel tax and shall credit all revenues to the local transient guest tax fund created in section 423A.7. Local authorities shall not require any tax permit not required by the director of revenue.

4. Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and 422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31, 423.33, 423.35, 423.37 through 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the taxes authorized under this chapter, in the same manner and with the same effect as if the state and local hotel and motel taxes were retail sales taxes within the meaning of those statutes. Notwithstanding this subsection, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in section 423.31. The director may require all persons who are engaged in the business of deriving any sales price subject to tax under this chapter to register with the department. All taxes collected under this chapter by a retailer, lodging provider, lodging facilitator, lodging platform, or any other person are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

2005 Acts, ch 140, §24; 2007 Acts, ch 126, §70; 2013 Acts, ch 119, §10; 2014 Acts, ch 1092, §91; 2014 Acts, ch 1093, §23; 2017 Acts, ch 158, §3; 2018 Acts, ch 1161, §251, 255

Referred to in §15J.4, 15J.5, 15J.6, 423A.7

423A.7 Local transient guest tax fund.

1. A local transient guest tax fund is created in the department which shall consist of all moneys credited to such fund under section 423A.6.

2. All moneys in the local transient guest tax fund shall be remitted at least quarterly by the department, pursuant to rules of the director of revenue, to each city in the amount collected from businesses in that city, to each county in the amount collected from businesses in the unincorporated areas of the county, and to each land use district in the amount collected from businesses in that land use district.

3. Moneys received by the city from this fund shall be credited to the general fund of the city, subject to the provisions of subsection 4.

4. The revenue derived by a city or county from any local hotel and motel tax authorized by section 423A.4 shall be used by a city or county as follows:

a. Each county or city which levies the tax shall spend at least fifty percent of the revenues derived therefrom for the acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities including but not limited to memorial buildings, halls and monuments, civic center convention buildings, auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities or the payment of principal and interest, when due, on bonds or other evidence of indebtedness issued by the county or city for those recreation, convention, cultural, or entertainment facilities; or for the promotion and encouragement of tourist and convention business in the city or county and surrounding areas.

b. The remaining revenues may be spent by the city or county which levies the tax for any city or county operations authorized by law as a proper purpose for the expenditure within statutory limitations of city or county revenues derived from ad valorem taxes.

c. Any city or county which levies and collects the local hotel and motel tax authorized by section 423A.4 may pledge irrevocably an amount of the revenues derived therefrom for each of the years the bonds remain outstanding to the payment of bonds which the city or county

may issue for one or more of the purposes set forth in paragraph "*a*". Any revenue pledged to the payment of such bonds may be credited to the spending requirement of paragraph "*a*".

d. (1) The provisions of chapter 384, subchapter III, relating to the issuance of corporate purpose bonds, apply to the issuance by a city of bonds payable as provided in this section and the provisions of chapter 331, subchapter IV, part 3, relating to the issuance of county purpose bonds, apply to the issuance by a county of bonds payable as provided in this section. The provisions of chapter 76 apply to the bonds payable as provided in this section except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged portion of the local hotel and motel tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the city or county which levied the tax from the first available local hotel and motel tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes.

(2) The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the local hotel and motel tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local hotel and motel tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections for the full year for the purpose of determining the amount of the bonds which may be issued.

e. A city or county, jointly with one or more other cities or counties as provided in chapter 28E, may pledge irrevocably any amount derived from the revenues of the local hotel and motel tax to the support or payment of bonds issued for a project within the purposes set forth in paragraph "*a*" and located within one or more of the participatory cities or counties or may apply the proceeds of its bonds to the support of any such project. Revenue so pledged or applied shall be credited to the spending requirement of paragraph "*a*".

f. (1) A city or county acting on behalf of an unincorporated area may, in lieu of calling an election, institute proceedings for the issuance of bonds under this section by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the city or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

(2) If at any time before the date fixed for taking action for the issuance of the bonds a petition signed by eligible electors residing in the city or the unincorporated area equal in number to at least three percent of the registered voters of the city or unincorporated area is filed, asking that the question of issuing the bonds be submitted to the registered voters of the city or unincorporated area, the council or board of supervisors acting on behalf of an unincorporated area shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds.

(3) The proposition of issuing bonds under this section is not approved unless the vote in favor of the proposition is equal to a majority of the vote cast.

(4) If no petition is filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the council or board of supervisors acting on behalf of an unincorporated area may proceed with the authorization and issuance of the bonds.

(5) Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this section without otherwise complying with this paragraph.

5. The revenue derived by a land use district from any local hotel and motel tax authorized

by section 423A.4 shall be expended exclusively for the purposes set forth in section 303.52, subsection 4, paragraph *"b"*.

2005 Acts, ch 140, §25; 2011 Acts, ch 25, §143; 2017 Acts, ch 158, §4 – 6; 2018 Acts, ch 1041, §127

Referred to in §331.427, 423A.4, 423A.6

CHAPTER 423B

LOCAL OPTION TAXES

Referred to in §15J.7, 76.4, 356.37, 418.13, 421.26, 421.28, 421.71, 423.2A, 423.3, 423.4, 423.14A, 423.36, 423.43

Personal liability for tax due, see §421.26

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		423B.10	Funding urban renewal projects.

423B.1 Authorization — election — imposition and repeal.

1. A county may impose by ordinance of the board of supervisors local option taxes authorized by this chapter, subject to this section and subject to the exception provided in subsection 2.

2. *a.* A city whose corporate boundaries include areas of two counties may impose by ordinance of its city council a local sales and services tax if all of the following apply:

(1) At least eighty-five percent of the residents of the city live in one county.

(2) The county in which at least eighty-five percent of the city residents reside has held an election on the question of the imposition of a local sales and services tax and a majority of those voting on the question in the city favored its imposition.

(3) The city has entered into an agreement on the distribution of the sales and services tax revenues collected from the area where the city tax is imposed with the county where such area is located.

b. The city council of a city authorized to impose a local sales and services tax pursuant to paragraph *"a"* shall only do so subject to all of the following restrictions:

(1) The tax shall only be imposed in the area of the city located in the county where not more than fifteen percent of the city's residents reside.

(2) The tax shall be at the same rate and become effective at the same time as the county tax imposed in the other area of the city.

(3) The tax once imposed shall continue to be imposed until the county-imposed tax is repealed, and the city-imposed tax shall also be repealed effective on the same date.

(4) The tax shall be imposed on the same basis as provided in section 423B.5 and notification requirements in section 423B.6 apply.

(5) The city shall assist the department of revenue to identify the businesses in the area which are to collect the city-imposed tax. The process shall be ongoing as long as the city tax is imposed.

c. The agreement on the distribution of the revenues collected from the city-imposed tax shall provide that fifty percent of such revenues shall be remitted to the county in which the part of the city where the city tax is imposed is located.

d. The latest certified federal census preceding the election held by the county on the question of imposition of the local sales and services tax shall be used in determining if the city qualifies under paragraph *"a"*, subparagraph (1), to impose its own tax and in determining the area where the city tax may be imposed under paragraph *"b"*, subparagraph (1).

e. A city is not authorized to impose a local sales and services tax under this subsection after July 1, 2000. A city that has imposed a local sales and services tax under this subsection on or before July 1, 2000, may continue to collect the tax until such time as the tax is repealed

by the city and the fact that the area acquires more than fifteen percent of the city's residents after the tax is imposed shall not affect the imposition or collection of the tax.

3. *a.* If a majority of those voting on the question of imposition of a local option tax favors imposition, the local option tax shall be imposed at the rate specified on the ballot until repealed as provided in this chapter.

b. If the tax is a local vehicle tax imposed by a county, it shall apply to all incorporated and unincorporated areas of the county.

c. (1) If the tax is a local sales and services tax imposed by a county, it shall only apply to those incorporated areas and the unincorporated area of that county in which a majority of those voting in the area on the tax favors its imposition. For purposes of the local sales and services tax, all cities contiguous to each other shall be treated as part of one incorporated area and the tax would be imposed in each of those contiguous cities only if the majority of those voting in the total area covered by the contiguous cities favors its imposition. For purposes of the local sales and services tax, a city is not contiguous to another city if the only road access between the two cities is through another state.

(2) The treatment of contiguous cities as one incorporated area for the purpose of determining whether a majority of those voting favors imposition does not apply to elections on the question of imposition of a local sales and services tax in all or a portion of a county that is a qualified county if the election occurs on or after January 1, 2019. For purposes of this chapter, "*qualified county*" means a county with a population in excess of four hundred thousand, a county with a population of at least one hundred thirty thousand but not more than one hundred thirty-one thousand, or a county with a population of at least sixty thousand but not more than seventy thousand, according to the 2010 federal decennial census.

4. *a.* (1) The county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local vehicle tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition requesting imposition of a local vehicle tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding general election. The petition requesting imposition shall specify the rate of tax and the classes, if any, that are to be exempt. If more than one valid petition is received, the earliest received petition shall be used.

(2) The county board of supervisors shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local sales and services tax to the registered voters of the incorporated and unincorporated areas of the county upon receipt of a petition requesting imposition of a local sales and services tax, signed by eligible electors of the whole county equal in number to five percent of the persons in the whole county who voted at the last preceding general election. If more than one valid petition is received, the earliest received petition shall be used.

(3) In lieu of the petition requirement of subparagraph (2), the county board of supervisors for a county that is a qualified county shall direct within thirty days the county commissioner of elections to submit the question of imposition of a local sales and services tax to the registered voters of a city, or the portion thereof located in the county, or to the registered voters of the unincorporated area of the county upon receipt by the board of supervisors of a petition requesting imposition of a local sales and services tax, signed by eligible electors of the city, or the portion thereof located in the county, or eligible electors of the unincorporated area of the county, as applicable, equal in number to five percent of the persons in the city, or applicable portion thereof, or in the unincorporated area of the county who voted at the last preceding general election. If more than one valid petition is received for a city or for the unincorporated area of the county, the earliest received petition shall be used. This subparagraph applies to petitions received on or after January 1, 2019.

b. (1) The question of the imposition of a local sales and services tax shall be submitted to the registered voters of the incorporated and unincorporated areas of the county upon receipt by the county commissioner of elections of the motion or motions, requesting such submission, adopted by the governing body or bodies of the city or cities located within the county or of the county, for the unincorporated areas of the county, representing at least

one half of the population of the county. Upon adoption of such motion, the governing body of the city or county, for the unincorporated areas, shall submit the motion to the county commissioner of elections and in the case of the governing body of the city shall notify the board of supervisors of the adoption of the motion. The county commissioner of elections shall keep a file on all the motions received and, upon reaching the population requirements, shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. A motion ceases to be valid at the time of the holding of the regular election for the election of members of the governing body that adopted the motion. The county commissioner of elections shall eliminate from the file any motion that ceases to be valid.

(2) In lieu of the motion requirements of subparagraph (1), the question of the imposition of a local sales and services tax shall be submitted to the registered voters of a city located in a county that is a qualified county, or the portion thereof located in the county, or to the registered voters of the unincorporated area of a county that is a qualified county upon receipt by the county commissioner of elections of a motion requesting such submission, adopted by the governing body of the city or the county for the unincorporated area of the county, as applicable. Upon adoption of such motion, the governing body of the city or county for the unincorporated area shall submit the motion to the county commissioner of elections. The county commissioner of elections shall publish notice of the ballot proposition concerning the imposition of the local sales and services tax. This subparagraph applies to motions received by the county commissioner of elections on or after January 1, 2019.

(3) The methods provided under this paragraph for the submission of the question of imposition of a local sales and services tax are alternatives to the methods provided in paragraph "*a*".

5. *a.* The county commissioner of elections shall submit the question of imposition of a local option tax at an election held on a date specified in section 39.2, subsection 4, paragraph "*a*" or "*b*", as applicable. The election shall not be held sooner than sixty days after publication of notice of the ballot proposition.

b. The ballot proposition shall specify the type and rate of tax and, in the case of a vehicle tax, the classes that will be exempt and, in the case of a local sales and services tax, the date it will be imposed which date shall not be earlier than ninety days following the election. The ballot proposition shall also specify the approximate amount of local option tax revenues that will be used for property tax relief, subject to the requirement of section 423B.7, subsection 7, paragraph "*b*", and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended. If the county board of supervisors or governing body of the city, as applicable, decides under subsection 6 to specify a date on which the local option sales and services tax shall automatically be repealed, the date of the repeal shall also be specified on the ballot.

c. The rate of the vehicle tax shall be in increments of one dollar per vehicle as set by the petition seeking to impose the tax.

d. The rate of a local sales and services tax shall be one percent.

e. The state commissioner of elections shall establish by rule the form for the ballot proposition which form shall be uniform throughout the state.

6. *a.* (1) (a) A local option tax may be repealed or the rate of the local vehicle tax increased or decreased or the use of a local option tax changed after an election at which a majority of those voting on the question of repeal or rate or use change favors the repeal or rate or use change.

(b) The date on which the repeal, rate, or use change is to take effect shall not be earlier than ninety days following the election. The election at which the question of repeal or rate or use change is offered shall be called and held in the same manner and under the same conditions as provided in subsections 4 and 5 for the election on the imposition of the local option tax. However, in the case of a local sales and services tax where the tax has not been imposed countywide, the question of repeal or imposition or use change shall be voted on only by the registered voters of the areas of the county where the tax has been imposed or has not been imposed, as appropriate.

(c) The governing body of the city or unincorporated area where the local sales and services tax is imposed may, upon its own motion, request the county commissioner

of elections to hold an election in the city, or portion thereof located in the county, or unincorporated area, as appropriate, on the question of the change in use of local sales and services tax revenues. The election may be held at any time but not sooner than sixty days following publication of the ballot proposition. If a majority of those voting in the city, or portion thereof located in the county, or unincorporated area on the change in use favors the change, the governing body of that area shall change the use to which the revenues shall be used. The ballot proposition shall list the present use of the revenues, the proposed use, and the date after which revenues received will be used for the new use.

(2) When submitting the question of the imposition of a local sales and services tax, the board of supervisors or if the election is initiated under subsection 4, paragraph "*a*", subparagraph (3), or subsection 4, paragraph "*b*", subparagraph (2), the governing board of a city, may direct that the question contain a provision for the repeal, without election, of the local sales and services tax on a specific date, which date shall be as provided in section 423B.6, subsection 1.

b. Within ten days of the election at which a majority of those voting on the question favors the imposition, repeal, or change in the rate of a local option tax, the county auditor shall give written notice of the result of the election by sending a copy of the abstract of the votes from the favorable election to the director of revenue or, in the case of a local vehicle tax, to the director of transportation. The appropriate director shall have the authority to waive the notice requirement.

c. Notwithstanding any other provision in this section, a change in use of the local sales and services tax revenues for purposes of funding an urban renewal project pursuant to section 423B.10 does not require an election.

7. *a.* More than one of the authorized local option taxes may be submitted at a single election and the different taxes shall be separately implemented as provided in this section.

b. Costs of local option tax elections shall be apportioned among jurisdictions within the county voting on the question at the same election on a pro rata basis in proportion to the number of registered voters in each taxing jurisdiction voting on the question and the total number of registered voters in all of the taxing jurisdictions voting on the question.

8. *a.* In a county that has imposed a local option sales and services tax, the board of supervisors shall, notwithstanding any contrary provision of this chapter, repeal the local option sales and services tax in the unincorporated areas or in an incorporated city area in which the tax has been imposed upon adoption of the board's own motion for repeal in the unincorporated areas or upon receipt of a motion adopted by the governing body of that incorporated city area requesting repeal. The board of supervisors shall repeal the local option sales and services tax effective on the earliest date specified in section 423B.6, subsection 1, following adoption of the motion. For purposes of this paragraph, incorporated city area includes an incorporated city which is contiguous to another incorporated city.

b. If imposition of the local option sales and services tax is initiated under subsection 4, paragraph "*a*", subparagraph (3), or subsection 4, paragraph "*b*", subparagraph (2), notwithstanding any contrary provision of this chapter, the board of supervisors may repeal the local sales and services tax in a city, or portion thereof located in the county, upon receipt of a motion adopted by the governing board of the city requesting the repeal. The board of supervisors shall repeal the local sales and services tax effective on the earliest date specified in section 423B.6, subsection 1, following adoption of the motion.

9. Notwithstanding subsection 8 or any other contrary provision of this chapter, a local option sales and services tax shall not be repealed if obligations are outstanding which are payable as provided in section 423B.9, unless funds sufficient to pay the principal, interest, and premium, if any, on the outstanding obligations at and prior to maturity have been properly set aside and pledged for that purpose.

85 Acts, ch 32, §89; 85 Acts, ch 198, §6

CS85, §422B.1

86 Acts, ch 1199, §2 – 6; 89 Acts, ch 146, §1; 89 Acts, ch 276, §1; 90 Acts, ch 1256, §21; 92 Acts, ch 1063, §1; 93 Acts, ch 143, §50; 95 Acts, ch 67, §53; 95 Acts, ch 186, §1 – 4, 9; 96 Acts, ch 1079, §22, 23; 99 Acts, ch 156, §5 – 11, 23; 2000 Acts, ch 1058, §36; 2002 Acts, ch 1119, §166; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §203, 205

C2005, §423B.1
2006 Acts, ch 1158, §52 – 54; 2007 Acts, ch 186, §25; 2008 Acts, ch 1115, §68, 71; 2008 Acts, ch 1191, §65; 2013 Acts, ch 90, §103; 2015 Acts, ch 29, §114; 2018 Acts, ch 1161, §232 – 238, 245
Referred to in §423B.7, 423B.10

423B.2 Local vehicle tax.

1. An annual local vehicle tax at the rate per vehicle specified on the ballot proposition may be imposed by a county on every vehicle which is required by the state to be registered and is registered with the county treasurer to a person residing within the county where the tax is imposed at the time of the renewal of the registration of the vehicle. The local vehicle tax shall be imposed only on the renewals of registrations and shall be payable during the registration renewal periods provided under section 321.40.

2. The county imposing the tax shall provide for the exemption of each class, if any, of vehicles for which an exemption was listed on the ballot proposition.

3. For the purpose of the tax authorized by this section:

a. *"Person"* means the same as defined in section 321.1.

b. *"Registration year"* means the same as defined in section 321.1.

c. *"Vehicle"* means motor vehicle as defined in section 321.1 which is subject to registration under section 321.18, and which is registered with the county treasurer.

85 Acts, ch 32, §90
CS85, §422B.2
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423B.2
2013 Acts, ch 90, §104

423B.3 Administration of local vehicle tax.

1. A local vehicle tax or change in the rate shall be imposed January 1 immediately following a favorable election for registration years beginning on or after that date and the repeal of the tax shall be as of December 31 following a favorable election for registration years beginning after that date.

2. Local officials shall confer with the director of transportation for assistance in drafting the ordinance imposing a local vehicle tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage. The director shall inform the appropriate county treasurers and provide assistance to them for the collection of all local vehicle taxes and any penalties, crediting local vehicle tax receipts excluding penalties to a "local vehicle tax fund" established in the office of the county treasurer. From the local vehicle tax fund, the treasurer shall remit monthly, by direct deposit in the same manner as provided in section 384.11, to each city in the county the amount collected from residents of the city during the preceding calendar month and to the county the amount collected from the residents of the unincorporated area during the preceding calendar month. Moneys received by a city or county from this fund shall be credited to the general fund of the city or county to be used solely for public transit or shall be credited to the street construction fund of that city or the secondary road fund of that county to be used for the purposes specified in section 312.6. Any penalties collected shall be credited to the county general fund to be used to defray the cost to the county of administering the local vehicle tax.

85 Acts, ch 32, §91
CS85, §422B.3
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423B.3
2015 Acts, ch 29, §114; 2019 Acts, ch 24, §104
Code editor directive applied

423B.4 Payment — penalties.

1. Taxpayers shall pay a local vehicle tax to the county treasurer at the time of application for the renewal of the registration of the vehicle under chapter 321 for the registration year. The county treasurer shall require a person applying for the renewal of the registration of

a vehicle to state the person's residence and shall not renew a registration certificate of a vehicle on which a local vehicle tax is due until the local vehicle tax is paid.

2. Payment of a local vehicle tax shall be evidenced by a notation on the state registration certificate. The director of transportation shall prescribe by rule the type of notation. A local vehicle tax shall not be refunded even when annual state registration fees are refunded.

3. Penalties for late payment which are comparable to the penalties for late payment of annual state registration fees shall be imposed by the ordinance imposing a local vehicle tax. Willful violation of a local vehicle tax ordinance is a simple misdemeanor.

85 Acts, ch 32, §92
CS85, §422B.4
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423B.4
2008 Acts, ch 1113, §115; 2015 Acts, ch 29, §114

423B.5 Local sales and services tax.

1. A local sales and services tax may be imposed by a county on the sales price taxed by the state under chapter 423, subchapter II. A local sales and services tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the sales price from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the sales price from the sale of equipment by the state department of transportation, or on the sales price from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the sales price from the sale of natural gas or electric energy is subject to a franchise fee or user fee during the period the franchise or user fee is imposed. A local sales and services tax is applicable to transactions within those cities and unincorporated areas of the county where it is imposed, which transactions include but are not limited to sales sourced pursuant to section 423.15, 423.17, 423.19, or 423.20, to a location within that city or unincorporated area of the county. The tax shall be collected by all persons required to collect state sales taxes. However, a local sales and services tax is not applicable to transactions sourced under chapter 423 to a place of business, as defined in section 423.1, of a retailer if such place of business is located in part within a city or unincorporated area of the county where the tax is not imposed.

2. The amount of the sale, for purposes of determining the amount of the local sales and services tax, does not include the amount of any state sales tax.

3. A tax permit other than the state sales tax permit required under section 423.36 shall not be required by local authorities.

4. If a local sales and services tax is imposed by a county pursuant to this chapter, a local excise tax at the same rate shall be imposed by the county on the purchase price of natural gas, natural gas service, electricity, or electric service subject to tax under chapter 423, subchapter III, and not exempted from tax by any provision of chapter 423, subchapter III. The local excise tax is applicable only to the use of natural gas, natural gas service, electricity, or electric service within those cities and unincorporated areas of the county where it is imposed and, except as otherwise provided in this chapter, shall be collected and administered in the same manner as the local sales and services tax. For purposes of this chapter, *"local sales and services tax"* shall also include the local excise tax.

85 Acts, ch 32, §96
CS85, §422B.8
86 Acts, ch 1042, §11; 86 Acts, ch 1199, §7; 88 Acts, ch 1154, §3; 89 Acts, ch 276, §2; 95 Acts, ch 83, §13; 99 Acts, ch 151, §30 – 32; 99 Acts, ch 156, §12; 2001 Acts, ch 116, §13; 2003 Acts, ch 178, §113, 121; 2003 Acts, ch 179, §142; 2003 Acts, 1st Ex, ch 2, §187, 203, 205

C2005, §423B.5
2005 Acts, ch 3, §70; 2005 Acts, ch 140, §14, 16, 26, 31; 2006 Acts, ch 1010, §104; 2006 Acts, ch 1158, §55; 2016 Acts, ch 1011, §121; 2018 Acts, ch 1161, §225, 229, 239, 245
Referred to in §28A.17, 423B.1
For future amendment to subsection 1, effective July 1, 2023, see 2019 Acts, ch 151, §21, 46

423B.6 Administration.

1. *a.* A local sales and services tax shall be imposed either January 1 or July 1 following the notification of the director of revenue but not sooner than ninety days following the favorable election and not sooner than sixty days following notice to sellers, as defined in section 423.1. However, a jurisdiction which has voted to continue imposition of the tax may impose that tax without repeal of the prior tax.

b. A local sales and services tax shall be repealed only on June 30 or December 31 but not sooner than ninety days following the favorable election if one is held. However, a local sales and services tax shall not be repealed before the tax has been in effect for one year. At least forty days before the imposition or repeal of the tax, a county shall provide notice of the action by certified mail to the director of revenue.

c. The imposition of a local sales and services tax shall not be applied to purchases from a printed catalog wherein a purchaser computes the local tax based on rates published in the catalog unless a minimum of one hundred twenty days' notice of the imposition has been given to the seller from the catalog and the first day of a calendar quarter has occurred on or after the one hundred twentieth day.

d. If a local sales and services tax has been imposed prior to April 1, 2000, and at the time of the election a date for repeal was specified on the ballot, the local sales and services tax may be repealed on that date, notwithstanding paragraph *"b"*.

2. *a.* The director of revenue shall administer a local sales and services tax as nearly as possible in conjunction with the administration of state sales tax laws. The director shall provide appropriate forms or provide on the regular state tax forms for reporting local sales and services tax liability.

b. The ordinance of a county board of supervisors imposing a local sales and services tax shall adopt by reference the applicable provisions of the appropriate sections of chapter 423. All powers and requirements of the director to administer the state sales tax law and use tax law are applicable to the administration of a local sales and services tax law and the local excise tax, including but not limited to the provisions of section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70 through 422.75, section 423.14, subsection 1 and subsection 2, paragraphs *"b"* through *"e"*, and sections 423.14A, 423.15, 423.23, 423.24, 423.25, 423.31 through 423.35, 423.37 through 423.42, 423.46, and 423.47. Local officials shall confer with the director of revenue for assistance in drafting the ordinance imposing a local sales and services tax. A certified copy of the ordinance shall be filed with the director as soon as possible after passage.

c. Frequency of deposits and quarterly reports of a local sales and services tax with the department of revenue are governed by the tax provisions in section 423.31. Local tax collections shall not be included in computation of the total tax to determine frequency of filing under section 423.31.

d. The director shall apply a boundary change of a county or city imposing or collecting the local sales and services tax to the imposition or collection of that tax only on the first day of a calendar quarter which occurs sixty days or more after the director has given notice of the boundary change to sellers.

3. *a.* The director, in consultation with local officials, shall collect and account for a local sales and services tax. The director shall certify each quarter the amount of local sales and services tax receipts and any interest and penalties to be credited to the "local sales and services tax fund" established in the office of the treasurer of state. All taxes collected under this chapter by a retailer or any individual are deemed to be held in trust for the state of Iowa and the local jurisdictions imposing the taxes.

b. All local tax moneys and interest and penalties received or refunded one hundred eighty

days or more after the date on which the county repeals its local sales and services tax shall be deposited in or withdrawn from the state general fund.

85 Acts, ch 32, §97

CS85, §422B.9

86 Acts, ch 1245, §441; 89 Acts, ch 276, §3; 97 Acts, ch 145, §1; 99 Acts, ch 151, §33, 89; 99 Acts, ch 156, §13, 23; 2001 Acts, ch 116, §14; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §188, 203, 205; 2004 Acts, ch 1073, §21

C2005, §423B.6

2008 Acts, ch 1032, §53; 2018 Acts, ch 1161, §226, 229, 240, 245

Referred to in §28A.17, 423B.1

423B.7 Payment to local governments.

1. *a.* Except as provided in paragraphs "*b*" and "*c*", the director shall credit the local sales and services tax receipts and interest and penalties from a county-imposed tax to the county's account in the local sales and services tax fund for the county in which the tax was collected. If the director is unable to determine from which county any of the receipts were collected, those receipts shall be allocated among the possible counties based on allocation rules adopted by the director.

b. The director shall credit the designated amount of the increase in local sales and services tax receipts, as computed in section 423B.10, collected in an urban renewal area of an eligible city that has adopted an ordinance pursuant to section 423B.10, subsection 2, into a special city account in the local sales and services tax fund.

c. The director shall credit the local sales and services tax receipts and interest and penalties from a city-imposed tax under section 423B.1, subsection 2, to the city's account in the local sales and services tax fund.

2. *a.* The director of revenue by August 15 of each fiscal year shall send to each city or county where the local option tax is imposed, an estimate of the amount of tax moneys each city or county will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director of revenue shall remit ninety-five percent of the estimated tax receipts for the city or county to the city or county on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director of revenue shall remit a final payment of the remainder of tax moneys due the city or county for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

3. Seventy-five percent of each county's account shall be remitted on the basis of the county's population residing in the unincorporated area where the tax was imposed and those incorporated areas where the tax was imposed as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the above population of the county residing in the unincorporated area of the county where the tax was imposed according to the most recent certified federal census.

b. To each city in the county where the tax was imposed a pro rata share based upon the percentage of the city's population residing in the county to the above population of the county according to the most recent certified federal census.

c. If a subsequent certified census exists which modifies that most recent certified federal census for a participating jurisdiction under paragraphs "*a*" and "*b*", the computations under paragraphs "*a*" and "*b*" shall utilize the subsequent certified census in the distribution formula under rules established by the director of revenue.

4. Twenty-five percent of each county's account shall be remitted based on the sum of property tax dollars levied by the board of supervisors if the tax was imposed in the unincorporated areas and each city in the county where the tax was imposed during the three-year period beginning July 1, 1982, and ending June 30, 1985, as follows:

a. To the board of supervisors a pro rata share based upon the percentage of the total property tax dollars levied by the board of supervisors during the above three-year period.

b. To each city council where the tax was imposed a pro rata share based upon the

percentage of property tax dollars levied by the city during the above three-year period of the above total property tax dollars levied by the board of supervisors and each city where the tax was imposed during the above three-year period.

5. From each city's account, the percent of revenues agreed to be distributed to the county in the agreement entered into as provided in section 423B.1, subsection 2, paragraph "*a*", subparagraph (3), and paragraph "*c*", shall be deposited into the appropriate county's account to be remitted as provided in subsections 3 and 4. The remaining revenues in the city's account shall be remitted to the city council. If a county does not have an account, its percent of the revenues shall be remitted directly to the county board of supervisors.

6. From each special city account, the revenues shall be remitted to the city council for deposit in the special fund created in section 403.19, subsection 2, to be used by the city as provided in section 423B.10. The distribution from the special city account is not subject to the distribution formula provided in subsections 3, 4, and 5.

7. *a.* Subject to the requirement of paragraph "*b*", local sales and services tax moneys received by a city or county may be expended for any lawful purpose of the city or county.

b. Each city located in whole or in part in a qualified county and each qualified county for the unincorporated area for which the imposition of the local sales and services tax in the city or portion thereof or the unincorporated area, as applicable, was approved at election on or after January 1, 2019, shall use not less than fifty percent of the moneys received from the qualified county's account in the local sales and services tax fund for property tax relief.

85 Acts, ch 32, §98

CS85, §422B.10

86 Acts, ch 1199, §8; 89 Acts, ch 277, §1, 2; 95 Acts, ch 186, §5, 6, 9; 96 Acts, ch 1079, §22, 23; 97 Acts, ch 145, §2; 99 Acts, ch 151, §34, 89; 99 Acts, ch 156, §14; 2002 Acts, ch 1151, §12; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §203, 205

C2005, §423B.7

2006 Acts, ch 1182, §45, 53; 2008 Acts, ch 1134, §68; 2008 Acts, ch 1191, §66, 67; 2018 Acts, ch 1161, §241, 242, 245

Referred to in §423B.1, 423B.10

423B.8 Construction contractor refunds.

1. Construction contractors may make application to the department for a refund of the additional local sales and services tax paid under this chapter by reason of taxes paid on goods, wares, or merchandise under the following conditions:

a. The goods, wares, or merchandise are incorporated into an improvement to real estate in fulfillment of a written contract fully executed prior to the date of the imposition of a local sales and services tax under this chapter. The refund shall not apply to equipment transferred in fulfillment of a mixed construction contract.

b. The contractor has paid to the department or to a retailer the full amount of the state and local tax.

c. The claim is filed on forms provided by the department and is filed within one year of the date the tax is paid.

2. The department shall pay the refund from the appropriate city's or county's account in the local sales and services tax fund.

3. A contractor who makes an erroneous application for refund shall be liable for payment of the excess refund paid plus interest at the rate in effect under section 421.7. In addition, a contractor who willfully makes a false application for refund is guilty of a simple misdemeanor and is liable for a penalty equal to fifty percent of the excess refund claimed. Excess refunds, penalties, and interest due under this subsection may be enforced and collected in the same manner as the local sales and services tax imposed under this chapter.

88 Acts, ch 1153, §6

C89, §422B.11

2001 Acts, ch 116, §15; 2003 Acts, 1st Ex, ch 2, §203, 205

C2005, §423B.8

2018 Acts, ch 1161, §243, 245

423B.9 Issuance of bonds.

1. For purposes of this section unless the context otherwise requires:

a. *"Bond issuer"* or *"issuer"* means a city, a county, or a secondary recipient.

b. *"Designated portion"* means the portion of the local option sales and services tax revenues which is authorized to be expended for one or a combination of purposes under an adopted public measure.

c. *"Secondary recipient"* means a political subdivision of the state which is to receive revenues from a local option sales and services tax over a period of years pursuant to the terms of a chapter 28E agreement with one or more cities or counties.

2. An issuer of public bonds which is a recipient of revenues from a local option sales and services tax imposed pursuant to this chapter may issue bonds in anticipation of the collection of one or more designated portions of the local option sales and services tax and may pledge irrevocably an amount of the revenue derived from the designated portions for each of the years the bonds remain outstanding to the payment of the bonds. Bonds may be issued only for one or more of the purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax, except bonds shall not be issued which are payable from that portion of tax revenues designated for property tax relief. The bonds may be issued in accordance with the procedures set forth in either subsection 3 or 4.

3. The governing body of an issuer may authorize the issuance of bonds which are payable from the designated portion of the revenues of the local option sales and services tax, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

4. To authorize the issuance of bonds payable as provided in this subsection, the governing body of an issuer shall comply with all of the procedures as follows:

a. (1) A bond issuer may institute proceedings for the issuance of bonds by causing a notice of the proposal to issue the bonds, including a statement of the amount and purpose of the bonds, together with the maximum rate of interest which the bonds are to bear, and the right to petition for an election, to be published at least once in a newspaper of general circulation within the political subdivision or unincorporated area at least ten days prior to the meeting at which it is proposed to take action for the issuance of the bonds.

(2) If at any time before the date fixed for taking action for the issuance of the bonds, a petition signed by eligible electors residing within the jurisdiction seeking to issue the bonds in a number equal to at least three percent of the registered voters of the bond issuer is filed, asking that the question of issuing the bonds be submitted to the registered voters, the governing body shall either by resolution declare the proposal to issue the bonds to have been abandoned or shall direct the county commissioner of elections to call a special election upon the question of issuing the bonds. The proposition of issuing bonds under this subsection is not approved unless the vote in favor of the proposition is equal to at least sixty percent of the vote cast. If a petition is not filed, or if a petition is filed and the proposition of issuing the bonds is approved at an election, the governing body acting on behalf of the issuer may proceed with the authorization and issuance of the bonds. Bonds may be issued for the purpose of refunding outstanding and previously issued bonds under this subsection without otherwise complying with the provisions of this subsection.

b. The provisions of chapter 76 apply to the bonds payable as provided in this subsection, except that the mandatory levy to be assessed pursuant to section 76.2 shall be at a rate to generate an amount which together with the receipts from the pledged designated portion of the local option sales and services tax is sufficient to pay the interest and principal on the bonds. All amounts collected as a result of the levy assessed pursuant to section 76.2 and paid out in the first instance for bond principal and interest shall be repaid to the bond issuer which levied the tax from the first available designated portion of local option sales and services tax collections received in excess of the requirement for the payment of the principal and interest of the bonds and when repaid shall be applied in reduction of property taxes. The amount of bonds which may be issued under section 76.3 shall be the amount which could be retired from the actual collections of the designated portions of the local option sales and services

tax for the last four calendar quarters, as certified by the director of revenue. The amount of tax revenues pledged jointly by other cities or counties may be considered for the purpose of determining the amount of bonds which may be issued. If the local option sales and services tax has been in effect for less than four calendar quarters, the tax collected within the shorter period may be adjusted to project the collections of the designated portion for the full year for the purpose of determining the amount of the bonds which may be issued. The provisions of this section constitute separate authorization for the issuance of bonds and shall prevail in the event of conflict with any other provision of the Code limiting the amount of bonds which may be issued or the source of payment of the bonds. Bonds issued under this section shall not limit or restrict the authority of the bond issuer to issue bonds under other provisions of the Code.

5. A city or county, jointly with one or more other political subdivisions as provided in chapter 28E, may pledge irrevocably any amount derived from the designated portions of the revenues of the local option sales and services tax to the support or payment of bonds of an issuer, issued for one or more purposes set forth on the ballot proposition concerning the imposition of the local option sales and services tax or a political subdivision may apply the proceeds of its bonds to the support of any such purpose.

6. Bonds issued pursuant to this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance, or sale of bonds. Bonds issued pursuant to this section are declared to be issued for an essential public and governmental purpose. Bonds issued pursuant to this section shall be authorized by resolution of the governing body and may be issued in one or more series and shall bear the date or dates, be payable on demand or mature at the time or times, bear interest at the rate or rates not exceeding that permitted by chapter 74A, be in the denomination or denominations, be in the form, have the rank or priority, be executed in the manner, be payable in the medium of payment, at the place or places, be subject to the terms of redemption, with or without premium, be secured in the manner, and have the other characteristics, as may be provided by the resolution authorizing their issuance. The bonds may be sold at public or private sale at a price as may be determined by the governing body.

95 Acts, ch 186, §7, 9
CS95, §422B.12
96 Acts, ch 1079, §22, 23; 2001 Acts, ch 56, §35; 2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423B.9
2011 Acts, ch 25, §143
Referred to in §423B.1

423B.10 Funding urban renewal projects.

1. For purposes of this section, unless the context otherwise requires:

a. *"Base year"* means the fiscal year during which an ordinance is adopted that provides for funding of an urban renewal project by a designated amount of the increased sales and services tax revenues.

b. *"Eligible city"* means a city in which a local sales and services tax imposed by the county applies or a city described in section 423B.1, subsection 2, paragraph *"a"*, and in which an urban renewal area has been designated.

c. *"Retail establishment"* means a business operated by a retailer as defined in section 423.1.

d. *"Urban renewal area"* and *"urban renewal project"* mean the same as defined in section 403.17.

2. *a.* Upon approval by the board of supervisors of each applicable county pursuant to paragraph *"b"*, an eligible city may by ordinance of the city council provide for the use of a designated amount of the increased local sales and services tax revenues collected under this chapter which are attributable to retail establishments in an urban renewal area to fund urban renewal projects located in the area. The designated amount may be all or a portion of such increased revenues.

b. A city shall not adopt an ordinance under paragraph *"a"* unless the board of supervisors of each county where the urban renewal area from which such local sales and services tax revenues are to be collected and used to fund urban renewal projects is located first adopts a resolution approving the collection and use of such local sales and services tax revenues.

3. To determine the revenue increase for purposes of subsection 2, revenue amounts shall be calculated by the department of revenue as follows:

a. Determine the amount of local sales and services tax revenue collected from retail establishments located in the area comprising the urban renewal area during the base year.

b. Determine the current year revenue amount for each fiscal year following the base year in the manner specified in paragraph *"a"*.

c. The excess of the amount determined in paragraph *"b"* over the base year revenue amount determined in paragraph *"a"* is the increase in the local sales and services tax revenues of which the designated amount is to be deposited in the special city account created in section 423B.7, subsection 6.

4. The ordinance adopted pursuant to this section is repealed when the area ceases to be an urban renewal area or twenty years following the base year, whichever is the earlier.

5. In addition to the moneys received pursuant to the ordinance authorized under subsection 2, an eligible city may deposit any other local sales and services tax revenues received by it pursuant to the distribution formula in section 423B.7, subsections 3, 4, and 5, to the special fund described in section 403.19, subsection 2.

6. For purposes of this section, the eligible city shall assist the department of revenue in identifying retail establishments in the urban renewal area that are collecting the local sales and services tax. This process shall be ongoing until the ordinance is repealed.

2008 Acts, ch 1191, §68; 2012 Acts, ch 1124, §23, 27
Referred to in §2.48, 421.17, 423B.1, 423B.7

CHAPTER 423C

AUTOMOBILE RENTAL EXCISE TAX

Referred to in §312.1, 321.105A, 421.26, 421.71, 423.36, 423A.5A

Chapter transferred from chapter 422C in Code 2005 pursuant to Code editor directive; 2003 Acts, 1st Ex, ch 2, §203, 205

423C.1 Short title.
423C.2 Definitions.
423C.3 Tax on rental of automobiles — collection and remittance of tax.
423C.4 Administration and enforcement.
423C.5 Deposit of revenue.

423C.1 Short title.

This chapter may be cited as the *"Automobile Rental Excise Tax Act"*.

92 Acts, ch 1006, §2
C93, §422C.1
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423C.1

423C.2 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Affiliate"* means the same as defined in section 423.1.

2. *"Automobile"* means a motor vehicle subject to registration in any state designed primarily for carrying nine passengers or less, excluding motorcycles and motorized bicycles.

3. *"Automobile provider"* means any of the following:

a. A person or any affiliate of a person that owns or controls an automobile and makes

the automobile available for rent through the person or any affiliate, or through any other person.

b. A person or any affiliate of a person who possesses or acquires a right or interest in any automobile with an intent to rent the automobile to another person, or through any other person.

4. *"Department"* means the department of revenue.

5. *"Facilitate"* or *"facilitation"* includes brokering, coordinating, or in any way arranging for the rental of automobiles by users.

6. *"Facilitation fee"* means any consideration, by whatever name called, that a person charges to a user for facilitating the user's rental of an automobile. *"Facilitation fee"* does not include any commission an automobile provider pays to a person for facilitating the rental of an automobile.

7. *"Host"* means the registered owner of an automobile made available for sharing through a peer-to-peer automobile sharing marketplace.

8. *"Person"* means person as defined in section 423.1.

9. *"Rental"*, *"renting"*, or *"rent"* means a transfer of the use, control, or possession or right to use, control, or possession of an automobile to a user for consideration for a period of sixty days or less.

10. *"Rental price"* means the same as *"sales price"* as defined in section 423.1, which term includes but is not limited to facilitation fees, reservation fees, services fees, nonrefundable deposits, and any other direct or indirect charge made or consideration provided in connection with the renting or facilitation of renting an automobile.

11. *"User"* means a person to whom an automobile is rented.

92 Acts, ch 1006, §3
C93, §422C.2
2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §189, 203, 205
C2005, §423C.2
2018 Acts, ch 1161, §252, 255; 2019 Acts, ch 152, §36 – 40
Section amended

423C.3 Tax on rental of automobiles — collection and remittance of tax.

1. A tax of five percent is imposed upon the rental price of an automobile if the rental transaction is subject to the sales tax under chapter 423, subchapter II, or the use tax under chapter 423, subchapter III. The tax shall not be imposed on any rental transaction not taxable under the state sales tax, as provided in section 423.3, or the state use tax, as provided in section 423.6, on automobile rental receipts.

2. The tax imposed under subsection 1 shall be collected and remitted to the department by all persons required to collect state sales and use tax on the rental transaction under chapter 423.

3. A person is not required to collect and remit the tax imposed under this chapter if the person meets all of the following requirements:

a. The person or any affiliate of the person is not an automobile provider.

b. The person or any affiliate of the person facilitates the renting or sharing of an automobile by doing all of the following:

(1) The person owns, operates, or controls a peer-to-peer automobile sharing marketplace that allows a host or an automobile provider who is not an affiliate of the person to offer or list an automobile for sharing or rent on the marketplace. For purposes of this paragraph, it is immaterial whether or not the automobile provider has a tax permit under this chapter or chapter 423 or whether the automobile is owned by a natural person or by a business entity.

(2) The person or affiliate of the person collects or processes the rental price charged to the user.

c. The only sales the person and affiliates of the person facilitate that are subject to tax under chapter 423 are sales of a transportation service under section 423.2, subsection 6, paragraph *"bf"*, or section 423.5, subsection 1, paragraph *"e"*, consisting of the rental of vehicles subject to registration which are registered for a gross weight of thirteen tons or less for a period of sixty days or less.

4. For any rental transaction for which a person is required to or elects to collect and remit the tax under this chapter, the person shall also be liable for the collection and remittance of any sales or use tax due on that transaction under section 423.2, subsection 6, paragraph *"bf"*, or section 423.5, subsection 1, paragraph *"e"*, notwithstanding any other provision to the contrary in chapter 423.

5. For any rental transaction for which the person is not required to collect and remit the tax under this chapter as provided under subsection 3, the automobile provider shall be solely liable for any amount of uncollected or unremitted tax under this chapter and chapter 423.

92 Acts, ch 1006, §4; 92 Acts, 2nd Ex, ch 1001, §210
C93, §422C.3
2003 Acts, 1st Ex, ch 2, §190, 203, 205
C2005, §423C.3
2018 Acts, ch 1161, §253, 255; 2019 Acts, ch 152, §41
Referred to in §423.14A, 423C.4
Section amended

423C.4 Administration and enforcement.

All powers and requirements of the director of revenue to administer the state sales tax law under chapter 423 are applicable to the administration of the tax imposed under section 423C.3, including but not limited to section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70 through 422.75, section 423.14, subsection 1, and sections 423.15, 423.23, 423.24, 423.25, 423.31, 423.33, 423.35 and 423.37 through 423.42, 423.45, 423.46, and 423.47. However, as an exception to the powers specified in section 423.31, the director shall only require the filing of quarterly reports.

92 Acts, ch 1006, §5
C93, §422C.4
2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §191, 203, 205
C2005, §423C.4

423C.5 Deposit of revenue.

The revenue arising from the operation of this chapter shall be credited to the statutory allocations fund created under section 321.145, subsection 2.

92 Acts, ch 1006, §6
C93, §422C.5
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423C.5
2008 Acts, ch 1113, §37
Referred to in §321.145

CHAPTER 423D

EQUIPMENT TAX

Referred to in §29C.24, 421.26, 421.71

423D.1	Definitions.	423D.3	Exemptions.
423D.2	Tax imposed.	423D.4	Administration by director.

423D.1 Definitions.

1. For the purposes of this chapter, unless the context otherwise requires:

a. *"Construction"* means new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

b. *"Contractor"* includes contractors, subcontractors, and builders, but not owners.

c. *"Department"* means the department of revenue.

d. *"Equipment"* means self-propelled building equipment, pile drivers, and motorized scaffolding, including auxiliary attachments which improve the performance, safety,

operation, or efficiency of the equipment, and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures.

e. *"Sales price"* or *"purchase price"* means the same as the term is defined in section 423.1.

2. All other words and phrases used in this chapter and defined in section 423.1 have the meaning given them by section 423.1 for the purposes of this chapter.

2005 Acts, ch 140, §33; 2011 Acts, ch 25, §143

423D.2 Tax imposed.

A tax of five percent is imposed on the sales price or purchase price of all equipment sold or used in the state of Iowa. This tax shall be collected and paid over to the department by any retailer, retailer maintaining a place of business in this state, or user who would be responsible for collection and payment of the tax if it were a sales or use tax imposed under chapter 423.

2005 Acts, ch 140, §34

423D.3 Exemptions.

There is exempted from tax imposed by this chapter the following:

1. The sales price on the lease or rental of equipment to contractors for direct and primary use in construction.

2. The sales price or purchase price of equipment exempt from the equipment tax as provided in section 29C.24.

2005 Acts, ch 140, §35; 2008 Acts, ch 1184, §60; 2014 Acts, ch 1093, §24 – 26; 2016 Acts, ch 1095, §12, 14

2014 amendment takes effect April 10, 2014, and applies retroactively to July 1, 2008, for all sales or uses of equipment on or after that date; 2014 Acts, ch 1093, §25, 26

423D.4 Administration by director.

1. The director of revenue shall administer the excise tax on the sale and use of equipment as nearly as possible in conjunction with the administration of the state sales and use tax law, except that portion of the law which implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting the sale and use of equipment excise tax liability. All moneys received and all refunds shall be deposited in or withdrawn from the general fund of the state.

2. The director may require all persons who are engaged in the business of deriving any sales price or purchase price subject to tax under this chapter to register with the department. The director may also require a tax permit applicable only to this chapter for any retailer not collecting, or any user not paying, taxes under chapter 423.

3. Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and 422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31 through 423.35, 423.37 through 423.42, and 423.47, consistent with the provisions of this chapter, apply with respect to the tax authorized under this chapter, in the same manner and with the same effect as if the excise taxes on equipment sales or use were retail sales taxes within the meaning of those statutes. Notwithstanding this subsection, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in section 423.31. All taxes collected under this chapter by a retailer or any user are deemed to be held in trust for the state of Iowa.

2005 Acts, ch 140, §36; 2007 Acts, ch 126, §71; 2015 Acts, ch 29, §57

CHAPTER 423E

SCHOOL INFRASTRUCTURE FUNDING FORMULA

Referred to in §256.9, 291.10, 421.26, 423.3, 423F.2, 423F.5

Chapter transferred from chapter 422E in Code 2005 pursuant to Code editor directive; 2003 Acts, 1st Ex, ch 2, §203, 205
Chapter repealed June 30, 2023; see §423E.7

423E.1 Authorization — rate of tax — use of revenues. Repealed by 2008 Acts, ch 1134, §33.
423E.2 Imposition by county. Repealed by 2008 Acts, ch 1134, §34.
423E.3 Collection of tax.
423E.4 Secure an advanced vision for education fund distribution formula.
423E.5 Bonding.
423E.6 School infrastructure safety fund.
423E.7 Repeal.

423E.1 Authorization — rate of tax — use of revenues. Repealed by 2008 Acts, ch 1134, §33. See chapter 423F.

423E.2 Imposition by county. Repealed by 2008 Acts, ch 1134, §34. See chapter 423F.

423E.3 Collection of tax.

1. The tax shall be imposed on the same basis as the state sales and services tax or in the case of the use of natural gas, natural gas service, electricity, or electric service on the same basis as the state use tax and shall not be imposed on the sale of any property or on any service not taxed by the state, except the tax shall not be imposed on the sales price from the sale of motor fuel or special fuel as defined in chapter 452A which is consumed for highway use or in watercraft or aircraft if the fuel tax is paid on the transaction and a refund has not or will not be allowed, on the sales price from the sale of equipment by the state department of transportation, or on the sales price from the sale or use of natural gas, natural gas service, electricity, or electric service in a city or county where the sales price from the sale of natural gas or electric energy is subject to a franchise fee or user fee during the period the franchise or user fee is imposed.

2. The tax is applicable to transactions within the county where it is imposed and shall be collected by all persons required to collect state sales or local excise taxes. The amount of the sale, for purposes of determining the amount of the tax, does not include the amount of any state sales taxes or excise taxes or other local option sales or excise taxes. A tax permit other than the state tax permit required under section 423.36 shall not be required by local authorities.

3. *a.* (1) If more than one school district, or a portion of a school district, is located within the county, tax receipts shall be remitted to each school district or portion of a school district in which the county tax is imposed in a pro rata share based upon the ratio which the actual enrollment for the school district that attends school in the county bears to the total combined actual enrollments for all school districts that attend school in the county.

(2) The combined actual enrollment for a county, for purposes of this section, shall be determined for each county by the department of management based on the actual enrollment figures reported by October 15 to the department of management by the department of education pursuant to section 257.6, subsection 1. The combined actual enrollment count shall be forwarded to the director of revenue by March 1, annually, for purposes of supplying estimated tax payment figures and making estimated tax payments pursuant to this section for the following fiscal year.

b. Notwithstanding the amount of tax receipts credited to the account within the secure an advanced vision for education fund maintained in the name of a school district, the amount of tax receipts the school district shall receive from the tax imposed in the county shall be determined as provided in section 423E.4, subsection 1.

98 Acts, ch 1130, §3, 6
C99, §422E.3

99 Acts, ch 151, §37 – 39, 89; 99 Acts, ch 156, §17 – 19, 23; 2001 Acts, ch 116, §16; 2002 Acts, ch 1151, §13; 2003 Acts, ch 145, §286; 2003 Acts, ch 157, §5 – 7, 11; 2003 Acts, ch 178, §114, 121; 2003 Acts, ch 179, §142; 2003 Acts, 1st Ex, ch 2, §193, 203, 205; 2004 Acts, ch 1175, §254
C2005, §423E.3
2005 Acts, ch 3, §71; 2005 Acts, ch 140, §15, 16, 27, 32; 2006 Acts, ch 1010, §105; 2006 Acts, ch 1152, §53; 2008 Acts, ch 1134, §15 – 17; 2008 Acts, ch 1191, §96
Referred to in §423E.4
For future amendment to subsection 1, effective July 1, 2023, see 2019 Acts, ch 151, §22, 46

423E.4 Secure an advanced vision for education fund distribution formula.

1. The moneys credited in a fiscal year to the secure an advanced vision for education fund shall be distributed as follows:

a. A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student above the guaranteed school infrastructure amount shall receive for the remainder of the unextended term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 423E.3, subsection 3, paragraph "*a*", unless the school board passes a resolution by October 1, 2003, agreeing to receive a distribution pursuant to paragraph "*b*", subparagraph (1).

b. (1) A school district that is located in whole or in part in a county that voted on and approved prior to April 1, 2003, the local sales and services tax for school infrastructure purposes and that has a sales tax capacity per student below its guaranteed school infrastructure amount shall receive for the remainder of the unextended term of the tax an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 423E.3, subsection 3, paragraph "*a*", plus an amount equal to its supplemental school infrastructure amount, unless the school district passes a resolution by October 1, 2003, agreeing to receive only an amount equal to its pro rata share as provided in section 423E.3, subsection 3, paragraph "*a*", in all subsequent years.

(2) A school district that is located in whole or in part in a county that voted on and approved on or after April 1, 2003, the local sales and services tax for school infrastructure purposes shall receive an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 423E.3, subsection 3, paragraph "*a*", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district shall receive an additional amount equal to its supplemental school infrastructure amount.

(3) A school district that is located in whole or in part in a county that voted on and approved the extension of the local sales and services tax for school infrastructure purposes pursuant to section 423E.2, subsection 5, Code 2007, on or after April 1, 2003, shall receive for any extended period an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 423E.3, subsection 3, paragraph "*a*", not to exceed its guaranteed school infrastructure amount. However, if the school district's pro rata share is less than its guaranteed school infrastructure amount, the district shall receive an additional amount equal to its supplemental school infrastructure amount.

c. In the case of a school district located in more than one county, the amount to be distributed to the school district shall be separately computed for each county based upon the school district's actual enrollment that attends school in the county.

2. *a.* The director of revenue by August 15 of each fiscal year shall compute the guaranteed school infrastructure amount for each school district, each school district's sales tax capacity per student for each county, the statewide tax revenues per student, and the supplemental school infrastructure amount for the fiscal year.

b. For purposes of distributions under subsection 1:

(1) "*Guaranteed school infrastructure amount*" means for a school district the statewide tax revenues per student, multiplied by the quotient of the tax rate percent imposed in the county, divided by one percent and multiplied by the quotient of the number of quarters the tax is imposed during the fiscal year divided by four quarters.

(2) *"Sales tax capacity per student"* means for a school district the estimated amount of revenues that a school district would receive if a local sales and services tax for school infrastructure purposes was imposed at one percent in the county pursuant to section 423E.2, Code 2007, divided by the school district's actual enrollment as determined in section 423E.3, subsection 3, paragraph *"a"*.

(3) *"Statewide tax revenues per student"* means the amount determined by estimating the total revenues that would be generated by a one percent local option sales and services tax for school infrastructure purposes if imposed by all the counties during the entire fiscal year and dividing this estimated revenue amount by the sum of the combined actual enrollment for all counties as determined in section 423E.3, subsection 3, paragraph *"a"*, subparagraph (2).

(4) *"Supplemental school infrastructure amount"* means the guaranteed school infrastructure amount for the school district less its pro rata share of local sales and services tax for school infrastructure purposes as provided in section 423E.3, subsection 3, paragraph *"a"*.

3. *a.* For the purposes of distribution under subsection 1, paragraph *"b"*, subparagraph (1), a school district with a sales tax capacity per student below its guaranteed school infrastructure amount shall use the amount equal to the guaranteed school infrastructure amount less the pro rata share amount in accordance with section 423E.3, subsection 3, paragraph *"a"*, for the purpose of paying principal and interest on outstanding bonds previously issued for school infrastructure purposes as defined in section 423E.1, subsection 3, Code 2007. Any money remaining after the payment of all principal and interest on outstanding bonds previously issued for infrastructure purposes may be used for any authorized infrastructure purpose of the school district. If a majority of the voters in the school district approves the use of revenue pursuant to a revenue purpose statement in an election held after July 1, 2003, in the school district pursuant to section 423E.2, Code Supplement 2007, the school district may use the amount for the purposes specified in its revenue purpose statement.

b. Nothing in this section shall prevent a school district from using its sales tax capacity per student or guaranteed school infrastructure amount to pay principal and interest on obligations issued pursuant to section 423E.5.

4. In the case of a deficiency in the fund to pay the supplemental school infrastructure amounts in full, the amount available in the fund less the sales and services tax revenues for school infrastructure purposes attributed to each school district should be allocated first to increase the school district with the lowest sales tax capacity per student to an amount equal to the school district or school districts with the next lowest sales tax capacity per student and then increase the school districts to an amount equal to the school district or school districts with the next lowest sales tax capacity per student and continue on in this manner until money is no longer available or all school districts reach their guaranteed school infrastructure amount.

5. A school district with a certified enrollment of fewer than two hundred fifty pupils in the entire district or certified enrollment of fewer than one hundred pupils in high school shall not expend the supplemental school infrastructure amount received for new construction or for payments for bonds issued for new construction against the supplemental school infrastructure amount without prior application to the department of education and receipt of a certificate of need pursuant to this subsection. However, a certificate of need is not required for the payment of outstanding bonds issued for new construction pursuant to section 296.1, before April 1, 2003. A certificate of need is also not required for repairing schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as provided in section 298.3, or for construction necessary for compliance with the federal Americans With Disabilities Act pursuant to 42 U.S.C. §12101 – 12117. In determining whether a certificate of need shall be issued or denied, the department shall consider all of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The infeasibility of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Availability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the district, including the effect of the decline of the budget guarantee and unspent balance.

g. Broad and long-term ability of the district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

6. Notwithstanding subsection 1 or any other provision to the contrary, a school district that is located in whole or in part in a county that has not previously imposed the local sales and services tax for school infrastructure, and which votes on and approves the tax at a rate of one percent after January 1, 2007, and before July 1, 2007, shall receive an amount equal to its pro rata share of the local sales and services tax receipts as provided in section 423E.3, subsection 3, paragraph "*a*", for a period corresponding to one-half the duration of the tax authorized by the voters. For the second half of the duration of the tax authorized by the voters, local sales and services tax receipts shall be distributed as otherwise applicable pursuant to subsection 1.

2003 Acts, ch 145, §286; 2003 Acts, ch 157, §8, 11; 2003 Acts, 1st Ex, ch 2, §20 – 25, 203, 205, 209

CS2003, §422E.3A

2004 Acts, ch 1086, §68; 2004 Acts, ch 1175, §255 – 257

C2005, §423E.4

2005 Acts, ch 140, §49; 2005 Acts, ch 179, §96; 2006 Acts, ch 1182, §46, 53; 2008 Acts, ch 1134, §18 – 24; 2008 Acts, ch 1191, §69, 70

Referred to in §423E.3, 423E.5

Secure an advanced vision for education fund, see §423F.2

423E.5 Bonding.

1. The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes and the supplemental school infrastructure amount distributed pursuant to section 423E.4, subsection 1, paragraph "*b*", and revenues received pursuant to section 423F.2, for principal and interest repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs as school infrastructure is defined in section 423E.1, subsection 3, Code 2007, and section 423F.3. Bonds issued under this section may be sold at public sale as provided in chapter 75, or at private sale, without notice and hearing as provided in section 73A.12. Bonds may bear dates, bear interest at rates not exceeding that permitted by chapter 74A, mature in one or more installments, be in registered form, carry registration and conversion privileges, be payable as to principal and interest at times and places, be subject to terms of redemption prior to maturity with or without premium, and be in one or more denominations, all as provided by the resolution of the board of directors authorizing their issuance. The resolution may also prescribe additional provisions, terms, conditions, and covenants which the board of directors deems advisable, including provisions for creating and maintaining reserve funds, the issuance of additional bonds ranking on a parity with such bonds and additional bonds junior and subordinate to such bonds, and that such bonds shall rank on a parity with or be junior and subordinate to any bonds which may be then outstanding. Bonds may be issued to refund outstanding and previously issued bonds under this section. The bonds are a contractual obligation of the school district, and the resolution issuing the bonds and pledging local option sales and services tax revenues or its share of the revenues distributed pursuant to section 423F.2 to the payment of principal and interest on the bonds is a part of the contract. Bonds issued pursuant to this section shall not constitute indebtedness within the meaning of any constitutional or statutory debt limitation or

restriction, and shall not be subject to any other law relating to the authorization, issuance, or sale of bonds.

2. A school district shall be authorized to enter into a chapter 28E agreement with one or more cities or a county whose boundaries encompass all or a part of the area of the school district. A city or cities entering into a chapter 28E agreement shall be authorized to expend its designated portion of the revenues for any valid purpose permitted in this chapter or authorized by the governing body of the city. A county entering into a chapter 28E agreement with a school district shall be authorized to expend its designated portion of the revenues to provide property tax relief within the boundaries of the school district located in the county. A school district is also authorized to enter into a chapter 28E agreement with another school district, a community college, or an area education agency which is located partially or entirely in or is contiguous to the county where the school district is located. The school district or community college shall only expend its designated portion of the revenues for infrastructure purposes. The area education agency shall only expend its designated portion of the revenues for infrastructure and maintenance purposes.

3. The governing body of a city may authorize the issuance of bonds which are payable from its designated portion of the revenues to be received under this section, and not from property tax, by following the authorization procedures set forth for cities in section 384.83. A city may pledge irrevocably any amount derived from its designated portions of the revenues to the support or payment of such bonds.

98 Acts, ch 1130, §4, 6

C99, §422E.4

99 Acts, ch 156, §20, 23; 2003 Acts, ch 157, §9, 11; 2003 Acts, 1st Ex, ch 2, §203, 205; 2004 Acts, ch 1175, §258

C2005, §423E.5

2005 Acts, ch 179, §66, 85; 2008 Acts, ch 1134, §26

Referred to in §275.12, 275.29, 275.30, 275.53, 275.54, 275.55, 423E.4, 423F.3

423E.6 School infrastructure safety fund.

1. There shall be distributed from the federal funds allocated to the state of Iowa as described in Conference Committee Report 105-390, accompanying H.R. 2264, making federal appropriations to the United States departments of labor, health and human services, and education, to the state department of education the sum of eight million dollars to establish a school infrastructure safety fund.

2. The funds shall be allocated to the school budget review committee to develop a school infrastructure safety fund grant program, in conjunction with the state fire marshal. For purposes of reviewing grant applications and making recommendations regarding the administration of the program, the state fire marshal shall be considered an additional voting member of the school budget review committee.

3. Top priority in awarding program grants shall be the making of school infrastructure improvements relating to fire and personal safety. School districts eligible for program grants shall have received an order or citation from the state fire marshal, or a fire department chief or fire prevention officer, for one or more fire safety violations regarding a school facility, or in the opinion of the state fire marshal shall be regarded as operating facilities subject to significant fire safety deficiencies. Grant awards shall also be available for defects or violations of the state building code, as adopted pursuant to section 103A.7, revealed during an inspection of school facilities by a local building department, or for improvements consistent with the standards and specifications contained in the state building code regarding ensuring that buildings and facilities are accessible to and functional for persons with disabilities. The school budget review committee shall allocate program funds to school districts which, in its discretion, are determined to be faced with the most severe deficiencies. School districts applying for program grants shall have developed and submitted to the state fire marshal or local building department a written plan to remedy fire or safety defects within a specified time frame. Approval of the written plan by the state fire marshal or local building department shall be obtained prior to receipt of a grant award by a school district.

4. Application forms, submission dates for applications and for written plans to remedy

fire or safety defects, and grant award criteria shall be developed by the state department of education, in coordination with the state fire marshal, by rule.

5. The school budget review committee shall submit a progress report of the number and amount of grants awarded, and fire and safety improvements made, pursuant to the school infrastructure safety fund grant program, to the general assembly by January 1, 2000.

6. If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to this section which are inconsistent with the provisions of this section, the state department of education shall adopt rules to comply with the requirements of the federal rules or regulations.

98 Acts, ch 1130, §5, 6
C99, §422E.5
2003 Acts, 1st Ex, ch 2, §203, 205; 2004 Acts, ch 1086, §69
C2005, §423E.6

423E.7 Repeal.

This chapter is repealed June 30, 2023, for fiscal years beginning after that date.

2003 Acts, ch 157, §10, 11
CS2003, §422E.6
2003 Acts, 1st Ex, ch 2, §203, 205
C2005, §423E.7

CHAPTER 423F

STATEWIDE SCHOOL INFRASTRUCTURE FUNDING

Referred to in §76.4, 256.9, 291.10

Chapter to be repealed January 1, 2051; see §423F.6

423F.1 Legislative intent.
423F.2 Repeal of local sales and services taxes — secure an advanced vision for education fund.
423F.3 Use of revenues.
423F.4 Borrowing authority for school districts.
423F.5 Contents of financial audit.
423F.6 Repeal.

423F.1 Legislative intent.

It is the intent of the general assembly that the increase in the state sales, services, and use taxes under chapter 423, subchapters II and III, from five percent to six percent on July 1, 2008, shall be used solely for purposes of providing revenues to local school districts under this chapter to be used solely for school infrastructure purposes or school district property tax relief.

2008 Acts, ch 1134, §27

423F.2 Repeal of local sales and services taxes — secure an advanced vision for education fund.

1. *a.* After July 1, 2008, all local sales and services taxes for school infrastructure purposes imposed under chapter 423E are repealed. After July 1, 2008, a county no longer has the authority under chapter 423E or any other provision of law to impose or to extend an existing local sales and services tax for school infrastructure purposes.

b. The increase in the state sales, services, and use taxes under chapter 423, subchapters II and III, from five percent to six percent shall replace the repeal of the county's local sales and services tax for school infrastructure purposes. The distribution of moneys in the secure an advanced vision for education fund and the use of the moneys for infrastructure purposes or property tax relief shall be as provided in this chapter.

c. To the extent that any school district has issued bonds anticipating the proceeds of a local sales and services tax for school infrastructure purposes prior to July 1, 2008, the pledge

of such tax receipts for the payment of principal and interest on such bonds shall be replaced by a pledge of its share of the revenues the school district receives under this section.

2. A secure an advanced vision for education fund is created as a separate and distinct fund in the state treasury under the control of the department of revenue. Moneys in the fund include revenues credited to the fund pursuant to this chapter, appropriations made to the fund, and other moneys deposited into the fund. Subject to subsection 3, any amounts disbursed from the fund shall be utilized for school infrastructure purposes or property tax relief.

3. *a.* The moneys available in a fiscal year in the secure an advanced vision for education fund shall be distributed by the department of revenue to each school district on a per pupil basis calculated using each school district's budget enrollment, as defined in section 257.6, for that fiscal year.

b. (1) Prior to distribution of moneys in the secure an advanced vision for education fund to school districts, an amount equal to the equity transfer amount for the fiscal year minus the foundation base transfer amount for the fiscal year shall be distributed and credited to the property tax equity and relief fund created in section 257.16A, an amount equal to the foundation base transfer amount shall be distributed and credited to the foundation base supplement fund created in section 257.16D, and an amount equal to the career academy transfer amount for the fiscal year shall be distributed and credited to the career academy fund created in section 257.51.

(2) For purposes of this subsection, the equity transfer amount is determined by multiplying the equity transfer percentage by the amount of moneys available in the secure an advanced vision for education fund in the fiscal year.

(a) For the fiscal year beginning July 1, 2018, the equity transfer percentage is two and one-tenth percent. For the fiscal year beginning July 1, 2019, the equity transfer percentage is three and one-tenth percent.

(b) For each fiscal year beginning on or after July 1, 2020, the equity transfer percentage is equal to the equity transfer percentage for the immediately preceding fiscal year, unless the amount of moneys available in the secure an advanced vision for education fund in the immediately preceding fiscal year equals or exceeds one hundred two percent of the amount of moneys available in the fund for the fiscal year prior to the immediately preceding fiscal year, in which case the equity transfer percentage shall be the equity transfer percentage for the immediately preceding fiscal year plus one percent subject to the limitation in subparagraph division (c).

(c) If the equity transfer percentage calculated under subparagraph division (b) exceeds thirty percent, the equity transfer percentage for that fiscal year shall be thirty percent.

(3) For purposes of this subsection, the foundation base transfer amount for the fiscal year beginning July 1, 2019, is zero, and for each fiscal year beginning on or after July 1, 2020, the foundation base transfer amount equals the equity transfer amount for the fiscal year under subparagraph (2) minus the sum of the following:

(a) Three and one-tenth percent of the amount of the moneys available in the secure an advanced vision for education fund in the fiscal year.

(b) One-half of the product of the equity transfer percentage for the fiscal year minus three and one-tenth percent multiplied by the moneys available in the secure an advanced vision for education fund in the fiscal year.

(4) (a) For purposes of this subsection, the career academy transfer amount for the fiscal year beginning July 1, 2019, is one million dollars.

(b) For each fiscal year beginning on or after July 1, 2020, the career academy transfer amount is equal to the lesser of five million dollars or the amount of the career academy transfer amount for the immediately preceding fiscal year, unless the amount of moneys available in the secure an advanced vision for education fund in the immediately preceding fiscal year equals or exceeds one hundred two and one-half percent of the amount of moneys available in the fund for the fiscal year prior to the immediately preceding fiscal year, in which case the career academy transfer amount equals the lesser of five million dollars or the sum of the amount of the career academy transfer amount for the immediately preceding fiscal year plus one-half percent of the amount of moneys available in the secure an advanced vision for

education fund in the fiscal year following the deposit of revenues in the property tax equity and relief fund and the foundation base supplement fund.

4. *a.* The director of revenue by August 15 of each fiscal year shall send to each school district an estimate of the amount of tax moneys each school district will receive for the year and for each month of the year. At the end of each month, the director may revise the estimates for the year and remaining months.

b. The director shall remit ninety-five percent of the estimated tax receipts for the school district to the school district on or before August 31 of the fiscal year and on or before the last day of each following month.

c. The director shall remit a final payment of the remainder of tax moneys due for the fiscal year before November 10 of the next fiscal year. If an overpayment has resulted during the previous fiscal year, the November payment shall be adjusted to reflect any overpayment.

2008 Acts, ch 1134, §28; 2008 Acts, ch 1191, §72; 2013 Acts, ch 140, §134 – 136; 2019 Acts, ch 166, §11

Referred to in §8.57, 257.51, 275.12, 275.29, 275.30, 292.1, 292.2, 423.2A, 423.43, 423E.5, 423F.4

Subsection 3 amended

423F.3 Use of revenues.

1. A school district receiving revenues from the secure an advanced vision for education fund under this chapter without a valid revenue purpose statement shall expend the revenues subject to subsections 2 and 3 for the following purposes:

a. Reduction of bond levies under sections 298.18 and 298.18A and all other debt levies.

b. Reduction of the regular and voter-approved physical plant and equipment levy under section 298.2.

c. Reduction of the public educational and recreational levy under section 300.2.

d. For any authorized infrastructure purpose of the school district as defined in subsection 6.

e. For the payment of principal and interest on bonds issued under sections 423E.5 and 423F.4.

2. A revenue purpose statement in existence for the expenditure of local sales and services tax for school infrastructure purposes imposed by a county pursuant to section 423E.2, Code Supplement 2007, prior to July 1, 2008, shall remain in effect until amended or extended. The board of directors of a school district may take action to adopt or amend a revenue purpose statement specifying the specific purposes for which the revenues received from the secure an advanced vision for education fund will be expended. If a school district is located in a county which has imposed a local sales and services tax for school infrastructure purposes prior to July 1, 2008, this action shall be taken before expending or anticipating revenues to be received after the unextended term of the tax unless the school district elects to adopt a revenue purpose statement as provided in subsection 3.

3. *a.* If the board of directors adopts a resolution to use funds received under the operation of this chapter solely for providing property tax relief by reducing indebtedness from the levies specified under section 298.2 or 298.18, the board of directors may approve a revenue purpose statement for that purpose without submitting the revenue purpose statement to a vote of the electors.

b. (1) If the board of directors intends to use funds for purposes other than those listed in paragraph "*a*", or change the use of funds to purposes other than those listed in paragraph "*a*", the board shall adopt a revenue purpose statement or amend an existing revenue purpose statement, subject to approval of the electors, listing the proposed use of the funds.

(2) (a) Notwithstanding any provision of law to the contrary, for each school district with an existing revenue purpose statement for the use of revenues from the secure an advanced vision for education fund adopted under this paragraph or adopted under another provision of law before July 1, 2019, such revenue purpose statement shall terminate and be of no further force and effect on January 1, 2031, or the expiration date of the revenue purpose statement, whichever is earlier. If such a school district intends to use funds for purposes other than those listed in paragraph "*a*" and does not intend to operate without a revenue purpose statement on or after January 1, 2031, or the expiration date of the revenue purpose statement, whichever

is earlier, the board of directors shall submit a revenue purpose statement for approval by the electors under subparagraph (1) on or after July 1, 2019, and such revenue purpose statement submitted to the electors shall include all proposed uses including those previously approved by the electors, if applicable. The following, in substantially the following form, shall be included in the notice of the election published under paragraph *"d"* and published on the school district's internet site:

> If a majority of eligible electors voting on the question fail to approve this revenue purpose statement, revenues received by the school district from the secure an advanced vision for education fund shall first be expended for . . . . (State the purposes in the order listed in subsection 1 and as required by subsection 4 of this section for which the revenues received by the school district under this chapter will be expended.)

(b) Unless a new revenue purpose statement is adopted by the electors, the existing revenue purpose statement remains in effect until January 1, 2031, or the expiration date of the revenue purpose statement, whichever is earlier. If a revenue purpose statement is terminated under the provisions of this subparagraph, such termination shall not affect the validity of or a first lien on bonds issued under section 423E.5, Code 2019, or section 423F.5 prior to the date the revenue purpose statement is terminated under subparagraph division (a), or the validity of a contract or other obligation of the school district secured in whole or in part by or requiring the payment of funds received under this chapter in effect prior to the date the revenue purpose statement is terminated under subparagraph division (a).

c. The board of directors may use funds received under the operation of this chapter for a joint infrastructure project with one or more school districts or one or more school districts and a community college established under chapter 260C, for which buildings or facilities are constructed or leased for the purpose of offering classes under a district-to-community college sharing agreement or concurrent enrollment program that meets the requirements for funding under section 257.11, subsection 3. If the board intends to use funds received under the operation of this chapter for such a joint infrastructure project, the board shall adopt a revenue purpose statement or amend an existing revenue purpose statement, subject to approval of the electors, stating the proposed use of the funds.

d. The board secretary shall notify the county commissioner of elections of the intent to take an issue to the voters pursuant to paragraph *"b"* or *"c"*. The county commissioner of elections shall publish the notices required by law for special or general elections, and the election shall be held on a date specified in section 39.2, subsection 4, paragraph *"c"*. A majority of those voting on the question must favor approval of the revenue purpose statement. If the proposal is not approved, the school district shall not submit the same or new revenue purpose statement to the electors for a period of six months from the date of the previous election.

4. The revenues received pursuant to this chapter shall be expended for the purposes specified in the revenue purpose statement. If a board of directors has not approved a revenue purpose statement, the revenues shall be expended in the order listed in subsection 1 except that the payment of bonds for which the revenues have been pledged shall be paid first. Once approved, a revenue purpose statement is effective until amended or repealed by the foregoing procedures. A revenue purpose statement shall not be amended or repealed to reduce the amount of revenue pledged to the payment of principal and interest on bonds as long as any bonds authorized by sections 423E.5 and 423F.4 are outstanding unless funds sufficient to pay principal, interest, and premium, if any, on the outstanding obligations at or prior to maturity have been properly set aside and pledged for that purpose.

5. A school district with a certified enrollment of fewer than two hundred fifty pupils in the entire district or certified enrollment of fewer than one hundred pupils in high school shall not expend the amount received for new construction without prior application to the department of education and receipt of a certificate of need pursuant to this subsection. A certificate of need is not required for repairing schoolhouses or buildings, equipment, technology, or transportation equipment for transporting students as provided in section

298.3, or for construction necessary for compliance with the federal Americans With Disabilities Act pursuant to 42 U.S.C. §12101 – 12117. In determining whether a certificate of need shall be issued or denied, the department shall consider all of the following:

a. Enrollment trends in the grades that will be served at the new construction site.

b. The cost-benefit analysis of remodeling, reconstructing, or repairing existing buildings.

c. The fire and health safety needs of the school district.

d. The distance, convenience, cost of transportation, and accessibility of the new construction site to the students to be served at the new construction site.

e. Availability of alternative, less costly, or more effective means of serving the needs of the students.

f. The financial condition of the district, including the effect of the decline of the budget guarantee and unspent balance.

g. Broad and long-term ability of the district to support the facility and the quality of the academic program.

h. Cooperation with other educational entities including other school districts, area education agencies, postsecondary institutions, and local communities.

i. Benefits and effects of the new construction on student learning.

6. *a.* For purposes of this chapter, *"school infrastructure"* means those activities authorized in section 423E.1, subsection 3, Code 2007.

b. Additionally, *"school infrastructure"* includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes as defined in this subsection, and the payment or retirement of bonds issued under sections 423E.5 and 423F.4.

c. Additionally, *"school infrastructure"* includes the acquisition or installation of information technology infrastructure. For purposes of this paragraph, *"information technology infrastructure"* means the basic, underlying physical framework or system necessary to deliver technology connectivity to a school district and to network school buildings within a school district.

d. Additionally, *"school infrastructure"* includes school safety and security infrastructure. For purposes of this paragraph, *"school safety and security infrastructure"* includes but is not limited to safe rooms, remote entry technology and equipment, security camera systems, card access systems, and communication systems with access to fire and police emergency frequencies. For purposes of this paragraph, *"school safety and security infrastructure"* does not include the cost of personnel, development of safety and security plans, or training related to the implementation of safety and security plans. It is the intent of the general assembly that each school district prioritize the use of revenues under this chapter for secure entries for the district's attendance centers before expending such revenues for athletic facility infrastructure projects.

e. A school district that uses secure an advanced vision for education fund moneys for school infrastructure shall comply with the state building code in the absence of a local building code.

7. *a.* Prior to approving the use of revenues received under this chapter for an athletic facility infrastructure project within the scope of the school district's approved revenue purpose statement or pursuant to subsection 4 for a school district without an approved revenue statement, the board of directors shall adopt a resolution setting forth the proposal for the athletic facility infrastructure project and hold an additional public hearing on the issue of construction of the athletic facility. Notice of the time and place of the public hearing shall be published not less than ten nor more than twenty days before the public hearing in a newspaper which is a newspaper of general circulation in the school district. If at any time prior to the fifteenth day following the hearing, the secretary of the board of directors receives a petition containing the required number of signatures and asking that the question of the approval of the use of revenues for the athletic facility infrastructure project be submitted to the voters of the school district, the board of directors shall either rescind the board's resolution for the use of revenues for the athletic facility infrastructure project or direct the county commissioner of elections to submit the question to the registered voters of the school district at an election held on a date specified in section 39.2, subsection 4, paragraph "*c*". The petition must be signed by eligible electors equal in number to not less

than one hundred or thirty percent of the number of voters at the last preceding election of school officials under section 277.1, whichever is greater. If a majority of those voting on the question favors the use of the revenues for the athletic facility infrastructure project, the board shall be authorized to approve such use by resolution of the board. If a majority of those voting on the question does not favor the use of the revenues for the athletic facility infrastructure project, the board of directors shall rescind the board's resolution for the use of revenues for the athletic facility infrastructure project. If a petition is not received by the board of directors within the prescribed time period, the board of directors may approve the use of revenues for the athletic facility infrastructure project without voter approval.

b. After fourteen days from the date of the hearing under paragraph *"a"* or fourteen days after the date of the election held under paragraph *"a"*, if applicable, whichever is later, an action shall not be brought questioning the board of directors' authority to use funds for the athletic facility infrastructure project or questioning the legality of any proceedings in connection with the authorization of such use.

c. For purposes of this subsection:

(1) *"Athletic facility"* means a building or structure, or portion thereof, that is not physically attached to a student attendance center.

(2) *"Athletic facility infrastructure project"* means a school infrastructure project that includes in whole or in part the construction of an athletic facility.

(3) "*Construction*" does not include repair or maintenance of an existing facility.

8. The general assembly shall not alter the purposes for which the revenues received under this section may be used from infrastructure and property tax relief purposes to any other purpose unless the bill is approved by a vote of at least two-thirds of the members of both chambers of the general assembly and is signed by the governor.

2008 Acts, ch 1134, §29; 2008 Acts, ch 1191, §73; 2013 Acts, ch 88, §36; 2013 Acts, ch 141, §50, 51; 2015 Acts, ch 120, §46; 2019 Acts, ch 166, §12 – 16

Referred to in §76.4, 275.12, 423E.5
Subsection 3, paragraph b amended
Subsection 5, paragraph b amended
Subsection 5, NEW paragraph i
Subsection 6, NEW paragraph d and former paragraph d redesignated as e
NEW subsection 7 and former subsection 7 renumbered as 8

423F.4 Borrowing authority for school districts.

1. Subject to the conditions established under subsection 2, a school district may anticipate its share of the revenues under section 423F.2 by issuing bonds in the manner provided in section 423E.5, Code 2019. However, to the extent any school district has issued bonds anticipating the proceeds of an extended local sales and services tax for school infrastructure purposes imposed by a county pursuant to former chapter 423E, Code and Code Supplement 2007, prior to July 1, 2008, the pledge of such revenues for the payment of principal and interest on such bonds shall be replaced by a pledge of its share of the revenues under section 423F.2.

2. *a.* Bonds issued on or after July 1, 2019, shall not be sold at public sale as provided in chapter 75, or at a private sale, without notice and hearing. Notice of the time and place of the public hearing shall be published not less than ten nor more than twenty days before the public hearing in a newspaper which is a newspaper of general circulation in the school district.

b. For bonds subject to the requirements of paragraph *"a"*, if at any time prior to the fifteenth day following the hearing, the secretary of the board of directors receives a petition containing the required number of signatures and asking that the question of the issuance of such bonds be submitted to the voters of the school district, the board shall either rescind its adoption of the resolution or direct the county commissioner of elections to submit the question to the registered voters of the school district at an election held on a date specified in section 39.2, subsection 4, paragraph *"c"*. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding election of school officials under section 277.1, whichever is greater. If the board submits the question at an election and a majority of those voting on the question favors issuance of the bonds, the board shall be authorized to issue the bonds.

c. After fourteen days from the date of the hearing under paragraph *"a"* or fourteen days after the date of the election held under paragraph *"b"*, if applicable, whichever is later, an action shall not be brought questioning the legality of any bonds or the power of the authority to issue any bonds or to the legality of any proceedings in connection with the authorization or issuance of the bonds.

2008 Acts, ch 1134, §30; 2019 Acts, ch 166, §17
Referred to in §275.12, 275.29, 275.30, 275.53, 275.54, 275.55, 423F.3
Section amended

423F.5 Contents of financial audit.

1. A school district shall include as part of its financial audit for the budget year beginning July 1, 2007, and for each subsequent budget year the amount received during the year pursuant to chapter 423E or this chapter, as applicable. In addition, the financial audit shall include the amount of bond levies, physical plant and equipment levy, and public educational and recreational levy reduced as a result of the moneys received under chapter 423E or this chapter, as applicable. The amount of the reductions shall be stated in terms of dollars and cents per one thousand dollars of valuation and in total amount of property tax dollars. Also included shall be an accounting of the amount of moneys received which were spent for infrastructure purposes pursuant to chapter 423E or this chapter, as applicable.

2. The auditor of state may prescribe necessary forms and procedures for the consistent collection of the information required by this section.

2008 Acts, ch 1134, §31; 2011 Acts, ch 25, §43
Referred to in §291.10, 423F.3

423F.6 Repeal.

This chapter is repealed January 1, 2051.

2008 Acts, ch 1134, §32; 2019 Acts, ch 166, §18
Section amended

CHAPTER 423G

WATER SERVICE TAX

Referred to in §421.71

Future repeal of chapter, see §423G.7

423G.1	Short title.	423G.5	Administration by director.
423G.2	Definitions.	423G.6	Deposit of revenues.
423G.3	Water service tax.	423G.7	Future repeal.
423G.4	Exemptions.		

423G.1 Short title.

This chapter may be cited as the *"Water Service Tax Act"*.

2018 Acts, ch 1001, §11, 27

423G.2 Definitions.

1. All words and phrases used in this chapter and defined in section 423.1 have the same meaning given them by section 423.1 for purposes of this chapter.

2. As used in this chapter, *"water service"* and *"water utility"* mean the same as defined in section 423.3, subsection 103.

2018 Acts, ch 1001, §12, 27

423G.3 Water service tax.

An excise tax at the rate of six percent is imposed on the sales price from the sale or furnishing by a water utility of a water service in the state to consumers or users.

2018 Acts, ch 1001, §13, 27

423G.4 Exemptions.

The sales price from transactions exempt from state sales tax under section 423.3, except section 423.3, subsection 103, is also exempt from the tax imposed by this chapter.

2018 Acts, ch 1001, §14, 27

423G.5 Administration by director.

1. The director of revenue shall administer the water service tax as nearly as possible in conjunction with the administration of the state sales and use tax law, except that portion of the law that implements the streamlined sales and use tax agreement. The director shall provide appropriate forms, or provide on the regular state tax forms, for reporting water service tax liability, and for ease of administration may require water service tax liability to be identified, reported, and remitted to the department as sales and use tax liability, provided the department has the ability to properly identify such amounts as water service tax revenues upon receipt.

2. The director may require all persons who are engaged in the business of deriving any sales price or purchase price subject to tax under this chapter to register with the department. The director may also require a tax permit applicable only to this chapter for any retailer not collecting, or any user not paying, taxes under chapter 423.

3. Section 422.25, subsection 4, sections 422.30, 422.67, and 422.68, section 422.69, subsection 1, sections 422.70, 422.71, 422.72, 422.74, and 422.75, section 423.14, subsection 1, and sections 423.23, 423.24, 423.25, 423.31 through 423.35, 423.37 through 423.42, and 423.47, consistent with the provisions of this chapter, shall apply with respect to the tax authorized under this chapter, in the same manner and with the same effect as if the excise taxes on the sale or furnishing of a water service were retail sales taxes within the meaning of those statutes. Notwithstanding this subsection, the director shall provide for quarterly filing of returns and for other than quarterly filing of returns both as prescribed in section 423.31. All taxes collected under this chapter by a retailer or any user are deemed to be held in trust for the state of Iowa.

2018 Acts, ch 1001, §15, 27; 2018 Acts, ch 1161, §25

423G.6 Deposit of revenues.

1. All moneys received and all refunds shall be deposited in or withdrawn from the general fund of the state.

2. Subsequent to the deposit in the general fund of the state, the department shall transfer the following amounts to the following funds:

a. For revenues reported on or after July 1, 2018, but before August 1, 2019, one-twelfth of the revenues to the water quality infrastructure fund created in section 8.57B, and one-twelfth of the revenues to the water quality financial assistance fund created in section 16.134A.

b. For revenues reported on or after August 1, 2019, but before August 1, 2020, one-sixth of the revenues to the water quality infrastructure fund created in section 8.57B, and one-sixth of the revenues to the water quality financial assistance fund created in section 16.134A.

c. For revenues reported on or after August 1, 2020, one-half of the revenues to the water quality financial assistance fund created in section 16.134A.

2018 Acts, ch 1001, §16, 27; 2018 Acts, ch 1161, §26

Referred to in §8.57B, 16.134A

423G.7 Future repeal.

This chapter is repealed upon the occurrence of one of the following, whichever is earlier:

1. The enactment date that the tax rate for the sales tax imposed upon the retail sales price of tangible personal property and the furnishing of enumerated services sold in this state in effect on July 1, 2016, is increased.

2. July 1, 2029.

2018 Acts, ch 1001, §17, 27

CHAPTER 424

ENVIRONMENTAL PROTECTION CHARGE ON PETROLEUM DIMINUTION

Repealed by its own terms effective December 31, 2016; 2016 Acts, ch 1105, §17, 18

SUBTITLE 2

PROPERTY TAXES

Referred to in §15E.204

CHAPTER 425

HOMESTEAD TAX CREDITS AND REIMBURSEMENT

Referred to in §2.48, 100.18, 321.1, 331.512

For requirements relating to state funding of property tax credits, see §25B.7

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SUBCHAPTER I

HOMESTEAD TAX CREDITS

425.1 Homestead credit fund — apportionment — payment.

1. *a.* A homestead credit fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the homestead credit fund, an amount sufficient to implement this chapter.

b. The director of the department of administrative services shall issue warrants on the homestead credit fund payable to the county treasurers of the several counties of the state under this chapter.

2. The homestead credit fund shall be apportioned each year so as to give a credit against the tax on each eligible homestead in the state in an amount equal to the actual levy on the first four thousand eight hundred fifty dollars of actual value for each homestead.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

4. Annually the department of revenue shall certify to the county auditor of each county the credit and its amount in dollars. Each county auditor shall then enter the credit against the tax levied on each eligible homestead in each county payable during the ensuing year, designating on the tax lists the credit as being from the homestead credit fund, and credit shall then be given to the several taxing districts in which eligible homesteads are located in an amount equal to the credits allowed on the taxes of the homesteads. The amount of credits shall be apportioned by each county treasurer to the several taxing districts as provided by law, in the same manner as though the amount of the credit had been paid by the owners of the homesteads. However, the several taxing districts shall not draw the funds so credited until after the semiannual allocations have been received by the county treasurer, as provided in this chapter. Each county treasurer shall show on each tax receipt the amount of credit received from the homestead credit fund.

5. If the homestead tax credit computed under this section is less than sixty-two dollars and fifty cents, the amount of homestead tax credit on that eligible homestead shall be sixty-two dollars and fifty cents subject to the limitation imposed in this section.

6. The homestead tax credit allowed in this chapter shall not exceed the actual amount of taxes payable on the eligible homestead, exclusive of any special assessments levied against the homestead.

[C35, §6943-f63, -f64; C39, §**6943.100, 6943.142;** C46, §422.69, 425.1; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.1; 82 Acts, ch 1186, §2, 5]

83 Acts, ch 172, §3; 86 Acts, ch 1244, §50; 91 Acts, ch 97, §48; 2003 Acts, ch 145, §258, 286; 2005 Acts, ch 140, §52; 2011 Acts, ch 25, §143

Referred to in §25B.7, 216.12, 404.3, 425.16, 425.17, 425.23, 441.21, 441.73

For provisions relating to the allowance and funding of homestead credit claims authorized under section 425.15 filed after July 1, 2014, but before July 1, 2015, see 2015 Acts, ch 116, §21 – 23 and 2015 Acts, ch 138, §158 – 160

425.2 Qualifying for credit.

1. A person who wishes to qualify for the credit allowed under this chapter shall obtain the appropriate forms for filing for the credit from the assessor. The person claiming the credit shall file a verified statement and designation of homestead with the assessor for the year for which the person is first claiming the credit. The claim shall be filed not later than July 1 of the year for which the person is claiming the credit. A claim filed after July 1 of the year for which the person is claiming the credit shall be considered as a claim filed for the following year.

2. Upon the filing and allowance of the claim, the claim shall be allowed on that homestead for successive years without further filing as long as the property is legally or equitably owned and used as a homestead by that person or that person's spouse on July 1 of each of those successive years, and the owner of the property being claimed as a homestead declares residency in Iowa for purposes of income taxation, and the property is occupied by that person or that person's spouse for at least six months in each of those calendar years in which the fiscal year begins. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to refile for the credit. Property divided pursuant to chapter 598 shall not be modified following the division of the property. An owner who ceases to use a property for a homestead or intends not to use it as a homestead for at least six months in a calendar year shall provide written notice to the assessor by July 1 following the date on which the use is changed. A person who sells or transfers a homestead or the personal representative of a deceased person who had a homestead at the time of death, shall provide written notice to the assessor that the property is no longer the homestead of the former claimant.

3. In case the owner of the homestead is in active service in the armed forces of this state or of the United States, or is sixty-five years of age or older, or is disabled, the statement and designation may be signed and delivered by any member of the owner's family, by the

owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. If the owner of the homestead is married, the spouse may sign and deliver the statement and designation. The director of human services or the director's designee may make application for the benefits of this chapter as the agent for and on behalf of persons receiving assistance under chapter 249.

4. Any person sixty-five years of age or older or any person who is disabled may request, in writing, from the appropriate assessor forms for filing for homestead tax credit. Any person sixty-five years of age or older or who is disabled may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

5. Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for homestead tax credit. The person may complete the form, which shall include a statement of homestead, and mail or return it to the appropriate assessor. The signature of the claimant on the statement of homestead shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

[C39, §**6943.143;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.2; 82 Acts, ch 1246, §1, 11]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1109, §1; 87 Acts, ch 198, §2; 88 Acts, ch 1141, §1; 89 Acts, ch 256, §1; 90 Acts, ch 1087, §1; 91 Acts, ch 97, §49; 92 Acts, ch 1073, §9; 94 Acts, ch 1143, §1; 97 Acts, ch 206, §6; 2015 Acts, ch 29, §114

Referred to in §25B.7, 331.401, 425.7, 425.11, 435.26

For provisions relating to the allowance and funding of homestead credit claims authorized under section 425.15 filed after July 1, 2014, but before July 1, 2015, see 2015 Acts, ch 116, §21 – 23 and 2015 Acts, ch 138, §158 – 160

425.3 Verification of claims for homestead credit.

1. The assessor shall retain a permanent file of current homestead claims filed in the assessor's office. The assessor shall file a notice of transfer of property for which a claim is filed when notice is received from the office of the county recorder.

2. The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the property transferred, the name of the person transferring the title to the property, and the name of the person to whom title to the property has been transferred.

3. Not later than July 6 of each year, the assessor shall remit the statements and designation of homesteads to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor.

4. The county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim, it shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the credit. The board is not required to send notice that a claim is disallowed if the claimant voluntarily withdraws the claim.

[C39, §**6943.144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.3; 82 Acts, ch 1246, §2, 11]

86 Acts, ch 1241, §32; 94 Acts, ch 1144, §1; 2015 Acts, ch 29, §114

Referred to in §25B.7, 331.401

425.4 Certification to treasurer.

All claims which have been allowed by the board of supervisors shall be certified on or before August 1, in each year, by the county auditor to the county treasurer, which certificates shall list the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed. The county treasurer shall forthwith certify to

the department of revenue the total amount of dollars, listed by taxing district in the county, due for homestead tax credits claimed and allowed.

[C39, §**6943.145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.4]

2003 Acts, ch 145, §286

Referred to in §25B.7, 331.559

425.5 Correcting listing.

If the assessor who last listed and valued a claimed eligible homestead did not, in the description and valuation thereof, comply with the provisions of section 428.7, the assessor shall, if still in office, on the written request of such claimant and without expense to the claimant or to the county, correct the listing and valuations of such claimed homestead and contiguous real property originally listed and valued by the assessor, and file such corrected listing and valuations with the county auditor, who forthwith shall certify the same to the county treasurer, and said county treasurer shall so correct the tax books; provided, that if the assessor who last listed and valued such property is not still in office, the assessor in office shall, on such written request and at the expense of the county, so correct such listing and valuations of said homestead and said contiguous real property.

[C39, §**6943.146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.5]

Referred to in §25B.7, 331.559

425.6 Waiver by neglect.

If a person fails to file a claim or to have a claim on file with the assessor for the credits provided in this chapter, the person is deemed to have waived the homestead credit for the year in which the person failed to file the claim or to have a claim on file with the assessor.

[C39, §**6943.147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.6; 82 Acts, ch 1246, §3, 11]

Referred to in §25B.7

425.7 Appeals permitted — disallowed claims and penalty.

1. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. In the event any claim under this chapter is allowed, any owner of an eligible homestead may appeal from the action of the board of supervisors to the district court of the county in which said claimed homestead is situated, by giving written notice of such appeal to the county auditor of said county and such notice to the owner of said claimed homestead as a judge of the district court shall direct.

3. *a.* If the department of revenue determines that a claim for homestead credit has been allowed by the board of supervisors which is not justifiable under the law and not substantiated by proper facts, the department may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or board of supervisors may appeal to the director of revenue within thirty days from the date of the notice of disallowance. The director shall grant a hearing and if, upon the hearing, the director determines that the disallowance was incorrect, the director shall set aside the disallowance. The director shall notify the claimant and the board of supervisors of the result of the hearing. The claimant or the board of supervisors may seek judicial review of the action of the director of revenue in accordance with chapter 17A.

b. If a claim is disallowed by the department of revenue and not appealed to the director of revenue or appealed to the director of revenue and thereafter upheld upon final resolution, including any judicial review, any amounts of credits allowed and paid from the homestead credit fund including the penalty, if any, become a lien upon the property on which credit was originally granted, if still in the hands of the claimant, and not in the hands of a bona

fide purchaser, and any amount so erroneously paid including the penalty, if any, shall be collected by the county treasurer in the same manner as other taxes and the collections shall be returned to the department of revenue and credited to the homestead credit fund. The director of revenue may institute legal proceedings against a homestead credit claimant for the collection of payments made on disallowed credits and the penalty, if any. If a person makes a false claim or affidavit with fraudulent intent to obtain the homestead credit, the person is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue. If a homestead credit is disallowed and the claimant failed to give written notice to the assessor as required by section 425.2 when the property ceased to be used as a homestead by the claimant, a civil penalty equal to five percent of the amount of the disallowed credit is assessed against the claimant.

[C39, §**6943.148;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.7; 82 Acts, ch 1246, §4, 11]

89 Acts, ch 251, §33; 97 Acts, ch 158, §26; 2001 Acts, ch 154, §1, 6; 2002 Acts, ch 1151, §15; 2003 Acts, ch 145, §286; 2006 Acts, ch 1010, §106; 2011 Acts, ch 25, §143; 2015 Acts, ch 109, §7, 75

Referred to in §25B.7, 331.559

Fraudulent practices; §714.8 – 714.14

425.8 Forms — rules.

1. The director of revenue shall prescribe the form for the making of verified statement and designation of homestead, the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. Whenever necessary, the department of revenue shall forward to the county auditors of the several counties in the state the prescribed sample forms, and the county auditors shall furnish blank forms prepared in accordance therewith with the assessment rolls, books, and supplies delivered to the assessors. The department of revenue shall prescribe and the county auditors shall provide on the forms for claiming the homestead credit a statement to the effect that the owner realizes that the owner must give written notice to the assessor when the owner changes the use of the property.

2. The director of revenue may prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

[C39, §**6943.149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.8; 82 Acts, ch 1246, §5, 11]

2003 Acts, ch 145, §286; 2019 Acts, ch 24, §104

Referred to in §25B.7

Code editor directive applied

425.9 Credits in excess of tax — appeals — refunds.

1. If the amount of credit apportioned to any homestead under the provisions of this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against said homestead, then such excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the homestead credit fund and be reallocated the following year by the department as provided in this chapter.

2. If any claim for credit made hereunder has been denied by the board of supervisors, and such action is subsequently reversed on appeal, the credit shall be allowed on the homestead involved in said appeal, and the director of revenue, the county auditor, and the county treasurer shall make such credit and change their books and records accordingly.

3. In the event the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such homestead valuation, remittance shall be made to such taxpayer of the amount of such credit.

4. The amount of such credit shall be allocated and paid from the surplus redeposited in the homestead credit fund provided for in subsection 1.

[C39, §**6943.150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.9]

2003 Acts, ch 145, §286; 2018 Acts, ch 1026, §135

Referred to in §25B.7, 331.559

425.10 Reversal of allowed claim.

In the event any claim is allowed, and subsequently reversed on appeal, any credit made thereunder shall be void, and the amount of such credit shall be charged against the property in question, and the director of revenue, the county auditor, and the county treasurer are authorized and directed to correct their books and records accordingly. The amount of such erroneous credit, when collected, shall be returned by the county treasurer to the homestead credit fund to be reallocated the following year as provided in this chapter.

[C39, §**6943.151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.10]

2003 Acts, ch 145, §286; 2018 Acts, ch 1026, §136

Referred to in §25B.7, 331.559

425.11 Definitions.

1. For the purpose of this chapter and wherever used in this chapter:

a. *"Assessed valuation"* means the taxable valuation of the homestead as fixed by the assessor, or by the board of review, under the provisions of section 441.21, without deducting therefrom the exemptions authorized in section 426A.11.

b. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer, unless the context otherwise requires, means the county system as defined in section 445.1.

c. *"Dwelling house"* shall embrace any building occupied wholly or in part by the claimant as a home.

d. *"Homestead"* shall have the following meaning:

(1) The homestead includes the dwelling house which the owner, in good faith, is occupying as a home on July 1 of the year for which the credit is claimed and occupies as a home for at least six months during the calendar year in which the fiscal year begins, except as otherwise provided.

(a) When any person is inducted into active service under the Selective Training and Service Act of the United States or whose voluntary entry into active service results in a credit on the quota of persons required for service under the Selective Training and Service Act, or who, being a member of any component part of the military, naval, or air forces or nurse corps of this state or nation, is called or ordered into active service, such person shall be considered as occupying or living on the homestead during such service and, where equitable or legal title of the homestead is in the spouse of the person who is a member of or is inducted into the armed services of the United States, the spouse shall be considered as occupying or living on the homestead during such service.

(b) When any person is confined in a nursing home, extended-care facility, or hospital, such person shall be considered as occupying or living on a homestead where such person is the owner of such homestead and such person maintains such homestead and does not lease, rent, or otherwise receive profits from other persons for the use thereof.

(2) It may contain one or more contiguous lots or tracts of land with the buildings or other appurtenances thereon habitually, and in good faith, used as a part of the homestead.

(3) It must not embrace more than one dwelling house, but where a homestead has more than one dwelling house situated thereon, the credit provided for in this chapter shall apply to the home and buildings used by the owner, but shall not apply to any other dwelling house and buildings appurtenant.

e. *"Owner"* means the person who holds the fee simple title to the homestead, and in addition shall mean the person occupying as a surviving spouse or the person occupying under a contract of purchase which contract has been recorded in the office of the county recorder of the county in which the property is located; or the person occupying the homestead under devise or by operation of the inheritance laws where the whole interest

passes or where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption; or the person occupying the homestead is a shareholder of a family farm corporation that owns the property; or the person occupying the homestead under a deed which conveys a divided interest where the divided interest is shared only by persons related or formerly related to each other by blood, marriage or adoption; or where the person occupying the homestead holds a life estate with the reversion interest held by a nonprofit corporation organized under chapter 504, provided that the holder of the life estate is liable for and pays property tax on the homestead; or where the person occupying the homestead holds an interest in a horizontal property regime under chapter 499B, regardless of whether the underlying land committed to the horizontal property regime is in fee or as a leasehold interest, provided that the holder of the interest in the horizontal property regime is liable for and pays property tax on the homestead; or where the person occupying the homestead is a member of a community land trust as defined in 42 U.S.C. §12773, regardless of whether the underlying land is in fee or as a leasehold interest, provided that the member of the community land trust is occupying the homestead and is liable for and pays property tax on the homestead. For the purpose of this chapter the word "*owner*" shall be construed to mean a bona fide owner and not one for the purpose only of availing the person of the benefits of this chapter. In order to qualify for the homestead tax credit, evidence of ownership shall be on file in the office of the clerk of the district court or recorded in the office of the county recorder at the time the owner files with the assessor a verified statement of the homestead claimed by the owner as provided in section 425.2.

2. Where not in conflict with the terms of the definitions set out in subsection 1, the provisions of chapter 561 shall control.

[C39, §**6943.152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.11; 82 Acts, ch 1246, §6, 11]

89 Acts, ch 256, §2; 90 Acts, ch 1087, §2; 90 Acts, ch 1250, §5; 91 Acts, ch 97, §50; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2006 Acts, ch 1158, §56, 69; 2011 Acts, ch 34, §166

Referred to in §25B.7

425.12 Indian land.

Each forty acres of land, or fraction thereof, occupied by a member or members of the Sac and Fox Indians in Tama county, which land is held in trust by the secretary of the interior of the United States for said Indians, shall be given a homestead tax credit within the meaning and under the provisions of this chapter. Application for such homestead tax credit shall be made to the county auditor of Tama county and may be made by a representative of the tribal council.

[C39, §**6943.153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.12]

Referred to in §25B.7

425.13 Conspiracy to defraud.

If any two or more persons conspire and confederate together with fraudulent intent to obtain the credit provided for under the terms of this chapter by making a false deed, or a false contract of purchase, they are guilty of a fraudulent practice.

[C39, §**6943.154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §425.13]

Referred to in §25B.7

425.14 False affidavits. Repealed by 2001 Acts, ch 154, §5, 6. See §425.7.

425.15 Disabled veteran tax credit.

1. If the owner of a homestead allowed a credit under this chapter is any of the following, the credit allowed on the homestead from the homestead credit fund shall be the entire amount of the tax levied on the homestead:

a. A veteran of any of the military forces of the United States, who acquired the homestead under 38 U.S.C. §21.801, 21.802, prior to August 6, 1991, or under 38 U.S.C. §2101, 2102.

b. A veteran as defined in section 35.1 with a permanent service-connected disability rating of one hundred percent, as certified by the United States department of veterans

affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the one hundred percent disability rate, as certified by the United States department of veterans affairs.

c. A former member of the national guard of any state who otherwise meets the service requirements of section 35.1, subsection 2, paragraph *"b"*, subparagraph (2) or (7), with a permanent service-connected disability rating of one hundred percent, as certified by the United States department of veterans affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the one hundred percent disability rate, as certified by the United States department of veterans affairs.

d. An individual who is a surviving spouse or a child and who is receiving dependency and indemnity compensation pursuant to 38 U.S.C. §1301 et seq., as certified by the United States department of veterans affairs.

2. *a.* For an owner described in subsection 1, paragraph *"a"*, *"b"*, or *"c"*, the credit allowed shall be continued to the estate of an owner who is deceased or the surviving spouse and any child, as defined in section 234.1, who are the beneficiaries of a deceased owner, so long as the surviving spouse remains unmarried.

b. An individual described in subsection 1, paragraph *"d"*, is no longer eligible for the credit upon termination of dependency and indemnity compensation under 38 U.S.C. §1301 et seq.

3. An owner or a beneficiary of an owner who elects to secure the credit provided in this section is not eligible for any other real property tax exemption provided by law for veterans of military service.

4. If an owner acquires a different homestead, the credit allowed under this section may be claimed on the new homestead unless the owner fails to meet the other requirements of this section.

5. For purposes of this section, *"permanent and total disability rating based on individual unemployability"* means a condition under which a person has either a permanent service-connected disability rating of sixty percent or two or more permanent service-connected disability conditions in which one of the conditions has at least a forty percent rating and the combined rating for all the conditions is at least seventy percent, and the person has an administrative adjustment added to the service-connected disability rating, due to individual unemployability, such that the United States department of veterans affairs rates the veteran permanently and totally disabled for purposes of disability compensation.

[C71, 73, 75, 77, 79, 81, §425.15]

90 Acts, ch 1250, §7; 2002 Acts, ch 1151, §16, 36; 2014 Acts, ch 1117, §1 – 3; 2014 Acts, ch 1141, §22; 2015 Acts, ch 6, §1 – 5

Referred to in §25B.7

2015 amendments take effect March 5, 2015, and apply retroactively to May 26, 2014, for homestead credit applications filed on or after that date; 2015 Acts, ch 6, §4, 5

For provisions relating to the allowance and funding of disabled veteran tax credit claims filed after July 1, 2014, but before July 1, 2015, see 2015 Acts, ch 116, §21 – 23 and 2015 Acts, ch 138, §158 – 160

SUBCHAPTER II

PROPERTY TAX CREDIT OR RENT REIMBURSEMENT FOR ELDERLY AND DISABLED

425.16 Additional tax credit.

In addition to the homestead tax credit allowed under section 425.1, subsections 1 to 4, persons who own or rent their homesteads and who meet the qualifications provided in this subchapter are eligible for an extraordinary property tax credit or reimbursement.

[C75, 77, 79, 81, §425.16]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.17 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Base year"* means the calendar year last ending before the claim is filed.

2. *a.* *"Claimant"* means either of the following:

(1) A person filing a claim for credit or reimbursement under this subchapter who has attained the age of sixty-five years on or before December 31 of the base year or who is totally disabled and was totally disabled on or before December 31 of the base year and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate.

(2) A person filing a claim for credit or reimbursement under this subchapter who has attained the age of twenty-three years on or before December 31 of the base year or was a head of household on December 31 of the base year, as defined in the Internal Revenue Code, but has not attained the age or disability status described in this paragraph *"a"*, subparagraph (1), and is domiciled in this state at the time the claim is filed or at the time of the person's death in the case of a claim filed by the executor or administrator of the claimant's estate, and was not claimed as a dependent on any other person's tax return for the base year.

b. *"Claimant"* under paragraph *"a"*, subparagraph (1) or (2), includes a vendee in possession under a contract for deed and may include one or more joint tenants or tenants in common. In the case of a claim for rent constituting property taxes paid, the claimant shall have rented the property during any part of the base year. In the case of a claim for property taxes due, the claimant shall have occupied the property during any part of the fiscal year beginning July 1 of the base year. If a homestead is occupied by two or more persons, and more than one person is able to qualify as a claimant, the persons may each file a claim based upon each person's income and rent constituting property taxes paid or property taxes due.

3. *"Gross rent"* means rental paid at arm's length for the right of occupancy of a homestead or manufactured or mobile home, including rent for space occupied by a manufactured or mobile home not to exceed one acre. If the department of revenue determines that the landlord and tenant have not dealt with each other at arm's length, and the department of revenue is satisfied that the gross rent charged was excessive, the department shall adjust the gross rent to a reasonable amount as determined by the department.

4. *"Homestead"* means the dwelling owned or rented and actually used as a home by the claimant during the period specified in subsection 2, and so much of the land surrounding it including one or more contiguous lots or tracts of land, as is reasonably necessary for use of the dwelling as a home, and may consist of a part of a multidwelling or multipurpose building and a part of the land upon which it is built. It does not include personal property except that a manufactured or mobile home may be a homestead. Any dwelling or a part of a multidwelling or multipurpose building which is exempt from taxation does not qualify as a homestead under this subchapter. However, solely for purposes of claimants living in a property and receiving reimbursement for rent constituting property taxes paid immediately before the property becomes tax exempt, and continuing to live in it after it becomes tax exempt, the property shall continue to be classified as a homestead. A homestead must be located in this state. When a person is confined in a nursing home, extended-care facility, or hospital, the person shall be considered as occupying or living in the person's homestead if the person is the owner of the homestead and the person maintains the homestead and does not lease, rent, or otherwise receive profits from other persons for the use of the homestead.

5. *"Household"* means a claimant and the claimant's spouse if living with the claimant at any time during the base year. *"Living with"* refers to domicile and does not include a temporary visit.

6. *"Household income"* means all income of the claimant and the claimant's spouse in a household and actual monetary contributions received from any other person living with the claimant during their respective twelve-month income tax accounting periods ending with or during the base year.

7. *"Income"* means the sum of Iowa net income as defined in section 422.7, plus all of the following to the extent not already included in Iowa net income: capital gains, alimony, child support money, cash public assistance and relief, except property tax relief granted under this subchapter, amount of in-kind assistance for housing expenses, the gross amount of any pension or annuity, including but not limited to railroad retirement benefits, payments received under the federal Social Security Act, except child insurance

benefits received by a member of the claimant's household, and all military retirement and veterans' disability pensions, interest received from the state or federal government or any of its instrumentalities, workers' compensation and the gross amount of disability income or "loss of time" insurance. *"Income"* does not include gifts from nongovernmental sources, or surplus foods or other relief in kind supplied by a governmental agency. In determining income, net operating losses and net capital losses shall not be considered.

8. *"Property taxes due"* means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which will actually be paid by the claimant. However, if the claimant is a person whose property taxes have been suspended under sections 427.8 and 427.9, *"property taxes due"* means property taxes including any special assessments, but exclusive of delinquent interest and charges for services, due on a claimant's homestead in this state, but includes only property taxes for which the claimant is liable and which would have to be paid by the claimant if the payment of the taxes has not been suspended pursuant to sections 427.8 and 427.9. *"Property taxes due"* shall be computed with no deduction for any credit under this subchapter or for any homestead credit allowed under section 425.1. Each claim shall be based upon the taxes due during the fiscal year next following the base year. If a homestead is owned by two or more persons as joint tenants or tenants in common, and one or more persons are not members of claimant's household, *"property taxes due"* is that part of property taxes due on the homestead which equals the ownership percentage of the claimant and the claimant's household. The county treasurer shall include with the tax receipt a statement that if the owner of the property is eighteen years of age or over, the person may be eligible for the credit allowed under this subchapter. If a homestead is an integral part of a farm, the claimant may use the total property taxes due for the larger unit. If a homestead is an integral part of a multidwelling or multipurpose building the property taxes due for the purpose of this subsection shall be prorated to reflect the portion which the value of the property that the household occupies as its homestead is to the value of the entire structure. For purposes of this subsection, *"unit"* refers to that parcel of property covered by a single tax statement of which the homestead is a part.

9. *"Rent constituting property taxes paid"* means twenty-three percent of the gross rent actually paid in cash or its equivalent during the base year by the claimant or the claimant's household solely for the right of occupancy of their homestead in the base year, and which rent constitutes the basis, in the succeeding year, of a claim for reimbursement under this subchapter by the claimant.

10. *"Special assessment"* means an unpaid special assessment certified pursuant to chapter 384, subchapter IV. The claimant may include as a portion of the taxes due during the fiscal year next following the base year an amount equal to the unpaid special assessment installment due, plus interest, during the fiscal year next following the base year.

11. *"Totally disabled"* means the inability to engage in any substantial gainful employment by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or is reasonably expected to last for a continuous period of not less than twelve months.

[C75, 77, 79, 81, §425.17; 82 Acts, ch 1214, §1, 2, 4]

88 Acts, ch 1139, §2, 3; 89 Acts, ch 233, §1; 90 Acts, ch 1250, §6; 91 Acts, ch 191, §19, 124; 92 Acts, ch 1016, §41; 92 Acts, 2nd Ex, ch 1001, §220, 225; 93 Acts, ch 156, §1, 2; 93 Acts, ch 180, §4, 15, 16, 22, 23; 94 Acts, ch 1125, §1, 2, 5; 94 Acts, ch 1165, §26, 50; 99 Acts, ch 152, §13, 40; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §89; 2015 Acts, ch 109, §8, 75; 2018 Acts, ch 1041, §127; 2019 Acts, ch 24, §51

Referred to in §25B.7, 425.23, 425.39, 427.9, 435.22

Subsection 2, paragraph a, subparagraph (2) amended

425.18 Right to file a claim.

The right to file a claim for reimbursement or credit under this subchapter may be exercised by the claimant or on behalf of a claimant by the claimant's legal guardian, spouse, or attorney, or by the executor or administrator of the claimant's estate. If a claimant

dies after having filed a claim for reimbursement for rent constituting property taxes paid, the amount of the reimbursement may be paid to another member of the household as determined by the department of revenue. If the claimant was the only member of the household, the reimbursement may be paid to the claimant's executor or administrator, but if neither is appointed and qualified within one year from the date of the filing of the claim, the reimbursement shall escheat to the state. If a claimant dies after having filed a claim for credit for property taxes due, the amount of credit shall be paid as if the claimant had not died.

[C75, 77, 79, 81, §425.18; 82 Acts, ch 1214, §3, 4]

83 Acts, ch 111, §1, 4; 2015 Acts, ch 109, §9, 75; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.19 Claim and credit or reimbursement.

Subject to the limitations provided in this subchapter, a claimant may annually claim a credit for property taxes due during the fiscal year next following the base year or claim a reimbursement for rent constituting property taxes paid in the base year. The amount of the credit for property taxes due for a homestead shall be paid on June 15 of each year by the director to the county treasurer who shall credit the money received against the amount of the property taxes due and payable on the homestead of the claimant and the amount of the reimbursement for rent constituting property taxes paid shall be paid to the claimant from the state general fund on or before December 31 of each year.

[C75, 77, 79, 81, §425.19]

83 Acts, ch 172, §4; 99 Acts, ch 152, §14, 40; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.20 Filing dates — affidavit — extension.

1. A claim for reimbursement for rent constituting property taxes paid shall not be paid or allowed, unless the claim is filed with and in the possession of the department of revenue on or before June 1 of the year following the base year.

2. A claim for credit for property taxes due shall not be paid or allowed unless the claim is filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the property taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue on or before May 1 of each year the total amount of dollars due for claims allowed.

3. In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for reimbursement or credit. However, any further time granted shall not extend beyond December 31 of the year following the year in which the claim was required to be filed. Claims filed as a result of this subsection shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

[C75, 77, 79, 81, §425.20; 81 Acts 2nd Ex, ch 4, §1]

83 Acts, ch 111, §2, 4; 88 Acts, ch 1050, §1; 94 Acts, ch 1125, §3, 5; 94 Acts, ch 1165, §27, 50; 96 Acts, ch 1167, §3, 8; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §92

Referred to in §25B.7, 427.9

425.21 Satisfaction of outstanding tax liabilities.

The amount of any claim for credit or reimbursement payable under this subchapter may be applied by the department of revenue against any tax liability, delinquent accounts, charges, loans, fees, or other indebtedness due the state or state agency that has a formal agreement with the department for central debt collection, outstanding on the books of the department

against the claimant, or against a spouse who was a member of the claimant's household in the base year.

[C75, 77, 79, 81, §425.21]

99 Acts, ch 152, §15, 40; 2001 Acts, ch 24, §51; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.22 One claimant per household.

Only one claimant per household per year shall be entitled to reimbursement under this subchapter and only one claimant per household per fiscal year shall be entitled to a credit under this subchapter.

[C75, 77, 79, 81, §425.22]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.23 Schedule for claims for credit or reimbursement.

The amount of any claim for credit or reimbursement filed under this subchapter shall be determined as provided in this section.

1. *a.* The tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "*a*", subparagraphs (1) and (2), if no appropriation is made to the fund created in section 425.40 shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

b. If moneys have been appropriated to the fund created in section 425.40, the tentative credit or reimbursement for a claimant described in section 425.17, subsection 2, paragraph "*a*", subparagraph (2), shall be determined as follows:

(1) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is at least twenty-seven million dollars, the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	100%
8,500 — 9,499.99	85
9,500 — 10,499.99	70
10,500 — 12,499.99	50
12,500 — 14,499.99	35
14,500 — 16,499.99	25

(2) If the amount appropriated under section 425.40 plus any supplemental appropriation made for a fiscal year for purposes of this lettered paragraph is less than twenty-seven million dollars the tentative credit or reimbursement shall be determined in accordance with the following schedule:

If the household income is:	Percent of property taxes due or rent constituting property taxes paid allowed as a credit or reimbursement:
$ 0 — 8,499.99	50%
8,500 — 9,499.99	42
9,500 — 10,499.99	35
10,500 — 12,499.99	25
12,500 — 14,499.99	17
14,500 — 16,499.99	12

2. The actual credit for property taxes due shall be determined by subtracting from the tentative credit the amount of the homestead credit under section 425.1 which is allowed as a credit against property taxes due in the fiscal year next following the base year by the claimant or any person of the claimant's household. If the subtraction produces a negative amount, there shall be no credit but no refund shall be required. The actual reimbursement for rent constituting property taxes paid shall be equal to the tentative reimbursement.

3. *a.* A person who is eligible to file a claim for credit for property taxes due and who has a household income of eight thousand five hundred dollars or less and who has an unpaid special assessment levied against the homestead may file a claim for a special assessment credit with the county treasurer. The department shall provide to the respective treasurers the forms necessary for the administration of this subsection. The claim shall be filed not later than September 30 of each year. Upon the filing of the claim, interest for late payment shall not accrue against the amount of the unpaid special assessment due and payable. The claim filed by the claimant constitutes a claim for credit of an amount equal to the actual amount due upon the unpaid special assessment, plus interest, payable during the fiscal year for which the claim is filed against the homestead of the claimant. However, where the claimant is an individual described in section 425.17, subsection 2, paragraph *"a"*, subparagraph (2), and the tentative credit is determined according to the schedule in subsection 1, paragraph *"b"*, subparagraph (2), of this section, the claim filed constitutes a claim for credit of an amount equal to one-half of the actual amount due and payable during the fiscal year. The treasurer shall certify to the director of revenue not later than October 15 of each year the total amount of dollars due for claims allowed. The amount of reimbursement due each county shall be certified by the director of revenue and paid by the director of the department of administrative services by November 15 of each year, drawn upon warrants payable to the respective treasurer. There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out the provisions of this subsection. The treasurer shall credit any moneys received from the department against the amount of the unpaid special assessment due and payable on the homestead of the claimant.

b. For purposes of this subsection, in computing household income, a person with a total disability shall deduct all medical and necessary care expenses paid during the twelve-month income tax accounting periods used in computing household income which are attributable to the person's total disability. *"Medical and necessary care expenses"* are those used in computing the federal income tax deduction under section 213 of the Internal Revenue Code as defined in section 422.3.

4. *a.* For the base year beginning in the 1999 calendar year and for each subsequent base year, the dollar amounts set forth in subsections 1 and 3 shall be multiplied by the cumulative adjustment factor for that base year. *"Cumulative adjustment factor"* means the product of the annual adjustment factor for the 1998 base year and all annual adjustment factors for subsequent base years. The cumulative adjustment factor applies to the base year beginning in the calendar year for which the latest annual adjustment factor has been determined.

b. The annual adjustment factor for the 1998 base year is one hundred percent. For each subsequent base year, the annual adjustment factor equals the annual inflation factor for the

calendar year, in which the base year begins, as computed in section 422.4 for purposes of the individual income tax.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.23]

83 Acts, ch 172, §5; 83 Acts, ch 189, §3, 5, 6; 84 Acts, ch 1305, §35; 88 Acts, ch 1139, §4; 90 Acts, ch 1250, §8, 9; 91 Acts, ch 267, §524; 92 Acts, ch 1016, §13, 42; 92 Acts, 2nd Ex, ch 1001, §221 – 223, 225; 93 Acts, ch 180, §5, 6, 15, 16, 22, 23; 96 Acts, ch 1129, §93; 96 Acts, ch 1167, §4, 8; 98 Acts, ch 1177, §12 – 14, 16; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §49; 2011 Acts, ch 25, §131 – 133; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9, 435.22

425.24 Maximum property tax for purpose of credit or reimbursement.

In any case in which property taxes due or rent constituting property taxes paid for any household exceeds one thousand dollars, the amount of property taxes due or rent constituting property taxes paid shall be deemed to have been one thousand dollars for purposes of this subchapter.

[C75, 77, 79, 81, §425.24]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.25 Administration.

The director of revenue shall make available suitable forms with instructions for claimants. Each assessor and county treasurer shall make available the forms and instructions. The claim shall be in a form as the director may prescribe. The director may also devise a tax credit or reimbursement table, with amounts rounded to the nearest even whole dollar. Reimbursements or credits in the amount of less than one dollar shall not be paid.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.25]

84 Acts, ch 1190, §1; 2003 Acts, ch 145, §286

Referred to in §25B.7, 331.559, 427.9

425.26 Proof of claim.

1. Every claimant shall give the department of revenue, in support of the claim, reasonable proof of:

a. Age and total disability, if any.

b. Property taxes due or rent constituting property taxes paid, including the name and address of the owner or manager of the property rented and a statement whether the claimant is related by blood, marriage, or adoption to the owner or manager of the property rented.

c. Homestead credit allowed against property taxes due.

d. Changes of homestead.

e. Household membership.

f. Household income.

g. Size and nature of property claimed as the homestead.

2. The department may require any additional proof necessary to support a claim.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.26]

83 Acts, ch 111, §3, 4; 85 Acts, ch 67, §44; 94 Acts, ch 1125, §4, 5; 94 Acts, ch 1165, §28; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143; 2015 Acts, ch 109, §10, 75

Referred to in §25B.7, 427.9

425.27 Audit — recalculation or denial — appeals.

If on the audit of a claim for credit or reimbursement under this subchapter, the department of revenue determines the amount of the claim to have been incorrectly calculated or that the claim is not allowable, the department shall recalculate the claim and notify the claimant of the recalculation or denial and the reasons for it. The recalculation of the claim shall be final unless appealed to the director within thirty days from the date of notice of recalculation or denial. The director shall grant a hearing, and upon hearing determine the correct claim, if any, and notify the claimant of the decision by mail. The department of revenue shall not adjust a claim after three years from October 31 of the year in which the claim was filed. If the claim for reimbursement has been paid, the amount may be recovered by assessment in the

same manner that income taxes are assessed under sections 422.26 and 422.30. If the claim for credit has been paid, the department of revenue shall give notification to the claimant and the county treasurer of the recalculation or denial of the claim and the county treasurer shall proceed to collect the tax owed in the same manner as other property taxes due and payable are collected, if the property on which the credit was granted is still owned by the claimant, and repay the amount to the director upon collection. If the property on which the credit was granted is not owned by the claimant, the amount may be recovered from the claimant by assessment in the same manner that income taxes are assessed under sections 422.26 and 422.30. The decision of the director shall be final unless appealed as provided in section 425.31. Section 422.70 is applicable with respect to this subchapter.

[C75, 77, 79, 81, §425.27]

84 Acts, ch 1190, §2; 88 Acts, ch 1050, §2; 2015 Acts, ch 109, §11, 75; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 425.29, 427.9

425.28 Waiver of confidentiality.

1. A claimant shall expressly waive any right to confidentiality relating to all income tax information obtainable through the department of revenue, including all information covered by sections 422.20 and 422.72. This waiver shall apply to information available to the county treasurer who shall hold the information confidential except that it may be used as evidence to disallow the credit.

2. The department of revenue may release information pertaining to a person's eligibility or claim for or receipt of rent reimbursement to an employee of the department of inspections and appeals in the employee's official conduct of an audit or investigation.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.28]

94 Acts, ch 1165, §29; 99 Acts, ch 139, §1; 2003 Acts, ch 145, §286; 2019 Acts, ch 24, §104

Referred to in §25B.7, 427.9

Code editor directive applied

425.29 False claim — penalty.

A person who makes a false affidavit for the purpose of obtaining credit or reimbursement provided for in this subchapter or who knowingly receives the credit or reimbursement without being legally entitled to it or makes claim for the credit or reimbursement in more than one county in the state without being legally entitled to it is guilty of a fraudulent practice. The claim for credit or reimbursement shall be disallowed in full and if the claim has been paid the amount shall be recovered in the manner provided in section 425.27. The department of revenue may impose penalties under section 421.27. The department of revenue shall send a notice of disallowance of the claim.

[C71, 73, §425.1(5); C75, 77, 79, 81, §425.29]

83 Acts, ch 160, §10; 99 Acts, ch 152, §16, 40; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §12, 75; 2018 Acts, ch 1041, §127; 2018 Acts, ch 1161, §18, 20

Referred to in §25B.7, 427.9

Fraudulent practices, see §714.8 – 714.14

Legislative intent regarding amendment by 2018 Acts, ch 1161; 2018 Acts, ch 1161, §19

425.30 Notices.

Section 423.39, subsection 1, shall apply to all notices under this subchapter.

[C75, 77, 79, 81, §425.30]

2003 Acts, 1st Ex, ch 2, §194, 205; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.31 Appeals.

Any person aggrieved by an act or decision of the director of revenue or the department of revenue under this subchapter shall have the same rights of appeal and review as provided in section 423.38 and the rules of the department of revenue.

[C75, 77, 79, 81, §425.31]

2003 Acts, ch 145, §286; 2003 Acts, 1st Ex, ch 2, §195, 205; 2015 Acts, ch 109, §13, 75; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 425.27, 425.34, 427.9

425.32 Disallowance of certain claims.

A claim for credit shall be disallowed if the department finds that the claimant or a person of the claimant's household received title to the homestead primarily for the purpose of receiving benefits under this subchapter.

[C75, 77, 79, 81, §425.32]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.33 Rent increase — request and order for reduction.

1. If upon petition by a claimant the department of revenue determines that a landlord has increased the claimant's rent primarily because the claimant is eligible for reimbursement under this subchapter, the department of revenue shall request the landlord by mail to reduce the rent appropriately.

2. In determining whether a landlord has increased a claimant's rent primarily because the claimant is eligible for reimbursement under this subchapter, the department of revenue shall consider the following factors:

a. The amount of the increase in rent.

b. If the landlord operates other rental property, whether a similar increase was imposed on the other rental property.

c. Increased or decreased costs of materials, supplies, services, and taxes in the area.

d. The time the rent was increased.

e. Other relevant factors in each particular case.

3. If the landlord fails to comply with the request of the department of revenue within fifteen days after the request is mailed by the department, the department of revenue shall order the rent reduced by an appropriate amount.

[C75, 77, 79, 81, §425.33]

86 Acts, ch 1241, §33; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9, 435.33

425.34 Hearings and appeals.

1. If the department of revenue orders a landlord to reduce rent to a claimant, then upon the request of the landlord the department of revenue shall hold a prompt hearing of the matter, to be conducted in accordance with the rules of the department. The department of revenue shall give notice of the decision by mail to the claimant and to the landlord.

2. The claimant and the landlord shall have the rights of appeal and review as provided in section 425.31.

[C75, 77, 79, 81, §425.343]

86 Acts, ch 1241, §34; 2003 Acts, ch 145, §286

Referred to in §25B.7, 427.9, 435.33

425.35 Defense to action for nonpayment of rent.

It is an affirmative defense to any action by a landlord based upon nonpayment or partial payment of rent that the landlord increased the rent primarily because the tenant had received, or was eligible for, reimbursement under this subchapter.

[C75, 77, 79, 81, §425.35]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9, 435.33

425.36 Discrimination in rentals or rent charges.

Discrimination by a landlord in the rental of or in rent charges for a homestead because the tenant has received or is eligible for reimbursement under this subchapter is a simple misdemeanor.

[C75, 77, 79, 81, §425.36]

2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9, 435.33

425.37 Rules.

The director of revenue shall adopt rules in accordance with chapter 17A for the interpretation and proper administration of this subchapter, including rules to prevent and disallow duplication of benefits and to prevent any unreasonable hardship or advantage to any person.

[C75, 77, 79, 81, §425.37]

2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 427.9

425.38 Reserved.

425.39 Fund created — appropriation — priority.

The elderly and disabled property tax credit and reimbursement fund is created. There is appropriated annually from the general fund of the state to the department of revenue to be credited to the elderly and disabled property tax credit and reimbursement fund, from funds not otherwise appropriated, an amount sufficient to implement this subchapter for claimants described in section 425.17, subsection 2, paragraph *"a"*, subparagraph (1).

[C75, 77, 79, 81, §425.39]

86 Acts, ch 1244, §51; 93 Acts, ch 180, §8; 97 Acts, ch 206, §7, 8, 10; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §134; 2018 Acts, ch 1041, §127

Referred to in §25B.7

425.40 Low-income fund created.

1. A low-income tax credit and reimbursement fund is created.

2. If the amount appropriated for purposes of this section for a fiscal year is insufficient to pay all claims in full, the director shall pay, in full, all claims to be paid during the fiscal year for reimbursement of rent constituting property taxes paid or if moneys are insufficient to pay all such claims on a pro rata basis. If the amount of claims for credit for property taxes due to be paid during the fiscal year exceed the amount remaining after payment to renters, the director of revenue shall prorate the payments to the counties for the property tax credit. In order for the director to carry out the requirements of this subsection, notwithstanding any provision to the contrary in this subchapter, claims for reimbursement for rent constituting property taxes paid filed before May 1 of the fiscal year shall be eligible to be paid in full during the fiscal year and those claims filed on or after May 1 of the fiscal year shall be eligible to be paid during the following fiscal year and the director is not required to make payments to counties for the property tax credit before June 15 of the fiscal year.

93 Acts, ch 180, §9, 22; 97 Acts, ch 23, §48; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127

Referred to in §25B.7, 425.23

CHAPTER 425A

FAMILY FARM TAX CREDIT

425A.1	Family farm tax credit fund.	425A.6	Warrants authorized by director — proration.
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425A.1 Family farm tax credit fund.

The family farm tax credit fund is created in the office of the treasurer of state. There shall be transferred annually to the fund the first ten million dollars of the amount annually appropriated to the agricultural land credit fund, provided in section 426.1. Any balance in the fund on June 30 shall revert to the general fund.

90 Acts, ch 1250, §10; 93 Acts, ch 180, §10

Referred to in §425A.6, 426.1

425A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Actively engaged in farming"* means the designated person is personally involved in the production of crops and livestock on the eligible tract on a regular, continuous, and substantial basis. However, a lessor, whether under a cash or a crop share lease, is not actively engaged in farming on the area of the tract covered by the lease. This provision applies to both written and oral leases.

2. *"Agricultural land"* means land in tracts of ten acres or more excluding any buildings or other structures located on the land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within a school corporation and in good faith used for agricultural or horticultural purposes. Any land in tracts laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes is entitled to the benefits of this chapter.

3. *"Crop"* or *"crop production"* includes pastureland.

4. *"Designated person"* means one of the following:

a. If the owner is an individual, the designated person includes the owner of the tract, the owner's spouse, the owner's child or stepchild, and their spouses, or the owner's relative within the third degree of consanguinity, and the relative's spouse.

b. If the owner is a partnership, a partner, or the partner's spouse.

c. If the owner is a family farm corporation, a family member who is a shareholder of the family farm corporation or the shareholder's spouse.

d. If the owner is a family farm limited liability company, a family member who is a member of the family farm limited liability company or the member's spouse.

e. If the owner is an authorized farm corporation, a shareholder who owns at least fifty-one percent of the stock of the authorized farm corporation or the shareholder's spouse.

f. If the owner is an authorized limited liability company, a member who holds at least fifty-one percent of all membership interests in the authorized limited liability company, or the member's spouse.

g. If the owner is an individual who leases the tract to a family farm corporation, a shareholder of the corporation if the combined stock of the family farm corporation owned by the owner of the tract and persons related to the owner as enumerated in paragraph *"a"* is equal to at least fifty-one percent of the stock of the family farm corporation.

h. If the owner is an individual who leases the tract to a family farm limited liability company, a member of the family farm limited liability company if the combined interests of the family farm limited liability company held by the owner of the tract and persons related to the owner as enumerated in paragraph *"a"* is equal to at least fifty-one percent of the interests of the family farm limited liability company.

i. If the owner is an individual who leases the tract to a partnership, a partner if the combined partnership interest owned by a designated person as defined in paragraph *"a"* is equal to at least fifty-one percent of the ownership interest of the partnership.

5. *"Eligible tract"* or *"eligible tract of agricultural land"* means an area of agricultural land which meets all of the following:

a. Is comprised of all of the contiguous tracts under identical legal ownership that are located within the same county.

b. In the aggregate more than half the acres of the contiguous tract is devoted to the production of crops or livestock by a designated person who is actively engaged in farming.

c. For purposes of paragraph *"b"*, if some or all of the contiguous tract is being farmed under a lease arrangement, the activities of the lessor do not constitute being actively engaged in farming on the areas of the tract covered by the lease. If the lessee is a designated person who is actively engaged in farming, the acres under lease may be considered in determining whether more than half the acres of the contiguous tract are devoted to the production of crops or livestock.

6. *"Owner"* means any of the following:

a. An individual who holds the fee simple title to the agricultural land.

b. An individual who owns the agricultural land under a contract of purchase which has

been recorded in the office of the county recorder of the county in which the agricultural land is located.

c. An individual who owns the agricultural land under devise or by operation of the inheritance laws, where the whole interest passes or where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

d. An individual who owns the agricultural land under a deed which conveys a divided interest, where the divided interest is shared only by individuals related or formerly related to each other by blood, marriage, or adoption.

e. A partnership where all partners are related or formerly related to each other by blood, marriage, or adoption.

f. A family farm corporation, family farm limited liability company, authorized farm corporation, or authorized limited liability company, as defined in section 9H.1, which owns the agricultural land.

90 Acts, ch 1250, §11; 91 Acts, ch 267, §609 – 611; 96 Acts, ch 1198, §1, 2; 2011 Acts, ch 112, §1 – 3

Referred to in §425A.3

425A.3 Where credit given.

1. The family farm tax credit fund shall be apportioned each year in the manner provided in this chapter so as to give a credit against the tax on each eligible tract of agricultural land within the several school districts of the state in which the levy for the general school fund exceeds five dollars and forty cents per thousand dollars of assessed value. The amount of the credit on each eligible tract of agricultural land shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on each eligible tract of agricultural land were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year. However, in the case of a deficiency in the family farm tax credit fund to pay the credits in full, the credit on each eligible tract of agricultural land in the state shall be proportionate and applied as provided in this chapter.

2. An eligible tract of agricultural land qualifies for the credit computed under subsection 1 if the tract is owned by an owner as defined in section 425A.2 and a designated person is actively engaged in farming during the fiscal year preceding the fiscal year in which the auditor computes the amount of the credit under section 425A.5 for which the tract would be eligible. Notwithstanding the foregoing sentence, the *"actively engaged in farming"* requirement is satisfied if the designated person is in general control of the tract under a federal program pertaining to agricultural land.

3. The county board of supervisors shall determine the eligibility of each tract for which an application is received.

90 Acts, ch 1250, §12; 91 Acts, ch 267, §612, 613

Referred to in §425A.8

425A.4 Claim for credit.

1. To apply for the credit, the person shall deliver to the county assessor a verified statement and designation of the tracts of agricultural land for which the credit is claimed. The assessor shall return the statement and designation on or before November 15 of each year to the county board of supervisors with a recommendation for allowance or disallowance. A claim for credit filed after November 1 of the year shall be considered as a claim filed for the following year.

2. The county board of supervisors in each county shall examine all claims delivered to county assessors, and shall either allow or disallow the claims, and if disallowed shall send notice of disallowance by regular mail to the claimant at the claimant's last known address. The claimant may appeal the decision of the board to the district court in which the tract for which the credit is claimed is situated by giving written notice of the appeal to the county board of supervisors within twenty days from the date of the mailing of the notice of the decision of the board of supervisors.

3. Upon the filing and allowance of the claim, the claim shall be allowed on that tract for successive years without further filing as long as the property is legally or equitably owned

by that person or that person's spouse on July 1 of each of those successive years, and the designated person who is actively engaged in farming remains the same during these years. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall file for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to file for the credit. In the case where the owner remains the same but the person who is actively engaged in farming changes, the owner shall refile for the credit. The owner shall provide written notice if the person actively engaged in farming changes.

4. The assessor shall retain a permanent file of current family farm credit claims filed in the assessor's office.

5. The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the tract of agricultural land transferred, the name of the person transferring the title to the tract, and the name of the person to whom title to the tract has been transferred.

90 Acts, ch 1250, §13; 91 Acts, ch 97, §51; 91 Acts, ch 267, §614, 615; 2001 Acts, ch 154, §2, 3, 6; 2009 Acts, ch 41, §254

425A.5 Computation by county auditor.

The family farm tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural land which are entitled to credit, the taxable value for the previous year, the budget from each school district for the previous year, and the tax rate determined for the general fund of the school district in the manner prescribed in section 444.3 for the previous year, and if the tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural land entitled to credit in the school district, and on or before April 1, certify the total amount of credit and the total number of acres entitled to the credit to the department of revenue.

90 Acts, ch 1250, §14; 91 Acts, ch 267, §616; 2001 Acts, ch 143, §2; 2003 Acts, ch 145, §286
Referred to in §425A.3, 425A.6

425A.6 Warrants authorized by director — proration.

After receiving from the county auditors the certifications provided for in section 425A.5, and during the following fiscal year, the director of revenue shall authorize the department of administrative services to draw warrants on the family farm tax credit fund created in section 425A.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on June 1 of each year taking into consideration the relative budget and cash position of the state resources. However, if the family farm tax credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before June 1.

90 Acts, ch 1250, §15; 91 Acts, ch 267, §617; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §50

425A.7 Apportionment by auditor.

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering the tax lists to the county treasurer. Upon receipt of the warrant by the county auditor, the auditor shall deliver the warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

90 Acts, ch 1250, §16; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §51

425A.8 False claim — penalty.

A person making a false claim or affidavit with fraudulent intent to obtain the credit under section 425A.3, is guilty of a fraudulent practice and the claim shall be disallowed in full. If the credit has been paid, the amount of the credit plus a penalty equal to twenty-five percent of the amount of credit plus interest, at the rate in effect under section 421.7, from the time of payment shall be collected by the county treasurer in the same manner as other property taxes, penalty, and interest are collected and when collected shall be paid to the director of revenue.

A person who fails to notify the assessor of a change in the person who is actively engaged in farming the tract for which the credit under section 425A.3 is allowed shall be liable for the amount of the credit plus a penalty equal to five percent of the amount of the credit. The amounts shall be collected by the county treasurer in the same manner as other property taxes and any penalty are collected and when collected shall be paid to the director of revenue.

90 Acts, ch 1250, §17; 2001 Acts, ch 154, §4, 6; 2003 Acts, ch 145, §286

Fraudulent practices; §714.8 – 714.14

CHAPTER 426

AGRICULTURAL LAND TAX CREDIT

Referred to in §2.48, 331.512

426.1 Agricultural land credit fund.
426.2 Definition.
426.3 Where credit given.
426.4 and 426.5 Reserved.
426.6 Computation by auditor — appeal.
426.7 Warrants authorized by director.
426.8 Apportionment by auditor.
426.9 Repealed by 89 Acts, ch 296, §96.
426.10 Rules.

426.1 Agricultural land credit fund.

There is created as a permanent fund in the office of the treasurer of state a fund to be known as the agricultural land credit fund, and for the purpose of establishing and maintaining this fund for each fiscal year there is appropriated thereto from funds in the general fund not otherwise appropriated the sum of thirty-nine million one hundred thousand dollars of which the first ten million dollars shall be transferred to and deposited into the family farm tax credit fund created in section 425A.1. Any balance in said fund on June 30 shall revert to the general fund.

[C39, §**6943.156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.1]

93 Acts, ch 180, §11

Referred to in §425A.1, 426.7, 441.73

426.2 Definition.

"Agricultural lands" as used in this chapter shall mean and include land in tracts of ten acres or more excluding any buildings or other structures located on such land, and not laid off into lots of less than ten acres or divided by streets and alleys into parcels of less than ten acres, lying within any school corporation in this state and in good faith used for agricultural or horticultural purposes.

Any land laid off or platted into lots of less than ten acres belonging to and a part of other lands of more than ten acres and in good faith used for agricultural or horticultural purposes shall be entitled to the benefits of this chapter.

[C39, §**6943.165;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.2]

426.3 Where credit given.

The agricultural land credit fund shall be apportioned each year in the manner hereinafter provided so as to give a credit against the tax on each tract of agricultural lands within the several school districts of the state in which the levy for the general school fund exceeds

five dollars and forty cents per thousand dollars of assessed value; the amount of such credit on each tract of such lands shall be the amount the tax levied for the general school fund exceeds the amount of tax which would be levied on said tract of such lands were the levy for the general school fund five dollars and forty cents per thousand dollars of assessed value for the previous year, except in the case of a deficiency in the agricultural land credit fund to pay said credits in full, in which case the credit on each eligible tract of such lands in the state shall be proportionate and shall be applied as hereinafter provided.

[C39, §**6943.157, 6943.164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.3]

426.4 and 426.5 Reserved.

426.6 Computation by auditor — appeal.

The agricultural land tax credit allowed each year shall be computed as follows: On or before April 1, the county auditor shall list by school districts all tracts of agricultural lands which are entitled to credit, together with the taxable value for the previous year, together with the budget from each school district for the previous year, and the tax rate determined for the general fund of the district in the manner prescribed in section 444.3 for the previous year, and if such tax rate is in excess of five dollars and forty cents per thousand dollars of assessed value, the auditor shall multiply the tax levy which is in excess of five dollars and forty cents per thousand dollars of assessed value by the total taxable value of the agricultural lands entitled to credit in the district, and on or before April 1, certify the amount to the department of revenue.

In the event the county auditor denies a credit upon any such lands, the auditor shall immediately mail to the owner at the owner's last known address notice of the decision thereon. The owner may, within thirty days thereafter, appeal to the board of supervisors of the county wherein the land involved is situated by serving notice of said appeal upon the chairperson of said board. The board shall hear such appeal promptly and shall determine anew all questions involved in said appeal and shall within ten days after such hearing, mail to the owner at the owner's last known address, notice of its decision. In the event of disallowance the owner may, within ten days from the date such notice is mailed, appeal such disallowance by the board of supervisors to the district court of that county by serving written notice of appeal on the county auditor. The appeal shall be tried de novo and may be heard in term time or vacation. The decision of the district court thereon shall be final.

[C39, §**6943.160 – 6943.163;** C46, §426.4 – 426.6; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.6]

86 Acts, ch 1245, §442; 2001 Acts, ch 143, §3; 2002 Acts, ch 1119, §54; 2003 Acts, ch 145, §286

Referred to in §331.401, 426.7

426.7 Warrants authorized by director.

After receiving from the county auditors the certifications provided for in section 426.6, and during the following fiscal year, the director of revenue shall authorize the department of administrative services to draw warrants on the agricultural land credit fund created in section 426.1, payable to the county treasurers in the amount certified by the county auditors of the respective counties and mail the warrants to the county auditors on July 15 of each year taking into consideration the relative budget and cash position of the state resources. However, if the agricultural land credit fund is insufficient to pay in full the total of the amounts certified to the director of revenue, the director shall prorate the fund to the county treasurers and notify the county auditors of the pro rata percentage on or before June 15.

[C39, §**6943.157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.7]

83 Acts, ch 172, §6; 86 Acts, ch 1244, §52; 2001 Acts, ch 143, §4; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §52

426.8 Apportionment by auditor.

Upon receiving the pro rata percentage from the director of revenue, the county auditor shall determine the amount to be credited to each tract of agricultural land, and shall enter

upon tax lists as a credit against the tax levied on each tract of agricultural land on which there has been made an allowance of credit before delivering said tax lists to the county treasurer. Upon receipt of the warrant by the county auditor, the auditor shall deliver said warrant to the county treasurer for apportionment. The county treasurer shall show on each tax receipt the amount of tax credit for each tract of agricultural land. In case of change of ownership the credit shall follow the title.

[C39, §**6943.158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.8]
86 Acts, ch 1245, §443; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §53
Referred to in §331.559

426.9 Repealed by 89 Acts, ch 296, §96.

426.10 Rules.

The director of revenue shall prescribe forms and rules, not inconsistent with this chapter, necessary to carry out its purposes.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426.10]
86 Acts, ch 1245, §444; 2003 Acts, ch 145, §286

CHAPTER 426A

MILITARY SERVICE TAX CREDIT AND EXEMPTIONS

Referred to in §2.48, 25B.7, 331.401, 331.429, 331.608

For requirements relating to state funding of military service property tax credits and exemptions, see §25B.7

426A.1 Definitions.
426A.1A Appropriation.
426A.2 Military service tax credit.
426A.3 Computation by auditor.
426A.4 Certification by director of revenue.
426A.5 Proportionate shares to districts.
426A.6 Setting aside allowance.
426A.7 Forms — rules.
426A.8 Excess remitted — appeals.
426A.9 Erroneous credits.
426A.10 Reserved.
426A.11 Military service — exemptions.
426A.12 Exemptions to relatives.
426A.13 Claim for military tax exemption — discharge recorded.
426A.14 Allowance — continuing effectiveness.
426A.15 Penalty.

426A.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

426A.1A Appropriation.

There is appropriated from the general fund of the state the amounts necessary to fund the credits provided under this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.1]
88 Acts, ch 1151, §3
C2001, §426A.1A

426A.2 Military service tax credit.

The moneys shall be apportioned each year so as to replace all or a portion of the tax which would be due on property eligible for military service tax exemption in the state, if the property were subject to taxation, the amount of the credit to be not more than six dollars and

ninety-two cents per thousand dollars of assessed value of property which would be subject to the tax, except for the military service tax exemption.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.2]

88 Acts, ch 1151, §4; 89 Acts, ch 83, §51; 99 Acts, ch 180, §23, 24

426A.3 Computation by auditor.

On or before August 1 of each year the county auditor shall certify to the county treasurer all claims for military service tax exemptions which have been allowed by the board of supervisors. Such certificate shall list the total amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed. The county treasurer shall forthwith certify to the department of revenue the amount of dollars, listed by taxing district in the county, due for military service tax credits claimed and allowed.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.3]

2003 Acts, ch 145, §286

Referred to in §331.512, 331.559

426A.4 Certification by director of revenue.

Sums distributable from the general fund of the state shall be allocated annually to the counties of the state. On September 15 annually the director of revenue shall certify and the department of administrative services shall draw warrants to the treasurer of each county payable from the general fund of the state in the amount claimed. Payments shall be made to the treasurer of each county not later than September 30 of each year.

[C50, 54, §426A.2, 426A.4, 426A.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.4, 426A.10; 81 Acts, ch 139, §2]

83 Acts, ch 172, §7; 86 Acts, ch 1244, §53; 88 Acts, ch 1151, §5; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §54

426A.5 Proportionate shares to districts.

The amount of credits received under this chapter shall then be apportioned by each county treasurer to the several taxing districts. Each taxing district shall receive its proportionate share of the military service tax credit allowed on each and every tax exemption allowed in such taxing district, in the proportion that the levy made by such taxing district upon general property bears to the total levy upon all property subject to general property taxation by all taxing districts imposing a general property tax in such taxing district.

[C50, §426A.2, 426A.4; C58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.5]

Referred to in §331.559

426A.6 Setting aside allowance.

If the department of revenue determines that a claim for military service tax exemption has been allowed by a board of supervisors which is not justifiable under the law and not substantiated by proper facts, the department may, at any time within thirty-six months from July 1 of the year in which the claim is allowed, set aside the allowance. Notice of the disallowance shall be given to the county auditor of the county in which the claim has been improperly granted and a written notice of the disallowance shall also be addressed to the claimant at the claimant's last known address. The claimant or the board of supervisors may appeal to the director of revenue within thirty days from the date of the notice of disallowance. The director shall grant a hearing and if, upon the hearing, the director determines that the disallowance was incorrect, the director shall set aside the disallowance. The director shall notify the claimant and the board of supervisors of the result of the hearing. The claimant or the board of supervisors may seek judicial review of the action of the director of revenue in accordance with chapter 17A. If a claim is disallowed by the department of revenue and not appealed to the director of revenue or appealed to the director of revenue and thereafter upheld upon final resolution, including judicial review, the credits allowed and paid from the general fund of the state become a lien upon the property on which the credit was originally granted, if still in the hands of the claimant and not in the hands of a bona fide purchaser, the amount so erroneously paid shall be collected by the county treasurer in the same manner as other taxes, and the collections shall be returned

to the department of revenue and credited to the general fund of the state. The director of revenue may institute legal proceedings against a military service tax exemption claimant for the collection of payments made on disallowed exemptions.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.6; 82 Acts, ch 1246, §7, 11]

88 Acts, ch 1151, §6; 89 Acts, ch 251, §34; 97 Acts, ch 158, §27; 2002 Acts, ch 1151, §17; 2003 Acts, ch 145, §286; 2006 Acts, ch 1010, §107; 2015 Acts, ch 109, §14, 75

426A.7 Forms — rules.

The director of revenue shall prescribe the form for the making of a verified statement and designation of property eligible for military service tax exemption, and the form for the supporting affidavits required herein, and such other forms as may be necessary for the proper administration of this chapter. From time to time as necessary, the department of revenue shall forward to the county auditors of the several counties of the state, such prescribed sample forms. The director of revenue shall have the power and authority to prescribe rules, not inconsistent with the provisions of this chapter, necessary to carry out and effectuate its purposes.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.7]

2003 Acts, ch 145, §286; 2004 Acts, ch 1086, §70

426A.8 Excess remitted — appeals.

1. If the amount of credit apportioned to any property eligible for military service tax exemption under this chapter in any year shall exceed the total tax, exclusive of any special assessments levied against such property eligible for military service tax exemption, then the excess shall be remitted by the county treasurer to the department of revenue to be redeposited in the general fund of the state and reallocated the following year by the department.

2. *a.* If any claim for exemption made has been denied by the board of supervisors, and the action is subsequently reversed on appeal, the same credit shall be allowed on the assessed valuation, not to exceed the amount of the military service tax exemption involved in the appeal, as was allowed on other military service tax exemption valuations for the year or years in question, and the director of revenue, the county auditor, and the county treasurer shall credit and change their books and records accordingly.

b. If the appealing taxpayer has paid one or both of the installments of the tax payable in the year or years in question on such military service tax exemption valuation, remittance shall be made to the county treasurer in the amount of such credit.

c. The amount of the credit shall be allocated and paid from the surplus redeposited in the general fund of the state provided for in subsection 1.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.8]

88 Acts, ch 1151, §7; 2003 Acts, ch 145, §286; 2013 Acts, ch 30, §96; 2014 Acts, ch 1026, §90

Referred to in §331.559

426A.9 Erroneous credits.

If any claim is allowed, and subsequently reversed on appeal, any credit shall be void, and the amount of the credit shall be charged against the property in question, and the director of revenue, the county auditor, and the county treasurer shall correct their books and records. The amount of the erroneous credit, when collected, shall be returned by the county treasurer to the general fund of the state.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §426A.9]

88 Acts, ch 1151, §8; 2003 Acts, ch 145, §286

Referred to in §331.559

426A.10 Reserved.

426A.11 Military service — exemptions.

The following exemptions from taxation shall be allowed:

1. The property, not to exceed two thousand seven hundred seventy-eight dollars in taxable value, of any veteran, as defined in section 35.1, of World War I.

2. The property, not to exceed one thousand eight hundred fifty-two dollars in taxable value, of an honorably separated, retired, furloughed to a reserve, placed on inactive status, or discharged veteran, as defined in section 35.1, subsection 2, paragraph "*a*" or "*b*".

3. Where the word "*veteran*" appears in this chapter, it includes without limitation the members of the United States air force, merchant marine, and coast guard.

4. For purposes of this chapter, unless the context otherwise requires, "*veteran*" also means a resident of this state who is a former member of the armed forces of the United States and who served for a minimum aggregate of eighteen months and who was discharged under honorable conditions. However, "*veteran*" also means a resident of this state who is a former member of the armed forces of the United States and who, after serving fewer than eighteen months, was honorably discharged because of a service-related injury sustained by the veteran.

5. For the purpose of determining a military tax exemption under this section, property includes a manufactured or mobile home as defined in section 435.1.

[C97, §1304; S13, SS15, §1304; C24, 27, 31, 35, 39, §**6946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.3; 82 Acts, ch 1063, §1]

83 Acts, ch 101, §87; 84 Acts, ch 1219, §32; 88 Acts, ch 1151, §9, 10; 88 Acts, ch 1243, §10; 89 Acts, ch 296, §45; 91 Acts, ch 199, §5; 94 Acts, ch 1173, §35; 99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §18

CS99, §426A.11

2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1151, §18; 2005 Acts, ch 115, §32, 40, 41; 2006 Acts, ch 1111, §1, 3; 2009 Acts, ch 164, §3, 7; 2013 Acts, ch 30, §97; 2013 Acts, ch 140, §66; 2014 Acts, ch 1026, §91

Referred to in §331.512, 331.608, 420.207, 425.11, 426A.12, 426A.13, 426A.15, 435.26

426A.12 Exemptions to relatives.

1. In case any person in the foregoing classifications does not claim the exemption from taxation, it shall be allowed in the name of the person to the same extent on the property of any one of the following persons in the order named:

a. The spouse, or surviving spouse remaining unmarried, of a veteran, as defined in this chapter or in section 35.1, subsection 2, paragraph "*a*" or "*b*", where they are living together or were living together at the time of the death of the veteran.

b. The parent whose spouse is deceased and who remains unmarried, of a veteran, as defined in this chapter or in section 35.1, subsection 2, paragraph "*a*" or "*b*", whether living or deceased, where the parent is, or was at the time of death of the veteran, dependent on the veteran for support.

c. The minor child, or children owning property as tenants in common, of a deceased veteran, as defined in this chapter or in section 35.1, subsection 2, paragraph "*a*" or "*b*".

2. No more than one tax exemption shall be allowed under this section or section 426A.11 in the name of a veteran, as defined in this chapter or in section 35.1, subsection 2, paragraph "*a*" or "*b*".

[C97, §1304; S13, SS15, §1304; C24, 27, 31, 35, 39, §**6946;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.4]

99 Acts, ch 151, §88, 89; 99 Acts, ch 180, §19

CS99, §426A.12

2005 Acts, ch 115, §33, 40, 41; 2009 Acts, ch 164, §4, 7

Referred to in §331.512, 420.207, 426A.15

426A.13 Claim for military tax exemption — discharge recorded.

1. A person named in section 426A.11, who is a resident of and domiciled in the state of Iowa, shall receive a reduction equal to the exemption, to be made from any property owned by the person or owned by a family farm corporation of which the person is a shareholder and occupant of the property and so designated by proceeding as provided in this section. To be eligible to receive the exemption, the person claiming it shall have recorded in the office of the county recorder of the county in which is located the property designated for the exemption, evidence of property ownership by that person or the family farm corporation of which the

person is a shareholder and the military certificate of satisfactory service, order transferring to inactive status, reserve, retirement, order of separation from service, honorable discharge or a copy of any of these documents of the person claiming or through whom is claimed the exemption. In the case of a person claiming the exemption as a veteran described in section 35.1, subsection 2, paragraph *"b"*, subparagraph (6) or (7), the person shall file the statement required by section 35.2.

2. The person shall file with the appropriate assessor on forms obtained from the assessor the claim for exemption for the year for which the person is first claiming the exemption. The claim shall be filed not later than July 1 of the year for which the person is claiming the exemption. The claim shall set out the fact that the person is a resident of and domiciled in the state of Iowa, and a person within the terms of section 426A.11, and shall give the volume and page on which the certificate of satisfactory service, order of separation, retirement, furlough to reserve, inactive status, or honorable discharge or certified copy thereof is recorded in the office of the county recorder, and may include the designation of the property from which the exemption is to be made, and shall further state that the claimant is the equitable or legal owner of the property designated or if the property is owned by a family farm corporation, that the person is a shareholder of that corporation and that the person occupies the property. In the case of a person claiming the exemption as a veteran described in section 35.1, subsection 2, paragraph *"b"*, subparagraph (6) or (7), the person shall file the statement required by section 35.2.

3. Upon the filing and allowance of the claim, the claim shall be allowed to that person for successive years without further filing. Provided, that notwithstanding the filing or having on file a claim for exemption, the person or person's spouse is the legal or equitable owner of the property on July 1 of the year for which the claim is allowed. When the property is sold or transferred or the person wishes to designate different property for the exemption, a person who wishes to receive the exemption shall refile for the exemption. A person who sells or transfers property which is designated for the exemption or the personal representative of a deceased person who owned such property shall provide written notice to the assessor that the property is no longer legally or equitably owned by the former claimant.

4. In case the owner of the property is in active service in any of the armed forces of the United States or of this state, including the nurses corps of the state or of the United States, or is sixty-five years of age or older, or is disabled, the claim may be filed by any member of the owner's family, by the owner's guardian or conservator, or by any other person who may represent the owner under power of attorney. In all cases where the owner of the property is married, the spouse may file the claim for exemption. A person may not claim an exemption in more than one county of the state, and if a designation is not made the exemption shall apply to the homestead, if any.

[C24, 27, 31, 35, 39, §**6947;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.5; 82 Acts, ch 1246, §8, 11]

84 Acts, ch 1221, §2; 87 Acts, ch 198, §3; 89 Acts, ch 296, §46; 97 Acts, ch 158, §31; 97 Acts, ch 206, §9; 99 Acts, ch 151, §88, 89

CS99, §426A.13

2005 Acts, ch 115, §34, 40, 41; 2006 Acts, ch 1010, §108; 2015 Acts, ch 29, §114; 2018 Acts, ch 1026, §137

Referred to in §331.512, 420.207, 426A.15

426A.14 Allowance — continuing effectiveness.

1. The assessor shall retain a permanent file of current military service tax exemption claims filed in the assessor's office. The assessor shall file a notice of transfer of property for which a claim is filed when notice is received from the office of the county recorder, from the person who sold or transferred the property, or from the personal representative of a deceased claimant.

2. The county recorder shall give notice to the assessor of each transfer of title filed in the recorder's office. The notice shall describe the property transferred, the name of the person transferring the title to the property, and the name of the person to whom title to the property has been transferred.

3. Not later than July 6 of each year, the assessor shall remit the claims and designations of property to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor.

4. The county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim, it shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the exemption. The board is not required to send notice that a claim is disallowed if the claimant voluntarily withdraws the claim.

5. Any person whose claim is denied under the provisions of this chapter may appeal from the action of the board of supervisors in the district court of the county in which said claimed military service tax exemption is situated by giving written notice of such appeal to the county auditor of said county within twenty days from the date of mailing of notice of such action by the board of supervisors.

6. Upon adoption of a resolution by the county board of supervisors, any person may request, in writing, from the appropriate assessor forms for the filing for a military service tax exemption. The person may complete the form, which shall include a statement claiming the military service tax exemption and designating the property upon which the tax exemption is claimed, and mail or return it to the appropriate assessor. The signature of the claimant on the claim shall be considered the claimant's acknowledgment that all statements and facts entered on the form are correct to the best of the claimant's knowledge.

[SS15, §1304-1A; C24, 27, 31, 35, 39, §**6948;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.6; 82 Acts, ch 1246, §9, 11]

86 Acts, ch 1241, §36; 94 Acts, ch 1144, §2; 99 Acts, ch 151, §88, 89

CS99, §426A.14

2015 Acts, ch 29, §114

Referred to in §331.401, 331.512, 420.207, 426A.15

426A.15 Penalty.

Any person making a false affidavit for the purpose of obtaining the exemption provided for in sections 426A.11 to 426A.14 or who knowingly receives such exemption without being legally entitled thereto, or who makes claim for exemption in more than one county in the state shall be guilty of a fraudulent practice.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.7]

99 Acts, ch 151, §88, 89

CS99, §426A.15

Referred to in §420.207

Fraudulent practices; see §714.8

CHAPTER 426B

PROPERTY TAX RELIEF — MENTAL HEALTH AND DISABILITIES SERVICES

Referred to in §331.424A

For specific exceptions to payments and expenditures provided under this chapter, see appropriations and other noncodified enactments in the annual Acts of the general assembly

426B.1 Appropriations — property tax relief fund.
426B.2 Property tax relief fund payments.
426B.3 Per capita funding — repayment of Medicaid offset amount. Repealed by 2017 Acts, ch 109, §14, 20, 21.
426B.4 Rules.
426B.5 Incentive pool.
426B.6 Future repeal. Repealed by 2012 Acts, ch 1120, §138.

426B.1 Appropriations — property tax relief fund.

1. A property tax relief fund is created in the state treasury under the authority of the department of human services. The fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state except in determining the cash position of the state for payment of state obligations. The moneys in the fund are not subject to the provisions of section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this chapter. Moneys in the fund may be used for cash flow purposes, provided that any moneys so allocated are returned to the fund by the end of each fiscal year. However, the fund shall be considered a special account for the purposes of section 8.53, relating to elimination of any GAAP deficit. For the purposes of this chapter, unless the context otherwise requires, *"property tax relief fund"* means the property tax relief fund created in this section.

2. Moneys shall be distributed from the property tax relief fund to counties for the mental health and disability regional service system for mental health and disabilities services, in accordance with the appropriations made to the fund and other statutory requirements.

95 Acts, ch 206, §17; 96 Acts, ch 1034, §38; 96 Acts, ch 1219, §104; 97 Acts, ch 158, §28; 2002 Acts, ch 1119, §167; 2003 Acts, ch 108, §72; 2010 Acts, ch 1193, §14; 2012 Acts, ch 1120, §134, 139, 140; 2017 Acts, ch 109, §12, 20, 21

Referred to in §437A.8, 437A.15

2017 amendment to subsection 2 takes effect May 5, 2017, and applies to fiscal years beginning on or after July 1, 2017; 2017 Acts, ch 109, §20, 21

426B.2 Property tax relief fund payments.

The director of human services shall draw warrants on the property tax relief fund, payable to the county treasurer in the amount due to a county in accordance with statutory requirements, and mail the warrants to the county auditors in July and January of each year.

95 Acts, ch 206, §18; 96 Acts, ch 1205, §4, 5; 97 Acts, ch 198, §5; 98 Acts, ch 1100, §59; 98 Acts, ch 1213, §7, 9; 2001 Acts, ch 191, §44; 2003 Acts, ch 106, §1, 15; 2008 Acts, ch 1187, §49; 2012 Acts, ch 1019, §132; 2012 Acts, ch 1120, §135, 136, 139, 140; 2015 Acts, ch 69, §76; 2017 Acts, ch 109, §13, 20, 21

Referred to in §437A.8, 437A.15

2017 amendment takes effect May 5, 2017, and applies to fiscal years beginning on or after July 1, 2017; 2017 Acts, ch 109, §20, 21

426B.3 Per capita funding — repayment of Medicaid offset amount. Repealed by 2017 Acts, ch 109, §14, 20, 21.

426B.4 Rules.

The mental health and disability services commission shall consult with county representatives and the director of human services in prescribing forms and adopting rules pursuant to chapter 17A to administer this chapter.

95 Acts, ch 206, §20; 97 Acts, ch 158, §29; 2002 Acts, ch 1146, §19; 2004 Acts, ch 1090, §31; 2010 Acts, ch 1031, §389

426B.5 Incentive pool.

1. An incentive pool is created in the property tax relief fund. The incentive pool shall consist of the moneys credited to the incentive pool by law.

2. Moneys available in the incentive pool for a fiscal year shall be distributed to those mental health and disability services regions that either meet or show progress toward meeting the purposes and intent described in section 225C.1. The moneys received by a region from the incentive pool shall be used to build community capacity to support individuals covered by the region's regional service system management plan approved under section 331.393 in meeting such purposes.

98 Acts, ch 1213, §8, 9; 2000 Acts, ch 1090, §4, 6; 2000 Acts, ch 1232, §2, 3, 9, 10; 2001 Acts, ch 155, §4 – 8, 11; 2002 Acts, ch 1050, §36; 2002 Acts, ch 1146, §20; 2003 Acts, ch 179, §1; 2004 Acts, ch 1090, §32; 2006 Acts, ch 1115, §11, 12; 2007 Acts, ch 218, §82, 89, 92; 2008 Acts, ch 1043, §1 – 4; 2009 Acts, ch 182, §53; 2010 Acts, ch 1031, §389; 2012 Acts, ch 1019, §134, 135; 2014 Acts, ch 1026, §92, 93; 2015 Acts, ch 69, §77, 78; 2015 Acts, ch 138, §41, 161, 162; 2019 Acts, ch 85, §88

Subsection 1 stricken and former subsection 2, paragraphs a and b redesignated as subsections 1 and 2

426B.6 Future repeal. Repealed by 2012 Acts, ch 1120, §138.

CHAPTER 426C

BUSINESS PROPERTY TAX CREDIT

Referred to in §2.48, 331.512, 331.559

426C.1	Definitions.	426C.5	Payment to counties.
426C.2	Business property tax credit fund — appropriation.	426C.6	Appeals.
426C.3	Claims for credit.	426C.7	Audit — recalculation or denial.
426C.4	Eligibility and amount of credit.	426C.8	False claim — penalty.
		426C.9	Rules.

426C.1 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Contiguous parcels"* means any of the following:

a. Parcels that share a common boundary.

b. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

c. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary.

2. *"Department"* means the department of revenue.

3. *"Fund"* means the business property tax credit fund created in section 426C.2.

4. *a.* *"Parcel"* means as defined in section 445.1.

b. (1) For purposes of business property tax credits claimed for the fiscal year beginning July 1, 2016, *"parcel"* also means that portion of a parcel assigned a classification of commercial property, industrial property, or railway property under chapter 434 pursuant to section 441.21, subsection 13, paragraph *"c"*.

(2) For purposes of business property tax credits claimed for fiscal years beginning on or after July 1, 2017, *"parcel"* also means that portion of a parcel assigned a classification of commercial property or industrial property pursuant to section 441.21, subsection 13, paragraph *"c"*.

5. *"Property unit"* means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

2013 Acts, ch 123, §3, 13; 2015 Acts, ch 116, §1

426C.2 Business property tax credit fund — appropriation.

1. A business property tax credit fund is created in the state treasury under the authority of the department. For the fiscal year beginning July 1, 2014, there is appropriated from the general fund of the state to the department to be credited to the fund, the sum of fifty million dollars to be used for business property tax credits authorized in this chapter. For the fiscal year beginning July 1, 2015, there is appropriated from the general fund of the state to the department to be credited to the fund, the sum of one hundred million dollars to be used for business property tax credits authorized in this chapter. For the fiscal year beginning July 1, 2016, and each fiscal year thereafter, there is appropriated from the general fund of the state to the department to be credited to the fund, the sum of one hundred twenty-five million dollars to be used for business property tax credits authorized in this chapter.

2. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund. Moneys in the fund are not subject to the provisions of section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this chapter.

2013 Acts, ch 123, §4, 13

Referred to in §426C.1

426C.3 Claims for credit.

1. Each person who wishes to claim the credit allowed under this chapter shall obtain the appropriate forms from the assessor and file the claim with the assessor. The director of revenue shall prescribe suitable forms and instructions for such claims, and make such forms and instructions available to the assessors.

2. *a.* (1) Claims for the business property tax credit against taxes due and payable in fiscal years beginning before July 1, 2017, shall be filed not later than March 15 preceding the fiscal year during which the taxes for which the credit is claimed are due and payable.

(2) Claims for the business property tax credit against taxes due and payable in fiscal years beginning on or after July 1, 2017, shall be filed not later than July 1 preceding the fiscal year during which the taxes for which the credit is claimed are due and payable.

b. A claim for credit filed after the deadline for filing claims shall be considered as a claim for the following year.

3. Upon the filing of a claim and allowance of the credit, the credit shall be allowed on the parcel or property unit for successive years without further filing as long as the parcel or property unit satisfies the requirements for the credit. If the parcel or property unit ceases to qualify for the credit under this chapter, the owner shall provide written notice to the assessor by the date for filing claims specified in subsection 2 following the date on which the parcel or property unit ceases to qualify for the credit.

4. The assessor shall remit the claims for credit to the county auditor with the assessor's recommendation for allowance or disallowance. If the assessor recommends disallowance of a claim, the assessor shall submit the reasons for the recommendation, in writing, to the county auditor. The county auditor shall forward the claims and recommendations to the board of supervisors. The board shall allow or disallow the claims.

5. For each claim and allowance of a credit for a property unit, the county auditor shall calculate the average of all consolidated levy rates applicable to the several parcels within the property unit. All claims for credit which have been allowed by the board of supervisors, the actual value of such parcels and property units applicable to the fiscal year for which the credit is claimed that are subject to assessment and taxation prior to imposition of any applicable assessment limitation, the consolidated levy rates for such parcels and the average consolidated levy rates for such property units applicable to the fiscal year for which the credit is claimed, and the taxing districts in which the parcel or property unit is located, shall be certified on or before June 30, in each year, by the county auditor to the department.

6. The assessor shall maintain a permanent file of current business property tax credits. The assessor shall file a notice of transfer of property for which a credit has been allowed when notice is received from the office of the county recorder, from the person who sold or transferred the property, or from the personal representative of a deceased property owner. The county recorder shall give notice to the assessor of each transfer of title filed in the

recorder's office. The notice from the county recorder shall describe the property transferred, the name of the person transferring title to the property, and the name of the person to whom title to the property has been transferred.

7. When all or a portion of a parcel or property unit that is allowed a credit under this chapter is sold, transferred, or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. In addition, when a portion of a parcel or property unit that is allowed a credit under this chapter is sold, transferred, or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit.

2013 Acts, ch 123, §5, 13; 2015 Acts, ch 116, §2
Referred to in §426C.4, 426C.6

426C.4 Eligibility and amount of credit.

1. *a.* Except as provided in paragraph *"b"*, parcels classified and taxed as commercial property, industrial property, or railway property under chapter 434 are eligible for a credit under this chapter. A person may claim and receive one credit under this chapter for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed. A person may claim and receive one credit under this chapter for each property unit. A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit. Only property units comprised of property assessed as commercial property, industrial property, or railway property under chapter 434 are eligible for a credit under this chapter. The classification of property used to determine eligibility for the credit under this chapter shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.

b. All of the following shall not be eligible to receive a credit under this chapter or be part of a property unit that receives a credit under this chapter:

(1) Property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended.

(2) For credits claimed for the fiscal year beginning July 1, 2014, and the fiscal year beginning July 1, 2015, property that is a mobile home park, manufactured home community, land-leased community, assisted living facility, as those terms are defined in section 441.21, subsection 13, or that is property primarily used or intended for human habitation containing three or more separate dwelling units.

2. Using the actual value of each parcel or property unit and the consolidated levy rate for each parcel or the average consolidated levy rate for each property unit, as certified by the county auditor to the department under section 426C.3, subsection 5, the department shall calculate, for each fiscal year, an initial amount of actual value for use in determining the amount of the credit for each such parcel or property unit so as to provide the maximum possible credit according to the credit formula and limitations under subsection 3, and to provide a total dollar amount of credits against the taxes due and payable in the fiscal year equal to ninety-eight percent of the moneys in the fund following the deposit of the appropriation for the fiscal year and including interest or earnings credited to the fund.

3. *a.* The amount of the credit for each parcel or property unit for which a claim for credit under this chapter has been approved shall be calculated under paragraph *"b"* using the lesser of the initial amount of actual value determined by the department under subsection 2, and the amount of actual value of the parcel or property unit certified by the county auditor under section 426C.3, subsection 5.

b. The amount of the credit for each parcel or property unit for which a claim for credit under this chapter has been approved shall be equal to the product of the amount of actual value determined under paragraph *"a"* times the difference, stated as a percentage, between the assessment limitation percentage applicable to the parcel or property unit under section 441.21, subsection 5, and the assessment limitation percentage applicable to residential property under section 441.21, subsection 4, divided by one thousand dollars, and then multiplied by the consolidated levy rate or average consolidated levy rate per one thousand

dollars of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under section 426C.3, subsection 5.

2013 Acts, ch 123, §6, 13; 2014 Acts, ch 1026, §143; 2014 Acts, ch 1131, §1, 4

426C.5 Payment to counties.

1. Annually the department shall certify to the county auditor of each county the amounts of the business property tax credits allowed in the county. Each county auditor shall then enter the credits against the tax levied on each eligible parcel or property unit in the county, designating on the tax lists the credit as being paid from the fund. Each taxing district shall receive its share of the business property tax credit allowed on each eligible parcel or property unit in such taxing district in the proportion that the levy made by such taxing district upon the parcel or property unit bears to the total levy upon the parcel or property unit by all taxing districts. However, the several taxing districts shall not draw the moneys so credited until after the semiannual allocations have been received by the county treasurer, as provided in this section. Each county treasurer shall show on each taxpayer receipt the amount of credit received from the fund.

2. The director of revenue shall authorize the department of administrative services to draw warrants on the fund payable to the county treasurers of the several counties of the state in the amounts certified by the department.

3. The amount due each county shall be paid in two payments on November 15 and March 15 of each fiscal year, drawn upon warrants payable to the respective county treasurers. The two payments shall be as nearly equal as possible.

2013 Acts, ch 123, §7, 13

426C.6 Appeals.

1. If the board of supervisors disallows a claim for credit under section 426C.3, subsection 4, the board of supervisors shall send written notice, by mail, to the claimant at the claimant's last known address. The notice shall state the reasons for disallowing the claim for the credit. The board of supervisors is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim. Any person whose claim is disallowed under the provisions of this chapter may appeal from the action of the board of supervisors to the district court of the county in which the parcel or property unit is located by giving written notice of such appeal to the county auditor within twenty days from the date of mailing of notice of such action by the board of supervisors.

2. If a claim for credit is disallowed by the board of supervisors, and such action is subsequently reversed on appeal, the credit shall be allowed on the applicable parcel or property unit, and the director of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. In the event the claimant has paid one or both of the installments of the tax payable in the year or years in question, remittance shall be made to the claimant of the amount of such credit. The amount of such credit awarded on appeal shall be allocated and paid from the balance remaining in the fund.

2013 Acts, ch 123, §8, 13

426C.7 Audit — recalculation or denial.

1. If on the audit of a credit provided under this chapter, the department of revenue determines the amount of the credit to have been incorrectly calculated or that the credit is not allowable, the department shall recalculate the credit and notify the claimant and the county auditor of the recalculation or denial and the reasons for it. The department shall not adjust a credit after three years from October 31 of the year in which the claim for the credit was filed. If the credit has been paid, the department shall give notification to the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit and the county treasurer shall proceed to collect the tax owed in the same manner as other property taxes due and payable are collected, if the parcel or property unit for which the credit was allowed is still owned by the claimant. If the parcel or property unit for which the credit was allowed is not owned by the claimant, the amount may be recovered from the claimant by assessment in the same manner that income taxes are assessed under sections

422.26 and 422.30. The amount of such erroneous credit, when collected, shall be deposited in the fund.

2. The claimant or board of supervisors may appeal any decision of the department of revenue to the director of revenue within thirty days from the date of the notice of the recalculation or denial provided to the claimant and county auditor. The director shall grant a hearing, and upon hearing the director shall determine the correct credit, if any, and notify the claimant, board of supervisors, county auditor, and county treasurer of the decision by mail. The claimant or the board of supervisors may seek judicial review of the action of the director of revenue in accordance with chapter 17A.

2013 Acts, ch 123, §9, 13; 2015 Acts, ch 109, §15, 75

Referred to in §426C.8

426C.8 False claim — penalty.

A person who makes a false claim for the purpose of obtaining a credit provided for in this chapter or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit of such a person shall be disallowed and if the credit has been paid the amount shall be recovered in the manner provided in section 426C.7. In such cases, the department of revenue shall send a notice of disallowance of the credit.

2013 Acts, ch 123, §10, 13; 2015 Acts, ch 109, §16, 75

426C.9 Rules.

The director of revenue shall prescribe forms, instructions, and rules as necessary, pursuant to chapter 17A, to carry out and effectuate the purposes of this chapter.

2013 Acts, ch 123, §11, 13

CHAPTER 427

PROPERTY EXEMPT AND TAXABLE

Referred to in §419.11, 433.4A, 437A.16A, 441.47

427.1 Exemptions.
427.2 Taxable property acquired through eminent domain.
427.2A Taxation of life estate in property donated to public.
427.3 Abatement of taxes of certain exempt entities.
427.4 through 427.7 Reserved.
427.8 Petition for suspension or abatement of taxes, assessments, and rates or charges, including interest, fees, and costs.
427.9 Suspension of taxes, assessments, and rates or charges, including interest, fees, and costs.
427.10 Abatement.
427.11 Grantee or devisee to pay tax.
427.12 Suspended tax record.
427.13 What taxable.
427.14 County lands.
427.15 Interest of lessee.
427.16 Historic property — rehabilitation tax exemption — application.
427.17 Reserved.
427.18 Token tax liability accrues.
427.19 Exemptions eligibility — prorating.

427.1 Exemptions.

The following classes of property shall not be taxed:

1. *Federal and state property.*

a. The property of the United States and this state, including state university, university of science and technology, and school lands, except as otherwise provided in this subsection. The exemption herein provided shall not include any real property subject to taxation under any federal statute applicable thereto, but such exemption shall extend to and include all machinery and equipment owned exclusively by the United States or any corporate agency or instrumentality thereof without regard to the manner of the affixation of such machinery and equipment to the land or building upon or in which such property is located, until such time

as the Congress of the United States shall expressly authorize the taxation of such machinery and equipment.

b. Property of the state operated pursuant to section 904.302, 904.705, or 904.706 that is leased to an entity other than an entity which is exempt from property taxation under this section shall be subject to property taxation for the term of the lease. Property taxes levied against such leased property shall be paid from the revolving farm fund created in section 904.706. The lessor shall file a copy of the lease with the county assessor of the county where the property is located.

2. *Municipal and military property.* The property of a county, township, city, school corporation, levee district, drainage district, district organized under chapter 357E, or the Iowa national guard, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 28F or 476A that shall be subject to taxation under chapter 437A and facilities of a municipal utility that are used for the provision of local exchange services pursuant to chapter 476, but only to the extent such facilities are used to provide such services, which shall be subject to taxation under chapter 433, except that section 433.11 shall not apply. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or leased from the city or county for any such purposes, or leased from the city or county by the Iowa national guard or by a federal agency for the benefit of the Iowa national guard when devoted for public use and not for pecuniary profit. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county. The exemption for property owned by a city or county also applies to property which is located at an airport and leased to a fixed base operator providing aeronautical services to the public.

3. *Public grounds and cemeteries.* Public grounds, including all places for the burial of the dead; and crematoriums with the land, not exceeding one acre, on which they are built and appurtenant thereto, so long as no dividends or profits are derived therefrom.

4. *Fire company buildings and grounds.* The publicly owned buildings and grounds used exclusively for keeping fire engines and implements for extinguishing fires and for meetings of fire companies.

5. *Property of associations of war veterans.*

a. The property of any organization composed wholly of veterans of any war, when such property is, except as otherwise provided in this subsection or subsection 14, devoted entirely to its own use and not held for pecuniary profit.

b. The operation of bingo games on property of such organization shall not adversely affect the exemption of that property under this subsection if all proceeds, in excess of expenses, are used for the legitimate purposes of the organization.

c. The occasional or irregular lease or rental of all or a portion of the property of such organization shall not adversely affect the exemption of that property under this subsection if the proceeds from such lease or rental do not exceed two hundred fifty dollars per lease or rental, and the proceeds, in excess of expenses, are used for the legitimate purposes of the organization. In addition, the occasional or irregular lease or rental shall be considered a use for the appropriate objects of the organization for purposes of subsection 14.

6. *Property of cemetery associations.*

a. Burial grounds, mausoleums, buildings, and equipment owned and operated by cemetery associations and used exclusively for the maintenance and care of the cemeteries devoted to interment of human bodies and human remains. The exemption granted by this subsection shall not apply to any property used for the practice of mortuary science.

b. Agricultural land owned by a cemetery association and leased to another person for agricultural use if the revenues resulting from the lease are used by the cemetery association

exclusively for the maintenance and care of cemeteries owned by the cemetery association and devoted to interment of human bodies and human remains.

7. *Libraries and art galleries.* All grounds and buildings used for public libraries, public art galleries, and libraries and art galleries owned and kept by private individuals, associations, or corporations, for public use and not for private profit. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

8. *Property of religious, literary, and charitable societies.*

a. All grounds and buildings used or under construction by literary, scientific, charitable, benevolent, agricultural, and religious institutions and societies solely for their appropriate objects, not exceeding three hundred twenty acres in extent and not leased or otherwise used or under construction with a view to pecuniary profit. However, an organization mentioned in this subsection whose primary objective is to preserve land in its natural state may own or lease land not exceeding three hundred twenty acres in each county for its appropriate objects. For assessment years beginning on or after January 1, 2016, the exemption granted by this subsection shall also apply to grounds owned by a religious institution or society, not exceeding a total of fifty acres, if all monetary and in-kind profits of the religious institution or society resulting from use or lease of the grounds are used exclusively by the religious institution or society for the appropriate objects of the institution or society.

b. All deeds or leases by which such property is held shall be filed for record before the property herein described shall be omitted from the assessment. All such property shall be listed upon the tax rolls of the district or districts in which it is located and shall have ascribed to it an actual fair market value and an assessed or taxable value, as contemplated by section 441.21, whether such property be subject to a levy or be exempted as herein provided and such information shall be open to public inspection.

9. *Property of educational institutions.* Real estate owned by any educational institution of this state as a part of its endowment fund, to the extent of one hundred sixty acres in any civil township except any real property acquired after January 1, 1965, by any educational institution as a part of its endowment fund or upon which any income is derived or used, directly or indirectly, for full or partial payment for services rendered, shall be taxed beginning with the levies applied for taxes payable in the year 1967, at the same rate as all other property of the same class in the taxing district in which the real property is located. The property acquired prior to January 1, 1965, and held or owned as part of the endowment fund of an educational institution shall be subject to assessment and levy in the assessment year 1974 for taxes payable in 1975. All the property shall be listed on the assessment rolls in the district in which the property is located and an actual fair market value and an assessed or taxable value be ascribed to it, as contemplated by section 441.21, irrespective of whether an exemption under this subsection may be or is affirmed, and the information shall be open to public inspection; it being the intent of this section that the property be valued whether or not it be subject to a levy. Every educational institution claiming an exemption under this subsection shall file with the assessor not later than February 1 of the year for which the exemption is requested, a statement upon forms to be prescribed by the director of revenue, describing and locating the property upon which exemption is claimed. Property which is located on the campus grounds and used for student union purposes may serve food and beverages without affecting its exemption received pursuant to subsection 8 or this subsection.

10. *Homes for soldiers.* The buildings and grounds of homes owned and operated by organizations of soldiers, sailors, or marines of any of the wars of the United States when used for a home for disabled soldiers, sailors, or marines and not operated for pecuniary profit.

11. *Agricultural produce.* Growing agricultural and horticultural crops except commercial orchards and vineyards.

12. *Government lands.* Government lands entered and located, or lands purchased from this state, for the year in which the entry, location, or purchase is made.

13. *Public airports.* Any lands, the use of which, without charge by or compensation to the holder of the legal title to the lands, has been granted to and accepted by the state or any political subdivision thereof for airport or aircraft landing area purposes.

14. *Statement of objects and uses filed.* A society or organization claiming an exemption under subsection 5, 8, or 33 shall file with the assessor not later than February 1 a statement upon forms to be prescribed by the director of revenue, describing the nature of the property upon which the exemption is claimed and setting out in detail any uses and income from the property derived from the rentals, leases, or other uses of the property not solely for the appropriate objects of the society or organization. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property is used for the purposes specified in the original claim for exemption. When the property is sold or transferred, the county recorder shall provide notice of the transfer to the assessor. The notice shall describe the property transferred and the name of the person to whom title to the property is transferred.

a. The assessor, in arriving at the valuation of any property of the society or organization, shall take into consideration any uses of the property not for the appropriate objects of the organization and shall assess in the same manner as other property, all or any portion of the property involved which is leased or rented and is used regularly for commercial purposes for a profit to a party or individual. If a portion of the property is used regularly for commercial purposes, an exemption shall not be allowed upon property so used and the exemption granted shall be in the proportion of the value of the property used solely for the appropriate objects of the organization, to the entire value of the property. However, the board of trustees or the board of directors of a hospital, as defined in section 135B.1, may permit use of a portion of the hospital for commercial purposes, and the hospital is entitled to full exemption for that portion used for nonprofit health-related purposes, upon compliance with the filing requirements of this subsection. The property of a nursing facility, as defined in section 135C.1, subsection 14, which is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, and otherwise qualified, is entitled to the full exemption of the property regardless of the proportion of residents of the facility for whom the cost of care is privately paid or paid under Tit. XIX of the federal Social Security Act, upon compliance with the filing requirements of this subsection.

b. An exemption shall not be granted upon property upon or in which persistent violations of the laws of the state are permitted. A claimant of an exemption shall, under oath, declare that no violations of law will be knowingly permitted or have been permitted on or after January 1 of the year in which a tax exemption is requested. Claims for exemption shall be verified under oath by the president or other responsible head of the organization. A society or organization which ceases to use the property for the purposes stated in the claim shall provide written notice to the assessor of the change in use.

15. *Mandatory denial.* No exemption shall be granted upon any property which is the location of federally licensed devices not lawfully permitted to operate under the laws of the state.

16. *Revoking or modifying exemption.* Any taxpayer or any taxing district may make application to the director of revenue for revocation or modification of any exemption, based upon alleged violations of this chapter. The director of revenue may also on the director's own motion set aside or modify any exemption which has been granted upon property for which exemption is claimed under this chapter. The director of revenue shall give notice by mail to the taxpayer or taxing district applicant and to the societies or organizations claiming an exemption upon property, exemption of which is questioned before or by the director of revenue, and shall hold a hearing prior to issuing any order for revocation or modification. An order made by the director of revenue revoking or modifying an exemption shall be applicable to the tax year commencing with the tax year in which the application is made to the director or the tax year commencing with the tax year in which the director's own motion is filed. An order made by the director of revenue revoking or modifying an exemption is subject to judicial review in accordance with chapter 17A, the Iowa administrative procedure Act.

Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court having jurisdiction in the county in which the property is located, and must be filed within thirty days after any order revoking or modifying an exemption is made by the director of revenue.

17. *Rural water sales.* The real property of a nonprofit corporation engaged in the distribution and sale of water to rural areas when devoted to public use and not held for pecuniary profit.

18. *Assessed value of exempt property.* Each county and city assessor shall determine the assessment value that would be assigned to the property if it were taxable and value all tax exempt property within the assessor's jurisdiction. A summary report of tax exempt property shall be filed with the director of revenue and the local board of review on or before April 16 of each year on forms prescribed by the director of revenue.

19. *Pollution control and recycling.* Pollution-control or recycling property as defined in this subsection shall be exempt from taxation to the extent provided in this subsection, upon compliance with the provisions of this subsection.

a. (1) This exemption shall apply to new installations of pollution-control or recycling property beginning on January 1 after the construction or installation of the property is completed. This exemption shall apply beginning on January 1, 1975, to existing pollution-control property if its construction or installation was completed after September 23, 1970, and this exemption shall apply beginning January 1, 1994, to recycling property.

(2) This exemption shall be limited to the market value, as defined in section 441.21, of the pollution-control or recycling property. If the pollution-control or recycling property is assessed with other property as a unit, this exemption shall be limited to the net market value added by the pollution-control or recycling property, determined as of the assessment date.

b. (1) Application for this exemption shall be filed with the assessing authority not later than the first of February of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific pollution-control or recycling property to be exempted.

(2) The application for a specific pollution-control or recycling property shall be accompanied by a certificate of the department of natural resources certifying that the primary use of the pollution-control property is to control or abate pollution of any air or water of this state or to enhance the quality of any air or water of this state or, if the property is recycling property, that the primary use of the property is for recycling.

c. A taxpayer may seek judicial review of a determination of the department or, on appeal, of the environmental protection commission in accordance with the provisions of chapter 17A.

d. The environmental protection commission of the department of natural resources shall adopt rules relating to certification under this subsection and information to be submitted for evaluating pollution-control or recycling property for which a certificate is requested. The department of revenue shall adopt any rules necessary to implement this subsection, including rules on identification and valuation of pollution-control or recycling property. All rules adopted shall be subject to the provisions of chapter 17A.

e. (1) For the purposes of this subsection, "*pollution-control property*" means personal property or improvements to real property, or any portion thereof, used primarily to control or abate pollution of any air or water of this state or used primarily to enhance the quality of any air or water of this state and "*recycling property*" means personal property or improvements to real property or any portion of the property, used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material. In the event such property shall also serve other purposes or uses of productive benefit to the owner of the property, only such portion of the assessed valuation thereof as may reasonably be calculated to be necessary for and devoted to the control or abatement of pollution, to the enhancement of the quality of the air or water of this state, or for recycling shall be exempt from taxation under this subsection.

(2) For the purposes of this subsection, "*pollution*" means air pollution as defined in section 455B.131 or water pollution as defined in section 455B.171. "*Water of the state*"

means the water of the state as defined in section 455B.171. *"Enhance the quality"* means to diminish the level of pollutants below the air or water quality standards established by the environmental protection commission of the department of natural resources.

20. *Impoundment structures.*

a. The impoundment structure and any land underlying an impoundment located outside an incorporated city, which are not developed or used directly or indirectly for nonagricultural income-producing purposes and which are maintained in a condition satisfactory to the soil and water conservation district commissioners of the county in which the impoundment structure and the impoundment are located. A person owning land which qualifies for a property tax exemption under this subsection shall apply to the county assessor each year not later than February 1 for the exemption. The application shall be made on forms prescribed by the department of revenue. The first application shall be accompanied by a copy of the water storage permit approved by the director of the department of natural resources or the director's designee, and a copy of the plan for the construction of the impoundment structure and the impoundment. The construction plan shall be used to determine the total acre-feet of the impoundment and the amount of land which is eligible for the property tax exemption. The county assessor shall annually review each application for the property tax exemption under this subsection and submit it, with the recommendation of the soil and water conservation district commissioners, to the board of supervisors for approval or denial. An applicant for a property tax exemption under this subsection may appeal the decision of the board of supervisors to the district court.

b. As used in this subsection, *"impoundment"* means a reservoir or pond which has a storage capacity of at least eighteen acre-feet of water or sediment at the time of construction; *"storage capacity"* means the total area below the crest elevation of the principal spillway including the volume of any excavation in the area; and *"impoundment structure"* means a dam, earthfill, or other structure used to create an impoundment.

21. *Low-rent housing.* The property owned and operated or controlled by a nonprofit organization, as recognized by the internal revenue service, providing low-rent housing for persons who are elderly and persons with physical and mental disabilities. For the purposes of this subsection, the controlling nonprofit entity may serve as a general partner or managing member of a limited liability company or limited liability partnership which owns the property. The exemption granted under the provisions of this subsection shall apply only until the final payment due date of the borrower's original low-rent housing development mortgage or until the borrower's original low-rent housing development mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14. However, if the borrower's original low-rent housing development mortgage is refinanced, the exemption shall apply only until the date that would have been the final payment due date under the terms of the borrower's original low-rent housing development mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner, subject to the provisions of subsection 14.

21A. *Dwelling unit property owned by community housing development organization.* Dwelling unit property owned and managed by a community housing development organization, as recognized by the state of Iowa and the federal government pursuant to criteria for community housing development organization designation contained in the HOME program of the federal National Affordable Housing Act of 1990, if the organization is also a nonprofit organization exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code and owns and manages more than one hundred fifty dwelling units that are located in a city with a population of more than one hundred ten thousand. For the 2007 and subsequent assessment years, an application for exemption must be filed with the assessing authority not later than February 1 of the assessment year for which the exemption is sought. Upon the filing and allowance of the claim, the claim shall be allowed on the property for successive years without further filing as long as the property continues to qualify for the exemption.

22. *Natural conservation or wildlife areas.* Recreational lakes, forest covers, rivers and streams, river and stream banks, and open prairies as designated by the board of supervisors of the county in which located. The board of supervisors shall annually designate the real

property, not to exceed in the aggregate for the fiscal year beginning July 1, 1983, the greater of one percent of the acres assessed as agricultural land or three thousand acres in each county, for which this exemption shall apply. For subsequent fiscal years, the limitation on the maximum acreage of real property that may be granted exemptions shall be the limitation for the previous fiscal year, unless the amount of acreage granted exemptions for the previous fiscal year equaled the limitation for that year, then the limitation for the subsequent fiscal year is the limitation for the previous fiscal year plus an increase, not to exceed three hundred acres, of ten percent of that limitation. The procedures of this subsection shall be followed for each assessment year to procure an exemption for the fiscal year beginning in the assessment year. The exemption shall be only for the fiscal year for which it is granted. A parcel of property may be granted subsequent exemptions. The exemption shall only be granted for parcels of property of two acres or more.

a. Application for this exemption shall be filed with the commissioners of the soil and water conservation district in which the property is located, not later than February 1 of the assessment year, on forms provided by the department of revenue. The application shall describe and locate the property to be exempted and have attached to it an aerial photograph of that property on which is outlined the boundaries of the property to be exempted. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an open prairie which is or includes a gully area susceptible to severe erosion, an approved erosion control plan must accompany the application.

b. Upon receipt of the application, the commissioners shall certify whether the property is eligible to receive the exemption. The commissioners shall not withhold certification of the eligibility of property because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the commissioners certify that the property is eligible, the application shall be forwarded to the board of supervisors by May 1 of that assessment year with the certification of the eligible acreage. An application must be accompanied by an affidavit signed by the applicant that if an exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted.

c. In the case of an open prairie that has been restored or reestablished and that does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the applicant shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

d. Before the board of supervisors may designate real property for the exemption, it shall establish priorities for the types of real property for which an exemption may be granted and the amount of acreage. These priorities may be the same as or different than those for previous years. The board of supervisors shall get the approval of the governing body of the city before an exemption may be granted to real property located within the corporate limits of that city. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, no public hearing is required if the proposed priorities are the same as those for the previous year. After the public hearing, the board of supervisors shall adopt by resolution the proposed priority list or another priority list. Property upon which are located abandoned buildings or structures shall have the lowest priority on the list adopted, except where the board of supervisors determines that a structure has historic significance. The board of supervisors shall also provide for a procedure where the amount of acres for which exemptions are sought exceeds the amount the priority list provides for that type or in the aggregate for all types.

e. After receipt of an application with its accompanying certification and affidavit and the establishment of the priority list, the board of supervisors may grant a tax exemption under this subsection using the established priority list as a mandate. Real property designated for the tax exemption shall be designated by May 15 of the assessment year in which begins the

fiscal year for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

f. The board of supervisors does not have to grant tax exemptions under this subsection, grant tax exemptions in the aggregate of the maximum acreage which may be granted exemptions, or grant a tax exemption for the total acreage for which the applicant requested the exemption. Only real property in parcels of two acres or more which is recreational lakes, forest cover, river and stream, river and stream banks, or open prairie and which is utilized for the purposes of providing soil erosion control or wildlife habitat or both, and which is subject to property tax for the fiscal year for which the tax exemption is requested, is eligible for the exemption under this subsection. However, in addition to the above, in order for a gully area which is susceptible to severe erosion to be eligible, there must be an erosion control plan for it approved by the commissioners of the soil and water conservation district in which it is located. In the case of an open prairie that has been restored or reestablished, the property shall be inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water. In the case of an exemption for river and stream or river and stream banks, the exemption shall not be granted unless there is included in the exemption land located at least thirty-three feet from the ordinary high water mark of the river and stream or river and stream banks. Property shall not be denied an exemption because of the existence upon the property of an abandoned building or structure which is not used for economic gain. If the real property is located within a city, the approval of the governing body must be obtained before the real property is eligible for an exemption. For purposes of this subsection:

(1) *"Open prairies"* includes hillsides and gully areas which have a permanent grass cover but does not include native prairies meeting the criteria of the natural resource commission.

(2) *"Forest cover"* means land which is predominantly wooded.

(3) *"Recreational lake"* means a body of water, which is not a river or stream, owned solely by a nonprofit organization and primarily used for boating, fishing, swimming, and other recreational purposes.

(4) *"Used for economic gain"* includes, but is not limited to, using property for the storage of equipment, machinery, or crops.

g. Notwithstanding other requirements under this subsection, the owner of any property lying between a river or stream and a dike which is required to be set back three hundred feet or less from the river or stream shall automatically be granted an exemption for that property upon submission of an application accompanied by an affidavit signed by the applicant that if the exemption is granted the property will not be used for economic gain during the period of exemption. The exemption shall continue from year to year for as long as the property qualifies and is not used for economic gain, without need for filing additional applications or affidavits. Property exempted pursuant to this paragraph is in addition to the maximum acreage applicable to other exemptions under this subsection.

23. *Native prairie and wetland.* Land designated as native prairie or land designated as a protected wetland by the department of natural resources pursuant to section 456B.12.

a. Application for the exemption shall be made on forms provided by the department of revenue. Land designated as a protected wetland shall be assessed at a value equal to the average value of the land where the wetland is located and which is owned by the person granted the exemption. The application forms shall be filed with the assessing authority not later than the first of February of the year for which the exemption is requested. The application must be accompanied by an affidavit signed by the applicant that if the exemption is granted, the property will not be used for economic gain during the assessment year in which the exemption is granted. If the property is used for economic gain during the assessment year in which the exemption is granted, the property shall lose its tax exemption and shall be taxed at the rate levied by the county for the fiscal year beginning in that assessment year. The first annual application shall be accompanied by a certificate from the department of natural resources stating that the land is native prairie or protected wetland. The department of natural resources shall issue a certificate for the native prairie

exemption if the department finds that the land has never been cultivated, is unimproved, is primarily a mixture of warm season grasses interspersed with flowering plants, and meets the other criteria established by the natural resource commission for native prairie. The department of natural resources shall issue a certificate for the wetland exemption if the department finds the land is a protected wetland, as defined under section 456B.1, or if the wetland was previously drained and cropped but has been restored under a nonpermanent restoration agreement with the department or other county, state, or federal agency or private conservation group. A taxpayer may seek judicial review of a decision of the department according to chapter 17A. The natural resource commission shall adopt rules to implement this subsection.

b. The assessing authority each year may submit to the department a claim for reimbursement of tax revenue lost from the exemption. Upon receipt of the claim, the department shall reimburse the assessing authority an amount equal to the lost tax revenue based on the value of the protected wetland as assessed by the authority, unless the department reimburses the authority based upon a departmental assessment of the protected wetland. The authority may contest the department's assessment as provided in chapter 17A. The department is not required to honor a claim submitted more than sixty days after the authority has assessed land where the protected wetland is located and which is owned by the person granted the exemption.

24. *Land certified as a wildlife habitat.*

a. The owner of agricultural land may designate not more than two acres of the land for use as a wildlife habitat. After inspection, if the land meets the standards established by the natural resource commission for a wildlife habitat under section 483A.3, and, in the case of a wildlife habitat that has been restored or reestablished, is inspected and certified as provided by the county board of supervisors as having adequate ground cover consisting of native species and that all primary and secondary noxious weeds present are being controlled to prevent the spread of seeds by either wind or water, the department of natural resources shall certify the designated land as a wildlife habitat and shall send a copy of the certification to the appropriate assessor not later than February 1 of the assessment year for which the exemption is requested. The department of natural resources may subsequently withdraw certification of the designated land if it fails to meet the established standards for a wildlife habitat and the ground cover requirement and the assessor shall be given written notice of the decertification.

b. In the case where the property is a restored or reestablished wildlife habitat and does not receive the certification as provided by the county board of supervisors as it relates to the ground cover, the owner shall be notified of the availability of resource enhancement and protection fund cost-share moneys and soil and conservation technological assistance for reestablishing native vegetation.

25. Reserved.

26. *Public television station.* All grounds and buildings used or under construction for a public television station and not leased or otherwise used or under construction for pecuniary profit.

27. *Speculative shell buildings of certain organizations.*

a. New construction of shell buildings by community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities for speculative purposes as provided in this subsection.

b. The exemption shall be for one of the following:

(1) The value added by new construction of a shell building or addition to an existing building or structure by a community development organization, not-for-profit cooperative association under chapter 499, or for-profit entity.

(2) The value of an existing building being reconstructed or renovated, and the value of the land on which the building is located, if the reconstruction or renovation constitutes complete replacement or refitting of the existing building or structure, by a community development organization, not-for-profit cooperative association under chapter 499, or for-profit entity.

c. The exemption or partial exemption shall be allowed only pursuant to ordinance of a city council or board of supervisors, which ordinance shall specify if the exemption will be

available for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities. If the exemption is for a project described in paragraph *"b"*, subparagraph (1), the exemption shall be effective for the assessment year in which the building is first assessed for property taxation or the assessment year in which the addition to an existing building first adds value. If the exemption is for a project described in paragraph *"b"*, subparagraph (2), the exemption shall be effective for the assessment year following the assessment year in which the project commences. An exemption allowed under this subsection shall be allowed for all subsequent years until the property is leased or sold or for a specific time period stated in the ordinance or until the exemption is terminated by ordinance of the city council or board of supervisors which approved the exemption. Eligibility for an exemption as a speculative shell building shall be determined as of January 1 of the assessment year. However, an exemption shall not be granted a speculative shell building of a not-for-profit cooperative association under chapter 499 or a for-profit entity if the building is used by the cooperative association or for-profit entity, or a subsidiary or majority owners thereof for other than as a speculative shell building. If the shell building or any portion of the shell building is leased or sold, the portion of the shell building which is leased or sold, and a proportionate share of the land on which it is located if applicable, shall not be entitled to an exemption under this subsection for subsequent years. Upon the sale of the shell building, the shell building shall be considered new construction for purposes of section 427B.1 if used for purposes set forth in section 427B.1.

d. (1) If the speculative shell building project is a speculative shell building project described in paragraph *"b"*, subparagraph (1), an application shall be filed pursuant to section 427B.4 for each such project for which an exemption is claimed.

(2) If the speculative shell building project is a speculative shell building project described in paragraph *"b"*, subparagraph (2), an application shall be filed by the owner of the property with the local assessor by February 1 of the assessment year in which the project commences. Applications for exemption shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue. The city council or the board of supervisors, by ordinance, shall give its approval of a tax exemption for the project if the project is in conformance with the zoning plans for the city or county. The approval shall also be subject to the hearing requirements of section 427B.1. Approval under this subparagraph (2) entitles the owner to exemption from taxation beginning in the assessment year following the assessment year in which the project commences. However, if the tax exemption for the building and land is not approved, the person may submit an amended proposal to the city council or board of supervisors to approve or reject.

e. For purposes of this subsection the following definitions apply:

(1) (a) *"Community development organization"* means an organization, which meets the membership requirements of subparagraph division (b), formed within a city or county or multicommunity group for one or more of the following purposes:

(i) To promote, stimulate, develop, and advance the business prosperity and economic welfare of the community, area, or region and its citizens.

(ii) To encourage and assist the location of new business and industry.

(iii) To rehabilitate and assist existing business and industry.

(iv) To stimulate and assist in the expansion of business activity.

(b) For purposes of this definition, a community development organization must have at least fifteen members with representation from the following:

(i) A representative from government at the level or levels corresponding to the community development organization's area of operation.

(ii) A representative from a private sector lending institution.

(iii) A representative of a community organization in the area.

(iv) A representative of business in the area.

(v) A representative of private citizens in the community, area, or region.

(2) *"New construction"* means new buildings or structures and includes new buildings or structures which are constructed as additions to existing buildings or structures. *"New construction"* also includes reconstruction or renovation of an existing building or structure

which constitutes complete replacement of an existing building or structure or refitting of an existing building or structure, if the reconstruction or renovation of the existing building or structure is required due to economic obsolescence, if the reconstruction or renovation is necessary to implement recognized industry standards for the manufacturing or processing of products, and the reconstruction or renovation is required in order to competitively manufacture or process products or for community development organizations, not-for-profit cooperative associations under chapter 499, or for-profit entities to market a building or structure as a speculative shell building, which determination must receive prior approval from the city council of the city or county board of supervisors of the county.

(3) "*Speculative shell building*" means a building or structure owned and constructed or reconstructed by a community development organization, a not-for-profit cooperative association under chapter 499, or a for-profit entity without a tenant or buyer for the purpose of attracting an employer or user which will complete the building to the employer's or user's specification for manufacturing, processing, or warehousing the employer's or user's product line.

28. *Joint water utilities.* The property of a joint water utility established under chapter 389, when devoted to public use and not held for pecuniary profit.

29. *Methane gas conversion.* Methane gas conversion property shall be exempt from taxation.

a. For purposes of this subsection, "*methane gas conversion property*" means personal property, real property, and improvements to real property, and machinery, equipment, and computers assessed as real property pursuant to section 427A.1, subsection 1, paragraphs "*e*" and "*j*", used in an operation to decompose waste and convert the waste to gas, to collect methane gas or other gases produced as a by-product of waste decomposition and to convert the gas to energy, or to collect waste in order to decompose the waste to produce methane gas or other gases and to convert the gas to energy.

b. If the property used to convert the gas to energy also burns another fuel, the exemption shall apply to that portion of the value of such property which equals the ratio that its use of methane gas bears to total fuel consumed.

c. Application for this exemption shall be filed with the assessing authority not later than February 1 of each year for which the exemption is requested on forms provided by the department of revenue. The application shall describe and locate the specific methane gas conversion property to be exempted. If the property consuming methane gas also consumes another fuel, the first year application shall contain a statement to that effect and shall identify the other fuel and estimate the ratio that the methane gas consumed bears to the total fuel consumed. Subsequent year applications shall identify the actual ratio for the previous year which ratio shall be used to calculate the exemption for that assessment year.

d. With respect to methane gas conversion property other than that used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill, the exemption pursuant to this subsection shall be limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and shall be available for the ten-year period following the date the property was originally placed in operation.

30. *Manufactured home community or mobile home park storm shelter.* A structure constructed as a storm shelter at a manufactured home community or mobile home park as defined in section 435.1. An application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the storm shelter to be exempted. If the storm shelter structure is used exclusively as a storm shelter, all of the structure's assessed value shall be exempt from taxation. If the storm shelter structure is not used exclusively as a storm shelter, the storm shelter structure shall be assessed for taxation at fifty percent of its value as commercial property.

31. *Barn preservation.* The increase in assessed value added to a farm structure constructed prior to 1937 as a result of improvements made to the farm structure for purposes of preserving the integrity of the internal and external features of the structure as a barn is exempt from taxation. To be eligible for the exemption, the structure must have been

first placed in service as a barn prior to 1937. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a barn.

a. For purposes of this subsection, "*barn*" means an agricultural structure, in whatever shape or design, which is used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

b. Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific structure for which the added value is requested to be exempt.

c. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure continues to be used as a barn. The taxpayer shall notify the assessing authority when the structure ceases to be used as a barn.

32. *One-room schoolhouse preservation.* The increase in assessed value added to a one-room schoolhouse as a result of improvements made to the structure for purposes of preserving the integrity of the internal and external features of the structure as a one-room schoolhouse is exempt from taxation. The exemption shall apply to the assessment year beginning after the completion of the improvements to preserve the structure as a one-room schoolhouse.

a. Application for this exemption shall be filed with the assessing authority not later than February 1 of the first year for which the exemption is requested, on forms provided by the department of revenue. The application shall describe and locate the specific one-room schoolhouse for which the added value is requested to be exempt.

b. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of applications as long as the structure is not used for dwelling purposes and the structure is preserved as a one-room schoolhouse. The taxpayer shall notify the assessing authority when the structure ceases to be eligible. The exemption in this subsection applies even though the one-room schoolhouse is no longer used for instructional purposes.

33. *Indian housing authority property.*

a. Property owned and operated by an Indian housing authority, as defined in 24 C.F.R. §950.102, created under Indian law, if a cooperative agreement has been made with the local governing body agreeing to the exemption. The exemption in this subsection is subject to the provisions of subsection 14.

b. For purposes of this subsection:

(1) "*Indian law*" means the code of an Indian tribe recognized as eligible for services provided to Indians by the United States secretary of the interior.

(2) "*Local governing body*" means the county board of supervisors if the property is located outside an incorporated city or the governing body of the city in which the property is located.

34. *Port authority property.* The property of a port authority created pursuant to section 28J.2, when devoted to public use and not held for pecuniary profit.

35. *Web search portal business property.*

a. Property, other than land and buildings and other improvements, that is utilized by a web search portal business as defined in and meeting the requirements of section 423.3, subsection 92, including computers and equipment that are necessary for the maintenance and operation of a web search portal and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the web search portal site.

b. This exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in

paragraph *"a"* are first assessed. For purposes of claiming this exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates as allowed under section 423.3, subsection 92. This exemption applies to affiliates of the web search portal business.

36. *Web search property.*

a. Property, other than land and buildings and other improvements, that is utilized by a web search portal business as defined in and meeting the requirements of section 423.3, subsection 93, including computers and equipment that are necessary for the maintenance and operation of a web search portal business and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the web search portal business.

b. This web search portal business exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph *"a"* are first assessed. For purposes of claiming this web search portal business exemption, the requirements may be met by aggregating the various Iowa investments and other requirements of the web search portal business's affiliates as allowed under section 423.3, subsection 93. This exemption applies to affiliates of the web search portal business.

37. *Data center business property.*

a. Property, other than land and buildings and other improvements, that is utilized by a data center business as defined in and meeting the requirements of section 423.3, subsection 95, including computers and equipment that are necessary for the maintenance and operation of a data center business and other property whether directly or indirectly connected to the computers, including but not limited to cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under chapter 437A; racking systems, cabling, and trays; and backup power generation systems, battery systems, and related infrastructure all of which are necessary for the maintenance and operation of the data center business.

b. This data center business exemption applies beginning with the assessment year the investment in or construction of the facility utilizing the materials, equipment, and systems set forth in paragraph *"a"* are first assessed.

38. *Geothermal heating and cooling system.*

a. The value added by any new or refitted construction or installation of a geothermal heating or cooling system on or after July 1, 2012, on property classified as residential. The exemption shall be allowed for ten consecutive years. The exemption shall apply to any value added by the addition of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses included in or required for the construction or installation of the geothermal system, as well as the proportionate value of any well field associated with the system and attributable to the owner.

b. A person claiming an exemption under this subsection shall obtain the appropriate forms from the assessor. The forms shall be prescribed by the director of revenue. The claim shall be filed no later than February 1 of the first assessment year the exemption is requested and shall contain information pertaining to all costs and other information associated with construction and installation of the system. Once the exemption is allowed, the exemption shall continue to be allowed for ten consecutive years without further filing as long as the property continues to be classified as residential property.

c. The director shall adopt rules to implement this subsection.

39. *County fair property.* Fairgrounds, as defined in section 174.1, that are owned by a county or a fair, as defined in section 174.1. The use of such fairgrounds for purposes other

than a fair event, as defined in section 174.1, by the owner or by a lessee, including uses for pecuniary profit, shall not affect the exemption.

40. *Broadband infrastructure.*

a. The owner of broadband infrastructure shall be entitled to an exemption from taxation to the extent provided in this subsection for assessment years beginning before January 1, 2027. Unless the context otherwise requires, the words and phrases used in this subsection shall have the same meaning as the words and phrases used in chapter 8B, including but not limited to the words and phrases defined in section 8B.1.

b. The exemption shall apply to the installation of broadband infrastructure that facilitates broadband service at or above the download and upload speeds specified in the definition of targeted service area in section 8B.1 commenced and completed on or after July 1, 2015, and before July 1, 2025, in a targeted service area, and used to deliver internet services to the public. A person claiming an exemption under this subsection shall certify to the local assessor prior to commencement of the installation that the installation of broadband infrastructure will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in section 8B.1 within a targeted service area and shall specify the current number of homes, farms, schools, and businesses in the targeted service area that were offered broadband service and the download and upload speeds available prior to the broadband infrastructure installation for which the exemption is claimed and the number of homes, farms, schools, and businesses in the targeted service area that will be offered broadband service and the download and upload speeds that will be available as a result of installation of the broadband infrastructure for which the exemption is claimed.

c. The tax exemption shall be a one hundred percent exemption from taxation for a period of ten years in an amount equal to the actual value added by installation of the broadband infrastructure.

d. For companies assessed by the department of revenue pursuant to chapter 433, the exemption shall be limited to an amount equal to the actual value added by installation of the broadband infrastructure as of the assessment date as determined by the department and the exemption shall be applied to the unit value prior to any other exemption applicable to the unit value, as determined under that chapter.

e. (1) An application for an exemption shall be filed by the owner of the property with the department of revenue by February 1 of the year in which the broadband infrastructure is first assessed for taxation, or the following two assessment years, and in each case the exemption is allowed for ten years. Applications from applicants whose property is subject to assessment by the department pursuant to chapter 433 shall be reviewed by the department. All other applications shall be reviewed by the applicable county board of supervisors. The department shall forward those applications for exemption that are subject to review by the county board of supervisors to the county board of supervisors of each county in which the property is located.

(2) In lieu of subparagraph (1), and notwithstanding any provision in this subsection to the contrary, an owner may at any time before completion of the project submit a proposal to the department requesting that the department or the board of supervisors, as applicable, allow the owner to file an application for exemption by February 1 of any other assessment year following completion of the project, which year shall be selected by the department or the board, as applicable. If the department approves or if the board, by resolution, approves the proposal, the exemption is allowed for ten years.

f. (1) The application shall be made on forms prescribed by the department. The application shall contain but not be limited to the following information:

(a) The nature of the broadband infrastructure installation.

(b) The percentage of the homes, farms, schools, and businesses in the targeted service area that will be provided access to broadband service.

(c) The actual cost of installing the broadband infrastructure under the project, if available. The application shall contain supporting documents demonstrating the actual cost.

(d) Certification from the office of the chief information officer pursuant to section 8B.10

that the installation will facilitate broadband service at or above the download and upload speeds specified in the definition of targeted service area in section 8B.1 in a targeted service area.

(e) Certification of the date of commencement and actual or estimated date of completion.

(f) A copy of any nonwireless broadband-related permit issued by a political subdivision.

(g) If applying pursuant to paragraph *"e"*, subparagraph (2), the actual cost already incurred for installation of broadband infrastructure, if any, the estimated costs for project completion, and the estimated date of project completion. The application shall contain supporting documents demonstrating the actual cost.

(2) The department and the board of supervisors shall not approve applications that are missing any of the information or documentation required in subparagraph (1). The department or the board of supervisors may consult with the office of the chief information officer to access additional information needed to review an application.

(3) The department or the board of supervisors, as applicable, shall, by March 1, notify an applicant of approval or denial of an application for an exemption under this subsection and shall also notify the applicant of the applicant's right to an appeal.

(4) The board of supervisors shall forward all approved applications and any necessary information regarding the applications to the appropriate local assessor by March 1 annually. After the tax exemption is granted, the department or the local assessor, as applicable, shall continue to grant the tax exemption for ten years, and applications for exemption for succeeding years shall not be required.

(5) An applicant for a property tax exemption whose application was reviewed by the board of supervisors may appeal denial of the application to the property assessment appeal board within thirty days of the issuance of the denial.

(6) An applicant for a property tax exemption whose application was reviewed by the department may appeal denial of the application to the director of revenue within thirty days of the issuance of the denial.

(7) At any time after the exemption is granted and the broadband service is available in a targeted service area, the department or the board of supervisors, as applicable, under the direction of the office of the chief information officer, may require the property owner receiving the exemption to substantiate that the owner continues to provide the service described in paragraph *"b"*. If the department or the board of supervisors determines that the property owner no longer provides the service described in paragraph *"b"*, the department or the board of supervisors shall revoke the exemption. An owner may appeal the decision to revoke the exemption in the same manner as provided in subparagraphs (5) and (6), as applicable.

g. (1) If a company whose property in the county is not assessed by the department of revenue is approved to receive a property tax exemption pursuant to this subsection, the actual value added by installation of the broadband infrastructure shall be determined by the local assessor who shall certify the amount of exemption determined to the county auditor at the time of transmitting the assessment rolls.

(2) Notwithstanding any other provision of law to the contrary, if a company in which all or a portion of the company's property in the county is assessed by the department pursuant to chapter 433 and the company's property in the county is approved to receive a property tax exemption pursuant to this subsection, the department shall assess all the company's property in the county used for operating telegraph and telephone lines, broadband, or cable systems for each assessment year the company receives the exemption, for purposes of determining the actual value added by installation of the broadband infrastructure.

h. The director of revenue shall adopt rules pursuant to chapter 17A for the interpretation and proper administration of the exemption provided in this subsection.

i. This subsection is repealed July 1, 2030.

41. *Out-of-state business property used in disaster or emergency-related work.* Property described in and meeting the requirements of section 29C.24, subsection 3, paragraph *"a"*, subparagraph (6).

1. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

2. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 81 Acts, ch 31, §8]

3, 4. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

5. [SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

6. [C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

7, 8, 9, 10. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1247, §1]

11. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

12. [C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

13. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

14. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

15. [C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

16. [C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

17. [R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

18. [SS15, §1304; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

19. [C51, §468, 469; R60, §723, 724; C73, §815, 816; C97, §1318, 1319, 1323; S13, §1330-g, 1342-g, 1346-g; SS15, §1346-s; C24, 27, 31, 35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

20. [C35, 39, §**6944;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

21. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

22. [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

23. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

24, 25. [C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

26. [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

27. [C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.1]

28. [C62, 66, 71, 73, 75, 77, 79, 81, §427.1]

29. [C66, 71, 73, 75, 77, 79, 81, §427.1]

30. [C71, 73, 75, 77, 79, 81, §427.1]

31. [C73, 75, 77, 79, 81, §427.1; 82 Acts, ch 1034, §1]

32. [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §92, 93, 96]

33. [C75, 77, 79, 81, §427.1; 82 Acts, ch 1199, §69, 96]

34. [C77, 79, 81, §427.1]

35. [C79, 81, §427.1]

36. [82 Acts, ch 1247, §2]

37. [82 Acts, ch 1247, §2]

38. [82 Acts, ch 1247, §2]

83 Acts, ch 121, §8; 83 Acts, ch 133, §1, 2; 83 Acts, ch 178, §1; 84 Acts, ch 1222, §5, 6, 7; 85 Acts, ch 32, §102; 86 Acts, ch 1113, §1, 2; 86 Acts, ch 1200, §8; 86 Acts, ch 1241, §35; 87 Acts, ch 23, §12 – 14; 87 Acts, ch 233, §495; 88 Acts, ch 1134, §81; 89 Acts, ch 296, §43, 44; 90 Acts, ch 1006, §1; 90 Acts, ch 1199, §5 – 8; 91 Acts, ch 97, §52, 53; 91 Acts, ch 168, §8; 92 Acts, ch 1073, §10, 11; 92 Acts, ch 1225, §3, 4; 93 Acts, ch 121, §1; 93 Acts, ch 159, §1; 95 Acts, ch 83, §19; 95 Acts, ch 84, §1 – 3; 96 Acts, ch 1034, §39; 96 Acts, ch 1129, §94; 96 Acts, ch 1167, §5; 97 Acts, ch 158, §30; 98 Acts, ch 1194, §28, 40; 99 Acts, ch 63, §5, 8; 99 Acts, ch 151, §41, 42, 89; 99 Acts, ch 152, §17, 40; 99 Acts, ch 186, §3 – 5; 99 Acts, ch 208, §56; 2000 Acts, ch 1058, §39; 2000 Acts, ch 1194, §15, 17; 2000 Acts, ch 1205, §1; 2001 Acts, ch 59, §1, 3; 2001 Acts, ch 116, §20; 2001 Acts, ch 139, §1, 2, 4; 2001 Acts, ch 150, §11 – 14, 26; 2001 Acts, ch 153, §16; 2001 Acts, 1st Ex, ch 4, §4, 36; 2002 Acts, ch 1119, §55, 56; 2002 Acts, ch 1151, §19; 2002

Acts, ch 1162, §39, 40; 2003 Acts, ch 121, §1 – 3; 2003 Acts, ch 130, §1, 2, 5; 2003 Acts, ch 136, §1, 3; 2003 Acts, ch 145, §286; 2005 Acts, ch 122, §1, 2; 2005 Acts, ch 150, §118; 2005 Acts, ch 179, §67 – 69, 84, 86, 87; 2006 Acts, ch 1125, §1, 2; 2006 Acts, ch 1158, §57; 2006 Acts, ch 1182, §62; 2006 Acts, ch 1185, §84, 89; 2007 Acts, ch 199, §3; 2008 Acts, ch 1006, §2, 3; 2008 Acts, ch 1143, §1, 2; 2008 Acts, ch 1184, §61; 2009 Acts, ch 41, §263; 2009 Acts, ch 97, §13; 2009 Acts, ch 179, §200, 223, 224, 227; 2011 Acts, ch 25, §44, 45; 2011 Acts, ch 130, §31, 71; 2012 Acts, ch 1121, §2, 4, 6; 2013 Acts, ch 109, §1, 3; 2014 Acts, ch 1116, §6, 8, 9; 2014 Acts, ch 1139, §31, 33 – 35; 2015 Acts, ch 29, §58; 2015 Acts, ch 116, §24; 2015 Acts, ch 120, §41, 45; 2016 Acts, ch 1095, §13, 14; 2018 Acts, ch 1026, §138; 2018 Acts, ch 1158, §7, 8; 2019 Acts, ch 59, §127; 2019 Acts, ch 159, §12 – 14

Referred to in §8B.25, 28J.19, 331.301, 331.401, 347.32, 364.4, 364.19, 420.207, 421.1A, 421.17, 422.7(26), 422.35, 423A.5, 427.3, 427.13, 433.8, 437A.4, 437A.6, 456A.16, 461A.79, 463B.2, 465A.4, 483A.3, 904.302, 904.705

Federally owned lands, §1.4 et seq.

Leased church property, §565.1

For future amendment to subsection 2, effective July 1, 2024, see 2018 Acts, ch 1158, §6, 28

2015 amendment adding subsection 40 applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 120, §45

Subsection 13 amended

Subsection 40, paragraphs a and b amended

Subsection 40, paragraph f, subparagraph (1), subparagraph division (d) amended

Subsection 40, paragraph i amended

427.2 Taxable property acquired through eminent domain.

1. Real estate occupied as a public road, and rights-of-way for established public levees and rights-of-way for established, open, public drainage improvements shall not be taxed.

2. When land or rights in land are acquired in connection with or for public use or public purposes, the acquiring authority shall assist in the collection of property taxes and special assessments. However, assistance in the collection of the property taxes does not require the payment of property taxes on the property acquired which exceed the amount of just compensation offered as required by section 6B.45 for the acquisition of the property.

3. The property owner shall pay all property taxes which are due and payable when the property owner surrenders possession of the property acquired and also those which become due and payable for the fiscal year the property is acquired in an amount equal to one-twelfth of the taxes due and payable on the property acquired for the preceding fiscal year multiplied by the number of months in the fiscal year in which the property was acquired which elapsed prior to the month in which the property owner surrenders possession, and including that month if the surrender of possession occurs after the fifteenth day of a month. For purposes of computing the payments, the property owner has surrendered possession of property acquired by eminent domain proceedings when the acquiring authority has the right to obtain possession of the acquired property as authorized by law. When all of the property is acquired for public use or public purposes, the property owner shall pay all special assessments in full which have been certified to the county treasurer for collection before the possession date of the acquiring authority. When part but not all of the property is acquired for public use or public purposes, taxing authorities may collect property taxes and special assessments which the property owner is obligated to pay, in accordance with chapter 446, from that part of the property which is not acquired. The county treasurer shall collect and accept the payment received on property acquired for public use or public purposes as full and final payment of all property tax on the property.

4. For that portion of the prorated year for which the acquiring authority has possession of the property or part of the property acquired in connection with or for public use or public purposes, all taxes shall be canceled by the county treasurer.

5. From the date of possession by the acquiring authority for land or rights in land acquired in connection with or for public use or public purposes, and for as long as ownership is retained by the acquiring authority, a special assessment shall not be certified to the county treasurer for collection while under public ownership. However, the assessment may be certified for collection to the county treasurer upon the sale of the acquired property by the acquiring authority to a new owner on a prorated basis. Special assessments certified to a county treasurer for collection while under public ownership shall be canceled by the county treasurer.

6. Upon sale of the acquired property by the acquiring authority to a new owner, the new

owner shall pay all property taxes which become due and payable or would have become due and payable but for the acquisition by the acquiring authority for the fiscal year the property is acquired by the new owner in an amount equal to one-twelfth of the taxes multiplied by the number of months in the fiscal year in which the new owner acquired the property which occurred after the month in which the new owner acquired the property.

[C73, §809; C97, §1344; C24, 27, 31, 35, 39, §**6945;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.2; 82 Acts, ch 1183, §1]

86 Acts, ch 1153, §1; 87 Acts, ch 40, §1; 2016 Acts, ch 1011, §121

427.2A Taxation of life estate in property donated to public.

1. Real estate donated to the state or a political subdivision of the state or any agency of the state or political subdivision, for which the donor retains a life estate, or provides for another to possess a life estate shall continue to be subject to property taxation and special assessment to the same extent as the property was so subject during the fiscal year in which the donation was made. The real property shall continue to be taxed until the fiscal year following the fiscal year during which the life estate terminates. Upon termination of the life estate, the real estate shall be subject to taxation as otherwise provided by law.

2. This section applies to property donated on or after July 1, 1992, for purposes of property taxes or special assessments due and payable in fiscal years beginning on or after July 1, 1997.

97 Acts, ch 146, §1; 2002 Acts, ch 1119, §168; 2019 Acts, ch 24, §104

Code editor directive applied

427.3 Abatement of taxes of certain exempt entities.

The board of supervisors may abate the taxes levied against property acquired by gift or purchase by a person or entity if the property acquired by gift or purchase was transferred to the person or entity after the deadline for filing for property tax exemption in the year in which the property was transferred and the property acquired by gift or purchase would have been exempt under section 427.1, subsection 7, 8, or 9, if the person or entity had been able to file for exemption in a timely manner.

2005 Acts, ch 140, §53; 2007 Acts, ch 186, §27, 30

427.4 through 427.7 Reserved.

427.8 Petition for suspension or abatement of taxes, assessments, and rates or charges, including interest, fees, and costs.

If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county treasurer to suspend the collection of the taxes, special assessments, and rates or charges, including interest, fees, and costs, which are assessed against the petitioner or the petitioner's estate for the current year and those unpaid for prior years, or the board may abate the taxes, special assessments, and rates or charges, including interest, fees, and costs. The petition, when approved, shall be filed by March 1 of the current tax year with the treasurer.

[C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6950;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.8]

84 Acts, ch 1219, §33; 88 Acts, ch 1031, §1; 89 Acts, ch 296, §47; 91 Acts, ch 191, §20; 92 Acts, ch 1016, §14

Referred to in §331.402, 420.207, 425.17, 427.9, 427.10, 445.1, 447.9

For definitions applicable to this section, see §445.1

427.9 Suspension of taxes, assessments, and rates or charges, including interest, fees, and costs.

If a person is a recipient of federal supplementary security income or state supplementary assistance, as defined in section 249.1, or is a resident of a health care facility, as defined by section 135C.1, which is receiving payment from the department of human services for the

person's care, the person shall be deemed to be unable to contribute to the public revenue. The director of human services shall notify a person receiving such assistance of the tax suspension provision and shall provide the person with evidence to present to the appropriate county board of supervisors which shows the person's eligibility for tax suspension on parcels owned, possessed, or upon which the person is paying taxes as a purchaser under contract. The board of supervisors so notified, without the filing of a petition and statement as specified in section 427.8, shall order the county treasurer to suspend the collection of all the taxes, special assessments, and rates or charges, including interest, fees, and costs, assessed against the parcels and remaining unpaid by the person or contractually payable by the person, for such time as the person remains the owner or contractually prospective owner of the parcels, and during the period the person receives assistance as described in this section. The county board of supervisors shall annually send to the department of human services the names and social security numbers of persons receiving a tax suspension pursuant to this section. The department shall verify the continued eligibility for tax suspension of each name on the list and shall return the list to the board of supervisors. The director of human services shall advise the person that the person may apply for an additional property tax credit pursuant to sections 425.16 through 425.37 which shall be credited against the amount of the taxes suspended.

[C35, §6950-g1; C39, §**6950.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.9]

83 Acts, ch 96, §157, 159; 88 Acts, ch 1031, §2; 91 Acts, ch 191, §21; 92 Acts, ch 1016, §15; 95 Acts, ch 151, §1; 97 Acts, ch 121, §14; 2019 Acts, ch 59, §128

Referred to in §331.401, 420.207, 425.17, 427.10, 427.11, 445.1, 447.9

For definitions applicable to this section, see §445.1

Section amended

427.10 Abatement.

The board of supervisors may, if in their judgment it is for the best interests of the public and the petitioner referred to in section 427.8, or the public and the person referred to in section 427.9, abate the taxes, special assessments, and rates or charges, including interest, fees, and costs, which have previously been suspended as provided in section 427.8 or 427.9.

[C51, §455; R60, §711; C73, §797; C97, §1304; SS15, §1304; C24, 27, 31, 35, 39, §**6951;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.10]

84 Acts, ch 1219, §34; 91 Acts, ch 191, §22; 92 Acts, ch 1016, §16

Referred to in §331.402, 420.207, 445.1, 447.9

For definitions applicable to this section, see §445.1

427.11 Grantee or devisee to pay tax.

If the petitioner or person described in section 427.9 sells any parcel upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, or if any parcel, or any part of the parcel, upon which the taxes, special assessments, and rates or charges, including interest, fees, and costs, have been suspended, passes by devise, bequest, or inheritance to any person other than the surviving spouse or minor child of the petitioner or other person, the total amount due that has been thus suspended shall all become due and payable with the next semiannual installment of taxes. Interest shall accrue on the total amount due at the rate of one and one-half percent per month from the next succeeding delinquency date to the month of payment unless payment is tendered in full before the delinquency date. Interest does not accrue during the suspension period on suspended parcels, including those parcels suspended prior to April 1, 1992. The petitioner, or any other person, may pay the suspended amounts at any time during the suspension period. Except in the case of manufactured or mobile home taxes, special assessments, or rates or charges, the treasurer may accept a partial payment during the suspension period with the partial payment first being applied to interest and costs.

[C24, 27, 31, 35, 39, §**6952;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.11]

91 Acts, ch 191, §23; 92 Acts, ch 1016, §17; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

Referred to in §420.207, 445.1, 447.9

For definitions applicable to this section, see §445.1

427.12 Suspended tax record.

1. The county treasurer shall maintain within the county system, as defined in section 445.1, the official record of suspended taxes, special assessments, and rates or charges, the collection of which has been suspended by order of the board of supervisors. The record shall include, but is not limited to, the following information:

a. A governmental or platted description of the parcel on which the tax, special assessment, rate, or charge has been levied or on which it is a lien.

b. The name of the owner of the parcel.

c. The amount and year of the tax, special assessment, rate or charge.

d. The date the suspension was ordered.

2. The county system, as defined in section 445.1, shall be such that all entries of taxes, special assessments, rates, or charges against the parcel shall be separate from the entry of taxes, special assessments, rates, or charges against all other parcels.

3. If a suspended tax, special assessment, or rate or charge in the county system is paid, or subsequently abated, the treasurer shall enter in the county system a notification of payment or abatement.

4. When a suspension ordered by the board of supervisors for any reason provided by law, has been entered in the county system, the entry, on and after its date, is a lien and shall serve as notice of a lien in accordance with section 445.10.

[C31, 35, §6952-d1; C39, §**6952.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.12]

84 Acts, ch 1219, §35; 91 Acts, ch 191, §24; 2011 Acts, ch 25, §143

Referred to in §331.559, 445.1, 447.9

For definitions applicable to this section, see §445.1

427.13 What taxable.

All other real property is subject to taxation in the manner prescribed, and this section is also intended to embrace ferry franchises and toll bridges, which, for the purpose of this chapter are considered real property. However, this section is subject to section 427.1.

[C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §**6953;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.13]

89 Acts, ch 296, §48; 2019 Acts, ch 24, §52

Bridges taxed, §434.20

Section amended

427.14 County lands.

All lands in this state which are owned or held by any other county or counties claiming title under locations with swampland indemnity scrip, or otherwise, shall be taxed the same as other real estate within the limits of the county.

[C51, §456; R60, §712; C73, §801; C97, §1308; C24, 27, 31, 35, 39, §**6954;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.14]

427.15 Interest of lessee.

In all cases where land belonging to any state institution has been leased and the leases renewed, containing an option of purchase, the interest of the lessees therein shall be subject to assessment and taxation as real estate. The value of such interest shall be fixed by deducting from the value of the lands and improvements the amount required by the lease to acquire the title thereto, which leasehold interest so assessed and taxed may be sold for delinquent taxes and deeds issued thereunder as in other cases of tax sales, and the same rights shall accrue to the grantee therein as were held and owned by the tenant.

[C97, §1351; C24, 27, 31, 35, 39, §**6955;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §427.15]

427.16 Historic property — rehabilitation tax exemption — application.

1. The board of supervisors shall annually designate real property in the county for a historic property tax exemption.

2. Application for the exemption shall be filed with the assessor, not later than February 1 of the assessment year, on forms provided by the department of revenue. The exemption application shall include an approved application for certified substantial rehabilitation from

the state historic preservation officer and documentation of additional property tax relief or financial assistance currently allowed for the real property. Upon receipt of the application, the assessor shall certify whether or not the property is eligible to receive the exemption and shall forward the application to the board.

3. Before the board may designate real property for the exemption, the board shall establish priorities for which an exemption may be granted. The priorities shall be based upon financial assistance or property tax relief the owner is receiving for the property or for which the property is eligible. A public hearing shall be held with notice given as provided in section 73A.2 at which the proposed priority list shall be presented. However, a public hearing is not required if the proposed priorities are the same as those established for the previous year. After the public hearing, the board shall adopt by resolution the proposed priority list or another priority list.

4. After receipt from the assessor of an exemption application with an accompanying approved application from the state historic preservation officer, and the establishment of a priority list, the board shall grant a tax exemption under this section using the adopted priority list. The board shall notify an owner in writing of a denial of the exemption under this section and an explanation of the denial.

5. Real property designated for the tax exemption shall be designated by April 15 of the assessment year in which the fiscal year begins for which the exemption is granted. Notification shall be sent to the county auditor and the applicant.

6. The owner shall apply for an exemption and the exemption may be approved for a period of not more than four years.

7. For purposes of this section "*historic property*" means any of the following:

a. Property in Iowa listed on the national register of historic places.

b. A historical site as defined in section 303.2.

c. Property located in an area of historical significance as defined in section 303.20.

d. Property located in an area designated as an area of historic significance under section 303.34.

e. Property designated a historic building or site as approved by a county or municipal landmark ordinance.

8. For purposes of this section, "*substantial rehabilitation*" means qualified expenditures which exceed the greater of the adjusted basis of the building or five thousand dollars.

9. For purposes of this section, "*adjusted basis*" means the acquisition cost of the property to the taxpayer; less the value of the land; less depreciation taken or one-half the current assessed valuation of the property, whichever is greater; plus the cost of additions or improvements to the property since its acquisition.

10. For purposes of this section, "*qualified expenditures*" means costs incurred to preserve or to maintain a building as a historic property according to the secretary of the interior's standards for rehabilitation and guidelines for rehabilitating historic buildings.

11. The assessor shall determine the base year valuation of the historic property upon receipt of the approved application and shall make a notation on each statement of assessment that the exemption of the historic property shall be based upon the certification from the state historic preservation officer. An assessor shall make an annual report to the county auditor of all substantial rehabilitations of historic property made in the county which receive a tax exemption under this section and shall submit a copy or summary of the record to the state historic preservation officer.

12. A tax exemption granted under this section is valid if the property continues to be certified by the state historic preservation officer. If the property is sold or transferred, the buyer or transferee is not required to refile for the tax exemption for the year in which the property is purchased or transferred.

13. The valuation for purposes of computing the assessed valuation of property under this section following the four-year exemption period is as follows:

a. For the first year after the expiration of the four-year exemption period, the valuation is the base year valuation plus twenty-five percent of the adjustment in value.

b. For the second year after the expiration of the four-year exemption period, the valuation is the base year valuation plus fifty percent of the adjustment in value.

c. For the third year after the expiration of the four-year exemption period, the valuation is the base year valuation plus seventy-five percent of the adjustment in value.

d. For the fourth year after the expiration of the four-year exemption period, the valuation is based upon the current fair cash value.

14. An additional application for a tax exemption under this section for substantial rehabilitation shall not affect subsection 11 and under subsection 13 the increase in assessed value of the historic property following a four-year tax exemption period.

15. The department of cultural affairs shall adopt rules pursuant to chapter 17A to administer this section.

90 Acts, ch 1160, §1; 2001 Acts, ch 150, §15, 26; 2003 Acts, ch 145, §286

427.17 Reserved.

427.18 Token tax liability accrues.

If property which may be exempt from taxation is acquired after July 1 by a person or the state or any of its political subdivisions, the exemption shall not be allowed for that fiscal year and the person or the state or any of its political subdivisions shall pay the property taxes levied against the property for that fiscal year, and payable in the following fiscal year. However, the seller and the purchaser may designate, by written agreement, the party responsible for payment of the property taxes due.

[C81, §427.18]

Referred to in §445.28

427.19 Exemptions eligibility — prorating.

All credits for and exemptions from property taxes for which an application is required shall be granted on the basis of eligibility in the fiscal year for which the application is filed. If the property which has received a credit or exemption becomes ineligible for the credit or exemption during the fiscal year for which it was granted, the property is subject to the taxes in a prorated amount for that part of the fiscal year for which the property was ineligible for the credit or exemption.

[C81, §427.19]

CHAPTER 427A

PERSONAL PROPERTY TAX REPLACEMENT

Referred to in §433.4A, 437A.16A, 441.47, 558.41

427A.1 Property taxed as real property.
427A.2 Personal property not subject to property tax.
427A.3 through 427A.11 Reserved.
427A.12 Replacement fund. Repealed by 2003 Acts, ch 178, §11.
427A.13 Appropriation. Repealed by 97 Acts, ch 158, §48.
427A.14 Computing debt limitations. Repealed by 99 Acts, ch 152, §39, 40.

427A.1 Property taxed as real property.

1. For the purposes of property taxation only, the following shall be assessed and taxed, unless otherwise qualified for exemption, as real property:

a. Land and water rights.

b. Substances contained in or growing upon the land, before severance from the land, and rights to such substances. However, growing crops shall not be assessed and taxed as real property, and this paragraph is also subject to the provisions of section 441.22.

c. Buildings, structures, or improvements, any of which are constructed on or in the land, attached to the land, or placed upon a foundation whether or not attached to the foundation. However, property taxed under chapter 435, property that is a concrete batch plant as that

term is defined in subsection 4, and to the extent provided in subsection 7, property that is transmission property shall not be assessed and taxed as real property.

d. Buildings, structures, equipment, machinery, or improvements, any of which are attached to the buildings, structures, or improvements defined in paragraph "*c*" of this subsection. However, to the extent provided in subsection 7, property that is transmission property shall not be assessed and taxed as real property.

e. Machinery used in manufacturing establishments. The scope of property taxable under this paragraph is intended to be the same as, and neither broader nor narrower than, the scope of property taxable under section 428.22, Code 1973, prior to July 1, 1974.

f. Property taxed under chapter 499B.

g. Rights to space above the land.

h. Property assessed by the department of revenue pursuant to sections 428.24 to 428.29, or chapters 433, 434, 437, 437A, 437B, and 438.

i. Property used but not owned by the persons whose property is defined in paragraph "*h*" of this subsection, which would be assessed by the department of revenue if the persons owned the property. However, this paragraph does not change the manner of assessment or the authority entitled to make the assessment.

j. (1) Computers. As used in this paragraph, "*computer*" means stored program processing equipment and all devices fastened to the computer by means of signal cables or communication media that serve the function of signal cables, but does not include point of sales equipment.

(2) Computer output microfilming equipment.

(3) Key entry devices that prepare information for input to a computer.

(4) All equipment that produces a final output from one of the facilities listed in subparagraphs (1), (2) and (3) of this paragraph.

k. Transmission towers and antennae not a part of a household.

2. As used in subsection 1, "*attached*" means any of the following:

a. Connected by an adhesive preparation.

b. Connected in a manner so that disconnecting requires the removal of one or more fastening devices, other than electric plugs.

c. Connected in a manner so that removal requires substantial modification or alteration of the property removed or the property from which it is removed.

3. Notwithstanding the definition of "*attached*" in subsection 2, property is not "*attached*" if it is a kind of property which would ordinarily be removed when the owner of the property moves to another location. In making this determination the assessing authority shall not take into account the intent of the particular owner.

4. Notwithstanding the definition of "*attached*" in subsection 2, property is not "*attached*" if any of the following conditions are met:

a. It is a fixture used for cooking, refrigeration, or freezing of value-added agricultural products, used in value-added agricultural processing, or used in direct support of value-added agricultural processing. For purposes of this subsection, "*direct support*" includes storage by public refrigerated warehouses for processors of value-added agricultural products. Such fixtures shall not be considered "*attached*" whether owned directly by the processor or warehouse operator or by another who leases the fixture to the processor or warehouse operator. This paragraph shall not apply to fixtures used primarily for retail sale or display.

b. It is a concrete batch plant. A "*concrete batch plant*" is the machinery, equipment, and fixtures used at a concrete mixing facility to process cement dry additive and other raw materials into concrete.

c. It is a hot mix asphalt facility.

d. It is a photobioreactor used in the production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production.

5. Notwithstanding the other provisions of this section, property described in this section, if held solely for sale, lease or rent as part of a business regularly engaged in selling, leasing or renting such property, and if the property is not yet sold, leased, rented or used by any

person, shall not be assessed and taxed as real property. This subsection does not apply to any land or building.

6. Notwithstanding the other provisions of this section, property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

7. *a.* For purposes of this section, *"transmission property"* means cable and wire facilities, poles, aerial cable, underground cable, buried cable, intrabuilding network cable, or aerial wire within the meaning of and for purposes of the uniform system of accounts for telecommunication companies in 47 C.F.R. pt. 32, in effect on July 1, 2018. *"Transmission property"* also includes lines, electronic equipment, headend electronics, poles, aerial cable, cable drops, lasers, fiber optics, underground cable, and any electronics attached thereto used to provide telecommunications service, cable television signals, or internet service to subscribers. *"Transmission property"* does not include a tower as defined in section 8C.2.

b. Transmission property that is not subject to assessment and taxation under chapter 433, shall be subject to assessment and taxation as follows:

(1) For the assessment year beginning January 1, 2019, at seventy-five percent of the transmission property's actual value.

(2) For the assessment year beginning January 1, 2020, at fifty percent of the transmission property's actual value.

(3) For the assessment year beginning January 1, 2021, at thirty percent of the transmission property's actual value.

(4) For the assessment year beginning January 1, 2022, and each subsequent assessment year, transmission property shall not be assessed and taxed as real property.

8. Nothing in this section shall be construed to permit an item of property to be assessed and taxed in this state more than once in any one year.

9. The assessing authority shall annually reassess property which is assessed and taxed as real property, but which would be regarded as personal property except for this section. This section shall not be construed to limit the assessing authority's powers to assess or reassess under other provisions of law.

10. The director of revenue shall promulgate rules subject to chapter 17A to carry out the intent of this section.

[C71, 73, 75, 77, 79, 81, §427A.1]

85 Acts, ch 32, §103; 95 Acts, ch 67, §32; 2001 Acts, ch 116, §21, 28; 2002 Acts, ch 1150, §10; 2003 Acts, ch 145, §286; 2006 Acts, ch 1146, §1 – 3; 2006 Acts, ch 1158, §59, 69; 2013 Acts, ch 94, §4, 35, 36; 2013 Acts, ch 118, §1, 3, 4; 2018 Acts, ch 1158, §9, 11; 2019 Acts, ch 59, §234, 239

Referred to in §15.333, 15.333A, 386.1, 423.3, 427.1(29)(a), 427B.1, 427B.17, 427B.19, 437A.3, 441.19, 441.21

For future amendment to subsection 1, paragraph h, effective July 1, 2024, see 2018 Acts, ch 1158, §10, 28

Section not amended; section history updated

427A.2 Personal property not subject to property tax.

Personal property shall not be listed or assessed for taxation and is not subject to the property tax.

95 Acts, ch 67, §33

427A.3 through 427A.11 Reserved.

427A.12 Replacement fund. Repealed by 2003 Acts, ch 178, §11.

427A.13 Appropriation. Repealed by 97 Acts, ch 158, §48.

427A.14 Computing debt limitations. Repealed by 99 Acts, ch 152, §39, 40.

CHAPTER 427B

SPECIAL TAX PROVISIONS

Referred to in §331.303, 331.402, 433.4A, 437A.16A, 441.47

SUBCHAPTER I

INDUSTRIAL PROPERTY AND CATTLE FACILITIES ACTUAL VALUE ADDED EXEMPTION

427B.1 Actual value added exemption from tax — public hearing.
427B.2 Zoning under chapter 335.
427B.3 Period of partial exemption.
427B.4 Application for exemption by property owner.
427B.5 Exemption may be repealed.
427B.6 Dual exemptions prohibited.
427B.7 Actual value added exemption from tax — cattle facilities.
427B.8 and 427B.9 Reserved.

SUBCHAPTER II

RESERVED

427B.10 through 427B.16 Reserved.

SUBCHAPTER III

SPECIAL VALUATION FOR MACHINERY, EQUIPMENT, AND COMPUTERS — STATE REPLACEMENT FUNDS

427B.17 Property subject to special valuation.
427B.18 Replacement.
427B.19 Assessor and county auditor duties.
427B.19A Fund created.
427B.19B Guarantee of state replacement funds. Repealed by 2003 Acts, ch 178, §11.
427B.19C Adjustment of certain assessments required.
427B.19D Appeal for state assistance.

SUBCHAPTER IV

UNDERGROUND STORAGE TANKS REMEDIAL ACTION CREDIT

427B.20 Local option remedial action property tax credit — public hearing.
427B.21 Application for credit by underground storage tank owner or operator — approval by county board of supervisors or city council.
427B.22 Credit may be repealed.
427B.23 through 427B.25 Reserved.

SUBCHAPTER V

SPECIAL VALUATION FOR WIND ENERGY CONVERSION PROPERTY

427B.26 Special valuation of wind energy conversion property.

SUBCHAPTER I

INDUSTRIAL PROPERTY AND CATTLE FACILITIES ACTUAL VALUE ADDED EXEMPTION

427B.1 Actual value added exemption from tax — public hearing.

1. For purposes of this section:

a. *"Distribution center"* means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. *"Distribution center"* does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods.

b. *"New construction"* means new buildings and structures and includes new buildings and structures which are constructed as additions to existing buildings and structures. *"New construction"* does not include reconstruction of an existing building or structure which does not constitute complete replacement of an existing building or structure or refitting of an existing building or structure, unless the reconstruction of an existing building or structure is required due to economic obsolescence and the reconstruction is necessary to implement recognized industry standards for the manufacturing and processing of specific products and the reconstruction is required for the owner of the building or structure to continue to competitively manufacture or process those products which determination shall receive prior approval from the city council of the city or the board of supervisors of the county.

c. *"Research-service facilities"* means a building or group of buildings devoted primarily to research and development activities, including but not limited to the design and production

or manufacture of prototype products for experimental use, and corporate-research services which do not have a primary purpose of providing on-site services to the public.

d. *"Warehouse"* means a building or structure used as a public warehouse for the storage of goods pursuant to chapter 554, article 7, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail.

2. A city council, or a county board of supervisors as authorized by section 427B.2, may provide by ordinance for a partial exemption from property taxation of the actual value added to industrial real estate by the new construction of industrial real estate, research-service facilities, warehouses, distribution centers and the acquisition of or improvement to machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph *"e"*. The exemption shall also apply to new machinery and equipment assessed as real estate pursuant to section 427A.1, subsection 1, paragraph *"e"*, unless the machinery or equipment is part of the normal replacement or operating process to maintain or expand the existing operational status.

3. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 335.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial exemption shall be available and may provide for an exemption schedule in lieu of that provided in section 427B.3. However, an alternative exemption schedule adopted shall not provide for a larger tax exemption in a particular year than is provided for that year in the schedule contained in section 427B.3.

[C81, §427B.1; 82 Acts, ch 1104, §20]

84 Acts, ch 1232, §2; 85 Acts, ch 232, §1; 2011 Acts, ch 118, §85, 89; 2013 Acts, ch 34, §8; 2017 Acts, ch 29, §123

Referred to in §364.19, 427.1(27)(c), 427.1(27)(d), 427B.2, 427B.3, 427B.4, 427B.5, 427B.7, 427B.17

427B.2 Zoning under chapter 335.

1. The board of supervisors of a county which has appointed a county zoning commission and provided for county zoning under chapter 335 may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1.

2. The board of supervisors of a county which has not appointed a zoning commission may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1 in the following areas:

a. Outside the incorporated limits of a city to which a city has extended its zoning ordinance pursuant to section 414.23 which complies with the city's zoning ordinance.

b. Outside the incorporated limits of a city which has adopted a zoning ordinance but which has not extended the ordinance to the area permitted under section 414.23 if the property would be within the area to which a city may extend a zoning ordinance pursuant to section 414.23.

c. Outside the incorporated limits of a city which has not adopted a zoning ordinance but which would be within the area to which a city may extend a zoning ordinance pursuant to section 414.23.

3. The board of supervisors of a county which has not appointed a zoning commission may provide for a partial exemption from property taxation of the actual value added to industrial real estate as provided under section 427B.1 in an area where the partial exemption could not otherwise be granted under this chapter where the actual value added is to industrial real estate existing on July 1, 1979.

4. To grant an exemption under the provisions of this section, the county board of supervisors shall comply with all of the requirements imposed by this chapter upon the city council of a city.

[C81, §427B.2; 82 Acts, ch 1104, §21 – 23]

2009 Acts, ch 41, §255

Referred to in §427B.1, 427B.7, 427B.17

427B.3 Period of partial exemption.

1. *"Actual value added"*, as used in this chapter, means the actual value added as of the first

year for which the exemption is received, except that actual value added by improvements to machinery and equipment means the actual value as determined by the assessor as of January 1 of each year for which the exemption is received.

2. The actual value added to industrial real estate for the reasons specified in section 427B.1 is eligible to receive a partial exemption from taxation for a period of five years. However, if property ceases to be classified as industrial real estate or ceases to be used as a warehouse or distribution center, the partial exemption for the value added shall not be allowed for subsequent assessment years.

3. *a.* The amount of actual value added which is eligible to be exempt from taxation shall be as follows:

(1) For the first year, seventy-five percent.
(2) For the second year, sixty percent.
(3) For the third year, forty-five percent.
(4) For the fourth year, thirty percent.
(5) For the fifth year, fifteen percent.

b. This schedule shall be followed unless an alternative schedule is adopted by the city council of a city or the board of supervisors of a county in accordance with section 427B.1.

4. However, the granting of the exemption under this section for new construction constituting complete replacement of an existing building or structure shall not result in the assessed value of the industrial real estate being reduced below the assessed value of the industrial real estate before the start of the new construction added.

[C81, §427B.3]
84 Acts, ch 1232, §3; 2011 Acts, ch 34, §167
Referred to in §427B.1, 427B.7, 427B.17

427B.4 Application for exemption by property owner.

1. An application shall be filed for each project resulting in actual value added for which an exemption is claimed. The application for exemption shall be filed by the owner of the property with the local assessor by February 1 of the assessment year in which the value added is first assessed for taxation. Applications for exemption shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the improvement, its cost, and other information deemed necessary by the director of revenue.

2. A person may submit a proposal to the city council of the city or the board of supervisors of a county to receive prior approval for eligibility for a tax exemption on new construction. The city council or the board of supervisors, by ordinance, may give its prior approval of a tax exemption for new construction if the new construction is in conformance with the zoning plans for the city or county. The prior approval shall also be subject to the hearing requirements of section 427B.1. Prior approval does not entitle the owner to exemption from taxation until the new construction has been completed and found to be qualified real estate. However, if the tax exemption for new construction is not approved, the person may submit an amended proposal to the city council or board of supervisors to approve or reject.

[C81, §427B.4; 82 Acts, ch 1104, §24]
2000 Acts, ch 1058, §40; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127
Referred to in §427.1(27)(d), 427B.7, 427B.17

427B.5 Exemption may be repealed.

When in the opinion of the city council or the county board of supervisors continuation of the exemption granted by this chapter ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.1, but all existing exemptions shall continue until their expiration.

[C81, §427B.5]
Referred to in §427B.17

427B.6 Dual exemptions prohibited.

A property tax exemption under this chapter shall not be granted if the property for which the exemption is claimed has received any other property tax exemption authorized by law.

[C81, §427B.6]

427B.7 Actual value added exemption from tax — cattle facilities.

A city council, or a county board of supervisors as authorized by section 427B.2, may, by ordinance as provided in section 427B.1, establish a partial exemption from property taxation of the actual value added to owner-operated cattle facilities, including small or medium sized feedlots but not including slaughter facilities, either by new construction or by the retrofitting of existing facilities. The application for the exemption shall be filed pursuant to section 427B.4. The actual value added to owner-operated cattle facilities, as specified in section 427B.1, is eligible to receive a partial exemption from taxation for a period of five years. The amount of actual value added which is eligible to be exempt from taxation is the same as provided in the exemption schedule in section 427B.3.

87 Acts, ch 169, §10

427B.8 and 427B.9 Reserved.

SUBCHAPTER II

RESERVED

427B.10 through 427B.16 Reserved.

SUBCHAPTER III

SPECIAL VALUATION FOR MACHINERY, EQUIPMENT, AND COMPUTERS — STATE REPLACEMENT FUNDS

427B.17 Property subject to special valuation.

1. For purposes of this section:

a. *"Electric power generating plant"* means any nameplate rated electric power generating plant, in which electric energy is produced from other forms of energy, including all taxable land, buildings, and equipment used in the production of such energy.

b. *"Net acquisition cost"* means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

c. *"Net actual generation"* means net electrical megawatt hours produced by the unit during the preceding assessment year.

d. *"Net capacity factor"* means net actual generation divided by the product of net maximum capacity times the number of hours the unit was in the active state during the assessment year. Upon commissioning, a unit is in the active state until it is decommissioned.

e. *"Net maximum capacity"* means the capacity the unit can sustain over a specified period when not restricted by ambient conditions or equipment deratings, minus the losses associated with station service or auxiliary loads.

2. For property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, the taxpayer's valuation shall be limited to thirty percent of the net acquisition cost of the property, except as otherwise provided in subsections 3 and 4.

3. Property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, which is first assessed for taxation in this state on or after January 1, 1995, shall be exempt from taxation.

4. Property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, and assessed under subsection 2 of this section, shall be valued by the local assessor as follows for the following assessment years:

a. For the assessment year beginning January 1, 1999, at twenty-two percent of the net acquisition cost.

b. For the assessment year beginning January 1, 2000, at fourteen percent of the net acquisition cost.

c. For the assessment year beginning January 1, 2001, at six percent of the net acquisition cost.

d. For the assessment year beginning January 1, 2002, and succeeding assessment years, at zero percent of the net acquisition cost.

5. Property assessed pursuant to this section shall not be eligible to receive a partial exemption under sections 427B.1 through 427B.5.

6. For the purpose of dividing taxes under section 260E.4, the employer's or business's valuation of property defined in section 427A.1, subsection 1, paragraphs "*e*" and "*j*", and used to fund a new jobs training project which project's first written agreement providing for a division of taxes as provided in section 403.19 is approved on or before June 30, 1995, shall be limited to thirty percent of the net acquisition cost of the property. The community college shall notify the assessor by February 15 of each assessment year if taxes levied against such property of an employer or business will be used to finance a project in the following fiscal year. In any fiscal year in which the community college does rely on taxes levied against an employer's or business's property defined in section 427A.1, subsection 1, paragraph "*e*" or "*j*", to finance a project, such property shall not be valued pursuant to subsection 3 or 4, whichever is applicable, for that fiscal year. An employer's or business's taxable property used to fund a new jobs training project shall not be valued pursuant to subsection 3 or 4, whichever is applicable, until the assessment year following the calendar year in which the certificates or other funding obligations have been retired or escrowed. If the certificates issued, or other funding obligations incurred, between January 1, 1982, and June 30, 1995, are refinanced or refunded after June 30, 1995, the valuation of such property shall then be the valuation specified in subsection 3 or 4, whichever is applicable, for the applicable assessment year beginning with the assessment year following the calendar year in which those certificates or other funding obligations are refinanced or refunded after June 30, 1995.

7. Notwithstanding subsection 8 or any other provision to the contrary, this section shall be applicable to a new cogeneration facility subject to the assessed value provisions of section 437A.16A, but the exemptions provided in this section shall be reduced by an amount bearing the same ratio to the value of the property that is exempt pursuant to this section as the allowable credit under section 437A.16A, subsection 1, bears to the assessable value of the entire new cogeneration facility before the application of any abatements, credits, or exemptions against that value.

8. *a.* This section shall not apply to property assessed by the department of revenue pursuant to sections 428.24 through 428.29, or chapters 433, 434, 437, 437A, 437B, and 438, and such property shall not receive the benefits of this section.

b. Any electric power generating plant which operated during the preceding assessment year at a net capacity factor of more than twenty percent, shall not receive the benefits of this section or of section 15.332.

85 Acts, ch 32, §109; 93 Acts, ch 180, §12; 95 Acts, ch 206, §29; 96 Acts, ch 1049, §2, 3, 9; 96 Acts, ch 1180, §18; 97 Acts, ch 66, §1, 2; 2002 Acts, ch 1150, §11; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §64, 69; 2011 Acts, ch 104, §1, 2; 2013 Acts, ch 90, §105; 2013 Acts, ch 94, §5, 35, 36; 2018 Acts, ch 1026, §139

Referred to in §427B.19, 427B.19A, 427B.19C, 427B.19D, 437A.3

For future amendment to subsection 8, paragraph a, effective July 1, 2024, see 2018 Acts, ch 1158, §12, 28

427B.18 Replacement.

Beginning with the fiscal year beginning July 1, 1996, each county treasurer shall be paid from the industrial machinery, equipment and computers replacement fund an amount equal to the amount of the industrial machinery, equipment and computers tax replacement claim, as calculated in section 427B.19.

95 Acts, ch 206, §30

427B.19 Assessor and county auditor duties.

1. On or before July 1 of each fiscal year, the assessor shall determine the total assessed

value of the property assessed under section 427B.17 for taxes payable in that fiscal year and the total assessed value of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

2. On or before July 1 of each fiscal year, the assessor shall determine the valuation of all commercial and industrial property assessed for taxes payable in that fiscal year and the valuation of such property assessed as of January 1, 1994, and shall report the valuations to the county auditor.

3. On or before September 1 of each fiscal year through June 30, 2004, the county auditor shall prepare a statement, based upon the report received pursuant to subsections 1 and 2, listing for each taxing district in the county:

a. Beginning with the assessment year beginning January 1, 1995, the difference between the assessed valuation of property assessed pursuant to section 427B.17 for that year and the total assessed value of such property assessed as of January 1, 1994. If the total assessed value of the property assessed as of January 1, 1994, is less, there is no tax replacement for the fiscal year.

b. The tax levy rate for each taxing district for that fiscal year.

c. The industrial machinery, equipment and computers tax replacement claim for each taxing district. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the replacement claim is equal to the amount determined pursuant to paragraph *"a"*, multiplied by the tax rate specified in paragraph *"b"*. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the replacement claim is equal to the product of the amount determined pursuant to paragraph *"a"*, less any increase in valuations determined in paragraph *"d"*, and the tax rate specified in paragraph *"b"*. If the amount subtracted under paragraph *"d"* is more than the amount determined in paragraph *"a"*, there is no tax replacement for the fiscal year.

d. Beginning with the assessment year beginning January 1, 2000, the auditor shall reduce the amount listed in paragraph *"a"*, by the increase, if any, in assessed valuations of commercial and industrial property in the assessment year beginning January 1, 1994, and the assessment year for which taxes are due and payable in that fiscal year. If the calculation under this paragraph indicates a net decrease in aggregate valuation of such property, the industrial machinery, equipment and computers tax replacement claim for each taxing district is equal to the amount determined pursuant to paragraph *"a"*, multiplied by the tax rate specified in paragraph *"b"*.

4. The county auditor shall certify and forward one copy of the statement to the department of revenue not later than September 1 of each year.

5. For purposes of this section, *"assessed value of the property assessed under section 427B.17"* does not include the value of property defined in section 427A.1, subsection 1, paragraphs *"e"* and *"j"*, which is obligated to secure payment of certificates or other indebtedness incurred pursuant to chapter 260E or 260F.

6. For purposes of computing replacement amounts under this section, that portion of an urban renewal area defined as the sum of the assessed valuations defined in section 403.19, subsections 1 and 2, shall be considered a taxing district.

95 Acts, ch 206, §31; 96 Acts, ch 1049, §4; 97 Acts, ch 158, §32, 33; 2003 Acts, ch 145, §286; 2003 Acts, ch 178, §5, 6

Referred to in §257.3, 427B.18, 427B.19A

427B.19A Fund created.

1. The industrial machinery, equipment and computers property tax replacement fund is created. For the fiscal year beginning July 1, 1996, through the fiscal year ending June 30, 2004, there is appropriated annually from the general fund of the state to the department of revenue to be credited to the industrial machinery, equipment and computers property tax replacement fund, an amount sufficient to implement this subchapter. However, for the fiscal year beginning July 1, 2003, the amount appropriated to the department of revenue to be credited to the industrial machinery, equipment and computers tax replacement fund is eleven million two hundred eighty-one thousand six hundred eighty-five dollars.

2. If an amount appropriated for a fiscal year is insufficient to pay all claims as a result of action by the general assembly limiting the amount appropriated to the fund, the director

shall prorate the disbursements from the fund to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

3. The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county. If the taxing district is an urban renewal area, the amount of the replacement claim shall be apportioned as provided in subsection 4 unless the municipality elects to proceed under subsection 5.

4. *a.* If the total assessed value of property located in an urban renewal area taxing district is equal to or more than that portion of such valuation defined in section 403.19, subsection 1, the total tax replacement amount computed pursuant to section 427B.19 shall be credited to that portion of the assessed value defined in section 403.19, subsection 2.

b. If the total assessed value of the property is less than that portion of such valuation defined in section 403.19, subsection 1, the replacement amount shall be credited to those portions of the assessed value defined in section 403.19, subsections 1 and 2, as follows:

(1) To that portion defined in section 403.19, subsection 1, an amount equal to the amount that would be produced by multiplying the applicable consolidated levy times the difference between the assessed value of the taxable property defined in section 403.19, subsection 1, and the total assessed value in the budget year for which the replacement claim is computed.

(2) To that portion defined in section 403.19, subsection 2, the remaining amount, if any.

c. Notwithstanding the allocation provisions of paragraphs "*a*" and "*b*", the amount of the tax replacement amount that shall be allocated to that portion of the assessed value defined in section 403.19, subsection 2, shall not exceed the amount equal to the amount certified to the county auditor under section 403.19 for the budget year in which the claim is paid, after deduction of the amount of other revenues committed for payment on that amount for the budget year. The amount not allocated to that portion of the assessed value defined in section 403.19, subsection 2, as a result of the operation of this paragraph, shall be allocated to that portion of assessed value defined in section 403.19, subsection 1.

5. A municipality may elect to reduce the amount of assessed value of property defined in section 403.19, subsection 1, by an amount equal to that portion of the amount of such assessed value which was phased out for the fiscal year by operation of section 427B.17, subsection 4. The applicable assessment roll and ordinance providing for the division of taxes under section 403.19 in the urban renewal taxing district shall be deemed to be modified for that fiscal year only to the extent of such adjustment without further action on the part of the city or county implementing the urban renewal taxing district.

95 Acts, ch 206, §32; 96 Acts, ch 1049, §5, 6; 97 Acts, ch 158, §34; 2001 Acts, ch 116, §22; 2003 Acts, ch 145, §286; 2003 Acts, ch 178, §7; 2003 Acts, ch 179, §37; 2013 Acts, ch 90, §246; 2017 Acts, ch 54, §76

Referred to in §257.3, 298.18A, 427B.19C

427B.19B Guarantee of state replacement funds. Repealed by 2003 Acts, ch 178, §11.

427B.19C Adjustment of certain assessments required.

In the assessment year beginning January 1, 2003, the amount of assessed value of property defined in section 403.19, subsection 1, for an urban renewal taxing district which received replacement moneys under section 427B.19A, subsection 4, shall be reduced by an amount equal to that portion of the amount of assessed value of such property which was assessed pursuant to section 427B.17, subsection 4.

96 Acts, ch 1049, §7; 2003 Acts, ch 178, §8; 2013 Acts, ch 90, §247

427B.19D Appeal for state assistance.

For fiscal years beginning on or after July 1, 1996, a municipality in which is located an urban renewal district for which debt was incurred prior to June 30, 1996, may appeal to the state appeal board for state assistance to meet such debt obligations for the fiscal year if such debt is not secured by an assessment agreement pursuant to section 403.6, subsection 19, and if the urban renewal area contains property assessed pursuant to section 427B.17. The appeal

shall be made by May 15 preceding the fiscal year on forms approved by the department of management.

96 Acts, ch 1049, §8

SUBCHAPTER IV

UNDERGROUND STORAGE TANKS REMEDIAL ACTION CREDIT

427B.20 Local option remedial action property tax credit — public hearing.

1. As used in this subchapter:

a. "Actual portion of the costs paid by the owner or operator of an underground storage tank in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action" means the amount determined by the fund's board, or the board's designee, as the administrator of the Iowa comprehensive petroleum underground storage tank fund, and for which the owner or operator was not reimbursed from any other source.

b. "Small business" means a business with gross receipts of less than five hundred thousand dollars per year.

2. In order to further the public interests of protecting the drinking water supply, preserving business and industry within a community, preserving convenient access to gas stations within a community, or other public purposes, a city council or county board of supervisors may provide by ordinance for partial or total property tax credits to owners of small businesses that own or operate an underground storage tank to reduce the amount of property taxes paid over the permitted period in amounts not to exceed the actual portion of costs paid by the business owner in connection with a remedial action for which the Iowa comprehensive petroleum underground storage tank fund shares in the cost of corrective action, and for which the small business owner was not reimbursed from any other source. A county board of supervisors may grant credits only for property located outside of the corporate limits of a city, and a city council may grant credits only for property located within the corporate limits of the city. The credit shall be taken on the property where the underground storage tank is situated. The credit granted by the council or board shall not exceed the amount of taxes generated by the property for the respective city or county. The credit shall apply to property taxes payable in the fiscal year following the calendar year in which a cost of remedial action was paid by the small business owner.

3. The ordinance may be enacted not less than thirty days after a public hearing is held in accordance with section 335.6 in the case of a county, or section 362.3 in the case of a city. The ordinance shall designate the length of time the partial or total credit shall be available, and shall include a credit schedule and description of the terms and conditions of the credit.

4. A property tax credit provided under this section shall be paid for out of any available funds budgeted for that purpose by the city council or county board of supervisors. A city council may certify a tax for the general fund levy and a county board of supervisors may certify a tax for the rural county service fund levy for property tax credits authorized by this section.

5. The maximum permitted period of a tax credit granted under this section is ten years.

89 Acts, ch 131, §30; 2009 Acts, ch 41, §128; 2017 Acts, ch 54, §76

Referred to in §427B.22

427B.21 Application for credit by underground storage tank owner or operator — approval by county board of supervisors or city council.

1. An application shall be filed by an owner of a small business that owns or operates an underground storage tank for each property for which a credit is sought. Applications shall be filed with the respective county board of supervisors or the city council by September 30 of the year following the calendar year in which a cost of remedial action was paid by the owner or operator. Small business owners receiving credits shall file applications for renewal of the credit by September 30 of each year. A credit may be renewed only if title to the credited property remains in the name of the person or entity originally receiving the credit.

2. In reviewing the applications, the board of supervisors or city council shall consider whether granting the credit would serve a public purpose. Upon approval of the application by the board of supervisors, and after the applicant has paid any property taxes due, the board shall direct the county treasurer to issue a warrant to the small business owner in the amount of the credit granted. Upon approval of the application by the city council, and after the applicant has paid any property taxes due, the council shall direct the city clerk to issue a warrant to the small business owner in the amount of the credit granted.

3. Applications for credit shall be made on forms prescribed by the director of revenue and shall contain information pertaining to the nature of the release, the total cost of corrective action, the actual portion of the costs paid by the small business owner and for which the owner was not reimbursed from any other source, the small business owner's income tax form from the most recent tax year, and other information deemed necessary by the director.

89 Acts, ch 131, §31; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127

427B.22 Credit may be repealed.

If in the opinion of the city council or the county board of supervisors continuation of the credit granted under an ordinance adopted pursuant to this subchapter ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by section 427B.20, but all existing credits shall continue until their expiration.

89 Acts, ch 131, §32; 2017 Acts, ch 54, §76

427B.23 through 427B.25 Reserved.

SUBCHAPTER V

SPECIAL VALUATION FOR WIND ENERGY CONVERSION PROPERTY

427B.26 Special valuation of wind energy conversion property.

1. *a.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property as provided in subsection 2. The ordinance may be enacted not less than thirty days after a public hearing on the ordinance is held. Notice of the hearing shall be published in accordance with section 331.305 in the case of a county, or section 362.3 in the case of a city. The ordinance shall only apply to property first assessed on or after the effective date of the ordinance.

b. If in the opinion of the city council or the county board of supervisors continuation of the special valuation provided under this section ceases to be of benefit to the city or county, the city council or the county board of supervisors may repeal the ordinance authorized by this subsection. Property specially valued under this section prior to repeal of the ordinance shall continue to be valued under this section until the end of the nineteenth assessment year following the assessment year in which the property was first assessed.

2. In lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs "*b*", "*c*", and "*d*", and sections 428.24 to 428.29, wind energy conversion property which is first assessed for property taxation on or after January 1, 1994, and on or after the effective date of the ordinance enacted pursuant to subsection 1, shall be valued by the local assessor for property tax purposes as follows:

a. For the first assessment year, at zero percent of the net acquisition cost.

b. For the second through sixth assessment years, at a percent of the net acquisition cost which rate increases by five percentage points each assessment year.

c. For the seventh and succeeding assessment years, at thirty percent of the net acquisition cost.

3. The taxpayer shall file with the local assessor by February 1 of the assessment year in which the wind energy conversion property is first assessed for property tax purposes, a declaration of intent to have the property assessed at the value determined under this section

in lieu of the valuation and assessment provisions in section 441.21, subsection 8, paragraphs "*b*", "*c*", and "*d*", and sections 428.24 to 428.29.

4. For purposes of this section:

a. "*Net acquisition cost*" means the acquired cost of the property including all foundations and installation cost less any excess cost adjustment.

b. "*Wind energy conversion property*" means the entire wind plant including, but not limited to, a wind charger, windmill, wind turbine, tower and electrical equipment, pad mount transformers, power lines, and substation.

93 Acts, ch 161, §2
Referred to in §437A.6, 441.21, 476B.6

CHAPTER 427C

FOREST AND FRUIT-TREE RESERVATIONS

Referred to in §441.47

This chapter not enacted as a part of this title;
transferred from chapter 161 in Code 1993

427C.1 Tax exemption.
427C.2 Reservations.
427C.3 Forest reservation.
427C.4 Removal of trees.
427C.5 Forest trees.
427C.6 Groves.
427C.7 Fruit-tree reservation — duration of exemption.
427C.8 Fruit trees.
427C.9 Replacing trees.
427C.10 Restraint of livestock and limitation on use.
427C.11 Penalty.
427C.12 Application — inspection — continuation of exemption — recapture of tax.
427C.13 Report to department of natural resources.

427C.1 Tax exemption.

Any person who establishes a forest or fruit-tree reservation as provided in this chapter shall be entitled to the tax exemption provided by law.

[C24, 27, 31, 35, 39, §**2605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.1]
C93, §427C.1
Referred to in §441.22

427C.2 Reservations.

On any tract of land in the state of Iowa, the owner or owners may select a permanent forest reservation or reservations, each not less than two acres in continuous area, or a fruit-tree reservation or reservations, not less than one nor more than ten acres in total area, or both, and upon compliance with the provisions of this chapter, such owner or owners shall be entitled to the benefits provided by law.

[S13, §1400-c; C24, 27, 31, 35, 39, §**2606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.2]
C93, §427C.2
Referred to in §427C.3, 441.22

427C.3 Forest reservation.

A forest reservation shall contain not less than two hundred growing forest trees on each acre. If the area selected is a forest containing the required number of growing forest trees, it shall be accepted as a forest reservation under this chapter provided application is made or on file on or before February 1 of the exemption year. If any buildings are standing on an area selected as a forest reservation under this section or a fruit-tree reservation under section 427C.7, one acre of that area shall be excluded from the tax exemption. However, the

exclusion of that acre shall not affect the area's meeting the acreage requirement of section 427C.2.

[S13, §1400-d; C24, 27, 31, 35, 39, §**2607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.3]

84 Acts, ch 1222, §1

C93, §427C.3

2001 Acts, ch 150, §16, 26

Referred to in §441.22

427C.4 Removal of trees.

Not more than one-fifth of the total number of trees in any forest reservation may be removed in any one year, excepting in cases where the trees die naturally.

[S13, §1400-e; C24, 27, 31, 35, 39, §**2608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.4]

C93, §427C.4

Referred to in §441.22

427C.5 Forest trees.

The ash, black cherry, black walnut, butternut, catalpa, coffee tree, the elms, hackberry, the hickories, honey locust, Norway and Carolina poplars, mulberry, the oaks, sugar maple, cottonwood, soft maple, osage orange, basswood, black locust, European larch and other coniferous trees, and all other forest trees introduced into the state for experimental purposes, shall be considered forest trees within the meaning of this chapter. In forest reservations which are artificial groves, the willows, box elder, and other poplars shall be included among forest trees for the purposes of this chapter when they are used as protecting borders not exceeding two rows in width around a forest reservation, or when they are used as nurse trees for forest trees in such forest reservation, the number of such nurse trees not to exceed one hundred on each acre; provided that only box elder shall be used as nurse trees.

[S13, §1400-f; C24, 27, 31, 35, 39, §**2609;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.5]

C93, §427C.5

Referred to in §441.22

427C.6 Groves.

The trees of a forest reservation shall be in groves not less than four rods wide except when the trees are growing or are planted in or along a gully or ditch to control erosion in which case any width will qualify provided the area meets the size requirement of two acres.

[S13, §1400-g; C24, 27, 31, 35, 39, §**2610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.6]

C93, §427C.6

Referred to in §441.22

427C.7 Fruit-tree reservation — duration of exemption.

A fruit-tree reservation shall contain on each acre, at least forty apple trees, or seventy other fruit trees, growing under proper care and annually pruned and sprayed. A reservation may be claimed as a fruit-tree reservation, under this chapter, for a period of eight years after planting provided application is made or on file on or before February 1 of the exemption year.

[S13, §1400-h; C24, 27, 31, 35, 39, §**2611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.7]

84 Acts, ch 1222, §2

C93, §427C.7

2001 Acts, ch 150, §17, 26

Referred to in §427C.3, 441.22

427C.8 Fruit trees.

The cultivated varieties of apples, crabs, plums, cherries, peaches, and pears shall be considered fruit trees within the meaning of this chapter.

[S13, §1400-i; C24, 27, 31, 35, 39, §**2612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.8]

C93, §427C.8

Referred to in §441.22

427C.9 Replacing trees.

When any tree or trees on a fruit-tree or forest reservation shall be removed or die, the owner or owners of such reservation shall, within one year, plant and care for other fruit or forest trees, in order that the number of such trees may not fall below that required by this chapter.

[S13, §1400-j; C24, 27, 31, 35, 39, §**2613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.9]

C93, §427C.9

Referred to in §441.22

427C.10 Restraint of livestock and limitation on use.

Cattle, horses, mules, sheep, goats, ostriches, rheas, emus, and swine shall not be permitted upon a fruit-tree or forest reservation. Fruit-tree and forest reservations shall not be used for economic gain other than the gain from raising fruit or forest trees.

[S13, §1400-k; C24, 27, 31, 35, 39, §**2614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.10]

84 Acts, ch 1222, §3

C93, §427C.10

95 Acts, ch 43, §11

Referred to in §441.22

427C.11 Penalty.

If the owner or owners of a fruit-tree or forest reservation violate any provision of this chapter within the two years preceding the making of an assessment, the assessor shall not list any tract belonging to such owner or owners, as a reservation within the meaning of this chapter, for the ensuing two years.

[S13, §1400-m; C24, 27, 31, 35, 39, §**2615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.11]

C93, §427C.11

Referred to in §441.22

427C.12 Application — inspection — continuation of exemption — recapture of tax.

It shall be the duty of the assessor to secure the facts relative to fruit-tree and forest reservations by taking the sworn statement, or affirmation, of the owner or owners making application under this chapter; and to make special report to the county auditor of all reservations made in the county under the provisions of this chapter.

The board of supervisors shall designate the county conservation board or the assessor who shall inspect the area for which an application is filed for a fruit-tree or forest reservation tax exemption before the application is accepted. Use of aerial photographs may be substituted for on-site inspection when appropriate. The application can only be accepted if it meets the criteria established by the natural resource commission to be a fruit-tree or forest reservation. Once the application has been accepted, the area shall continue to receive the tax exemption during each year in which the area is maintained as a fruit-tree or forest reservation without the owner having to refile. If the property is sold or transferred, the seller shall notify the buyer that all, or part of, the property is in fruit-tree or forest reservation and subject to the recapture tax provisions of this section. The tax exemption shall continue to be granted for the remainder of the eight-year period for fruit-tree reservation and for the following years for forest reservation or until the property no longer qualifies as a fruit-tree or forest reservation. The area may be inspected each year by the county conservation board or the assessor to determine if the area is maintained as a fruit-tree or forest reservation. If the area is not maintained or is used for economic gain other than as a fruit-tree reservation

during any year of the eight-year exemption period and any year of the following five years or as a forest reservation during any year for which the exemption is granted and any of the five years following those exemption years, the assessor shall assess the property for taxation at its fair market value as of January 1 of that year and in addition the area shall be subject to a recapture tax. However, the area shall not be subject to the recapture tax if the owner, including one possessing under a contract of sale, and the owner's direct antecedents or descendants have owned the area for more than ten years. The tax shall be computed by multiplying the consolidated levy for each of those years, if any, of the five preceding years for which the area received the exemption for fruit-tree or forest reservation times the assessed value of the area that would have been taxed but for the tax exemption. This tax shall be entered against the property on the tax list for the current year and shall constitute a lien against the property in the same manner as a lien for property taxes. The tax when collected shall be apportioned in the manner provided for the apportionment of the property taxes for the applicable tax year.

[S13, §1400-n; C24, 27, 31, 35, 39, §**2616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §161.12]

84 Acts, ch 1222, §4; 85 Acts, ch 75, §1

C93, §427C.12

95 Acts, ch 156, §1

Referred to in §441.22

427C.13 Report to department of natural resources.

The county assessor shall keep a record of all forest and fruit-tree reservations in the county and submit a report of the reservations to the department of natural resources not later than June 15 of each year.

[S13, §1400-o; C24, 27, 31, 35, 39, §**2617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §161.13; 81 Acts, ch 117, §1208]

C93, §427C.13

Referred to in §441.22

CHAPTER 428

LISTING PROPERTY FOR TAXATION

Referred to in §306.22, 429.1, 433.4A, 437A.16A, 441.19, 441.21, 441.47, 441.72, 461A.25

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428.37 Listing certain electric power generating plants. Repealed by 98 Acts, ch 1194, §39, 40.

428.1 Listing of property.

Every person shall list for the assessor all property subject to taxation in the state, of which the person is the owner, or has the control or management, including but not limited to the following:

1. The property of one under disability, by the person having charge thereof.
2. The property of a married person, by either party.
3. The property of a beneficiary for whom the property is held in trust, by the trustee.

4. The property of a body corporate, company, society or partnership, by its principal accountant, officer, agent, or partner, as the assessor may demand.

5. Property under mortgage or lease is to be listed by and taxed to the mortgagor or lessor, unless listed by the mortgagee or lessee.

[C51, §458; R60, §714; C73, §803; C97, §1312; S13, §1312; C24, 27, 31, 35, 39, §**6956;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.1]

89 Acts, ch 296, §49; 95 Acts, ch 83, §20; 99 Acts, ch 151, §43, 89

Referred to in §441.19

428.2 Listing property of another.

Any person required to list property belonging to another shall list it in the same county in which the person would be required to list it if it were the person's own, except as herein otherwise directed; but the person shall list it separately from the person's own, giving the assessor the name of the person or estate to which it belongs.

[C51, §461; R60, §716; C73, §805; C97, §1316; C24, 27, 31, 35, 39, §**6957;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.2]

Referred to in §441.19

428.3 Reserved.

428.4 Real estate — buildings.

1. Property shall be assessed for taxation each year. Real estate shall be listed and assessed in 1981 and every two years thereafter. The assessment of real estate shall be the value of the real estate as of January 1 of the year of the assessment. The year 1981 and each odd-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, any real estate that the assessor finds was incorrectly valued or assessed, or was not listed, valued, and assessed, in the assessment year immediately preceding, also any real estate the assessor finds has changed in value subsequent to January 1 of the preceding real estate assessment year. However, a percentage increase on a class of property shall not be made in a year not subject to an equalization order unless ordered by the department of revenue. The assessor shall determine the actual value and compute the taxable value thereof as of January 1 of the year of the revaluation and reassessment. The assessment shall be completed as specified in section 441.28, but no reduction or increase in actual value shall be made for prior years. If an assessor makes a change in the valuation of the real estate as provided for, sections 441.23, 441.37, 441.37A, 441.37B, and 441.38 apply.

2. The assessor shall notify the director of revenue, in the manner and form to be prescribed by the director, as to the class or classes of real estate reviewed, revalued, and reassessed and shall report such details as to the effects or results of the revaluation and reassessment as may be deemed necessary by the director. This notification shall be contained in a report to be attached to the abstract of assessment for the year in which the new valuations become effective.

3. Any buildings erected, improvements made, or buildings or improvements removed in a year after the assessment of the class of real estate to which they belong, shall be valued, listed, and assessed and reported by the assessor to the county auditor after approval of the valuations by the local board of review, and the auditor shall thereupon enter the taxable value of such building or taxable improvement on the tax list as a part of real estate to be taxed. If such buildings or improvements are erected or made by any person other than the owner of the land, they shall be listed and assessed to the owner of the buildings or improvements as real estate.

[C51, §460, 465; R60, §719, 720; C73, §812; C97, §1350; C24, 27, 31, 35, 39, §**6959;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §428.4; 81 Acts, ch 140, §3, 4; 82 Acts, ch 1190, §5]

89 Acts, ch 296, §50, 51; 97 Acts, ch 158, §35; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §122; 2016 Acts, ch 1011, §121; 2017 Acts, ch 151, §2, 29

Referred to in §331.512, 420.207, 443.22, 445.32

2017 amendment to subsection 1 applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

428.5 Unknown owners.

When the name of the owner of any real estate is unknown, it shall be assessed without connecting therewith any name, but inscribing at the head of the page the words "owners unknown", and such property, whether lands or city lots, shall be listed as nearly as practicable in the order of the numbers thereof.

[R60, §737; C73, §826; C97, §1353; C24, 27, 31, 35, 39, §**6960;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.5]

428.6 Deceased owner.

The real estate of persons deceased may be listed as belonging to the estate or the person's heirs, without enumerating them.

[C51, §461; R60, §716; C73, §805; C97, §1353; C24, 27, 31, 35, 39, §**6961;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.6]

428.7 Description of tracts — manner.

A description shall not comprise more than one city lot or other smallest subdivision of the land according to the government surveys, except in cases where the boundaries are so irregular that it cannot be described in the usual manner in accordance therewith. However, descriptions may be combined for assessment purposes to allow the assessor to value the property as a unit. This section shall apply to known owners and unknown owners, alike.

[C97, §1353; C24, 27, 31, 35, 39, §**6962;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.7]

Referred to in §425.5

428.8 through 428.19 Reserved.

428.20 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

A person who purchases, receives, or holds personal property of any description for the purpose of adding to its value by a process of manufacturing, refining, purifying, combining of different materials, or by the packing of meats, with a view to selling the property for gain or profit, is a *"manufacturer"* for the purposes of this Title.*

[C51, §469; R60, §724; C73, §816; C97, §1319; C24, 27, 31, 35, 39, §**6975;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.20]

89 Acts, ch 296, §53; 90 Acts, ch 1168, §48; 94 Acts, ch 1023, §53; 2000 Acts, ch 1148, §1

Referred to in §420.207, 428.23

*This provision does not include chapters 421B, 427C, 435, 452A, and 453A, which were moved into this Title by the Code editor; chapters 421B, 427C, 435, 452A, and 453A contain the applicable provisions pertaining to those chapters

428.21 Reserved.

428.22 Locker plants.

For purposes of valuing and assessing property for tax purposes, locker plants shall be valued and assessed as commercial property. For purposes of this section, *"locker plants"* means any property used primarily for any or all of the following purposes:

1. To provide, as a part of its business operations, locker facilities which are rented at retail to consumers to be used for the storage of frozen meats, fish, or fowl owned by the person renting the locker.

2. To custom slaughter livestock under contract for a natural person and to process the carcass for the natural person by cutting, wrapping, and freezing the meat.

3. To process an animal carcass to offer at retail processed meat products to a natural person after the facility has purchased the livestock or carcass.

[C81, §428.22]

Referred to in §420.207

428.23 Manufacturer to list.

Corporations organized for pecuniary profit and engaged in manufacturing as defined in section 428.20 shall list their real property in the same manner as is required of individuals.

[C97, §1319; C24, 27, 31, 35, 39, §**6978;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.23]

89 Acts, ch 296, §54; 95 Acts, ch 83, §21

Referred to in §420.207

428.24 Public utility plants.

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks, other than waterworks taxed under chapter 437B, or gasworks or pipelines, except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

[C97, §1343; C24, 27, 31, 35, 39, §**6979;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.24; 81 Acts, ch 31, §9]

83 Acts, ch 101, §88; 98 Acts, ch 1194, §29, 40; 2003 Acts, ch 145, §286; 2013 Acts, ch 94, §6, 35, 36

Referred to in §29C.24, 423.3, 427A.1, 427B.17, 427B.26, 428.28, 437.12, 437.13, 441.73

428.25 Property in different districts.

Where any such property except the capital stock is situated partly within and partly without the limits of a city, such portions of the said plant shall be assessed separately, and the portion within the said city shall be assessed as above provided, and the portion without the said city shall be apportioned by the department of revenue to the district or districts in which it is located.

[C97, §1343; C24, 27, 31, 35, 39, §**6980;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.25]

2003 Acts, ch 145, §286

Referred to in §29C.24, 427A.1, 427B.17, 427B.26, 437.12, 437.13

428.26 Personal property.

1. All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, other than natural gas pipelines permitted pursuant to chapter 479 and other than waterworks taxed under chapter 437B, shall be listed and assessed by the department of revenue.

2. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation in which the waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.

[C97, §1343; C24, 27, 31, 35, 39, §**6981;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.26]

98 Acts, ch 1194, §30, 40; 2003 Acts, ch 145, §286; 2013 Acts, ch 94, §7, 35, 36

Referred to in §29C.24, 423.3, 427A.1, 427B.17, 427B.26, 437.12, 437.13

428.27 Capital stock listed and assessed. Repealed by 95 Acts, ch 83, §33.

428.28 Annual report by utility.

1. Every individual, partnership, corporation, or association operating for profit, waterworks, other than waterworks taxed under chapter 437B, or gasworks or pipelines other than natural gas pipelines permitted pursuant to chapter 479, annually on or before May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue of all of the property owned by such individual, partnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the department of revenue shall require.

2. Every individual, partnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A or chapter 437B, as defined in section 428.24 shall annually, on or before May 1 of each calendar year,

make a report on blanks to be provided by the department of revenue of all of the property owned by the individual, partnership, corporation, or association within the incorporated limits of any city in the state, and give other information the department of revenue requires.

[C31, 35, §6982-d1; C39, §**6982.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.28; 81 Acts, ch 31, §10]

84 Acts, ch 1177, §1; 98 Acts, ch 1194, §31, 40; 2003 Acts, ch 145, §286; 2008 Acts, ch 1032, §106; 2013 Acts, ch 94, §8, 35, 36; 2015 Acts, ch 109, §17, 75

Referred to in §29C.24, 423.3, 427A.1, 427B.17, 427B.26, 428.29

428.29 Assessment and certification.

The department of revenue shall on or before October 31 each year proceed to determine, upon the basis of the data required in the report under section 428.28 and any other information the department may obtain, the actual value of all property, subject to the department's jurisdiction, of said individual, partnership, corporation, or association, and shall make assessments upon the taxable value of the property, as provided by section 441.21. The department of revenue shall, on or before October 31, certify to the county auditor of every county in the state the valuations fixed for assessment upon all such property in each and every taxing district in each county by the department of revenue. This valuation shall then be spread upon the books in the same manner as other valuations fixed by the department of revenue upon property assessed under the department's jurisdiction.

[C31, 35, §6982-d2; C39, §**6982.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.29]

2003 Acts, ch 145, §286; 2008 Acts, ch 1032, §106; 2009 Acts, ch 60, §8; 2010 Acts, ch 1069, §52; 2015 Acts, ch 109, §18, 75

Referred to in §29C.24, 427A.1, 427B.17, 427B.26, 437.13, 443.22

428.30 through 428.34 Reserved.

428.35 Grain handled.

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

a. "*Grain*" means wheat, corn, barley, oats, rye, flaxseed, field peas, soybeans, grain sorghums, spelts, and such other products as are usually stored in grain elevators. Such term excludes such seeds after being processed, and the products of such processing when packaged or sacked.

b. "*Handling or handled*" means the receiving of grain at or in each elevator, warehouse, mill, processing plant, or other facility in this state in which it is received for storage, accumulation, sale, processing, or for any purpose whatsoever.

c. "*Person*" means individuals, corporations, firms, and associations of whatever form.

d. "*Processing*" shall not include hulling, cleaning, drying, grading, or polishing.

2. *Tax imposed.* An annual excise tax is hereby levied on such handling of grain in the amount provided in this section. All grain so handled shall be exempt from all taxation as property under the laws of this state. The amount of such excise tax shall be a sum equal to one-fourth mill per bushel upon all grain as defined in this section that is so handled.

3. *Statement filing form.* Every person engaged in handling grain shall, on the first day of January of each year and not later than sixty days thereafter, make and file with the assessor a statement of the number of bushels of grain handled by the person in that district during the year immediately preceding, or the part thereof, during which the person was engaged in handling grain. Upon demand, the assessor shall have the right to inspect all such person's records thereof. A form for making the statement shall be included in the blanks prescribed by the director of revenue. If a statement is not furnished as required in this subsection, section 441.24 shall apply.

4. *Assessment.* The assessor of each such district, from the statement required or from such other information as the assessor may acquire, shall ascertain the number of bushels of grain handled by each person handling grain in the assessor's district during the preceding year, or part thereof, and shall assess the amount herein provided to such person under the provisions of this section.

5. *Computation of tax.* The rate imposed by subsection 2 shall be applied to the number

of bushels of grain so handled, and the computed amount thereof shall constitute the tax to be assessed.

6. *Payment of tax.* The tax, when determined, shall be entered in the same manner as general property taxes on the tax list of the taxing district, and the proceeds of the collection of the tax shall be distributed to the same taxing units and in the same proportion as the general property tax on the tax list of each taxing district. All provisions of the law relating to the assessment and collection of property taxes and the powers and duties of the county treasurer, county auditor and all other officers with respect to the assessment, collection, and enforcement of property taxes apply to the assessment, collection, and enforcement of the tax imposed by this section.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §428.35]

89 Acts, ch 296, §55; 2003 Acts, ch 145, §286; 2016 Acts, ch 1073, §116; 2019 Acts, ch 59, §129

Referred to in §445.3

Subsections 2 and 3 amended

428.36 Reserved.

428.37 Listing certain electric power generating plants. Repealed by 98 Acts, ch 1194, §39, 40. See chapter 437A.

CHAPTER 428A

REAL ESTATE TRANSFER TAX

Referred to in §331.602, 441.47, 558.69

428A.1	Amount of tax on transfers — declaration of value.
428A.2	Exceptions.
428A.3	Who liable for tax.
428A.4	Recording refused.
428A.5	Documentation of payment.
428A.6	Reserved.
428A.7	Forms provided by director of revenue.
428A.8	Remittance to state treasurer — portion retained in county.
428A.9	Refund of tax.
428A.10	Penalty.
428A.11	Enforcement.
428A.12	Reserved.
428A.13	Nonapplicability.
428A.14	Reserved.
428A.15	Penal provisions.

428A.1 Amount of tax on transfers — declaration of value.

1. *a.* There is imposed on each deed, instrument, or writing by which any lands, tenements, or other realty in this state are granted, assigned, transferred, or otherwise conveyed, a tax determined in the following manner:

(1) When there is no consideration or when the deed, instrument, or writing is executed and tendered for recording as an instrument corrective of title, and so states, there is no tax.

(2) When there is consideration and the actual market value of the real property transferred is in excess of five hundred dollars, the tax is eighty cents for each five hundred dollars or fractional part of five hundred dollars in excess of five hundred dollars.

b. The term "*consideration*", as used in this chapter, means the full amount of the actual sale price of the real property involved, paid or to be paid, including the amount of an encumbrance or lien on the property, if assumed by the grantee.

c. It is presumed that the sale price so stated includes the value of all personal property transferred as part of the sale unless the dollar value of personal property is stated on the instrument of conveyance. When the dollar value of the personal property included in the sale is so stated, it shall be deducted from the consideration shown on the instrument for the purpose of determining the tax.

2. When each deed, instrument, or writing by which any real property in this state is granted, assigned, transferred, or otherwise conveyed is presented for recording to the county recorder, a declaration of value signed by at least one of the sellers or one of the buyers or

their agents shall be submitted to the county recorder. However, if the deed, instrument, or writing contains multiple parcels some of which are located in more than one county, separate declarations of value shall be submitted on the parcels located in each county and submitted to the county recorder of that county when paying the tax as provided in section 428A.5. A declaration of value is not required for those instruments described in section 428A.2, subsections 2 to 5, 7 to 13, and 16 to 21, or described in section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of lands, whether by contract or condemnation, for public purposes through an exercise of the power of eminent domain.

3. The declaration of value shall state the full consideration paid for the real property transferred. If agricultural land, as defined in section 9H.1, is purchased by a corporation, limited partnership, trust, alien or nonresident alien, the declaration of value shall include the name and address of the buyer, the name and address of the seller, a legal description of the agricultural land, and identify the buyer as a corporation, limited partnership, trust, alien, or nonresident alien. The county recorder shall not record the declaration of value, but shall enter on the declaration of value information the director of revenue requires for the production of the sales/assessment ratio study and transmit all declarations of value to the city or county assessor in whose jurisdiction the property is located. The city or county assessor shall enter on the declaration of value the information the director of revenue requires for the production of the sales/assessment ratio study and transmit one copy of each declaration of value to the director of revenue, at times as directed by the director of revenue. The assessor shall retain one copy of each declaration of value for three years from December 31 of the year in which the transfer of realty for which the declaration was filed took place. The director of revenue shall, upon receipt of the information required to be filed under this chapter by the city or county assessor, send to the office of the secretary of state that part of the declaration of value which identifies a corporation, limited partnership, trust, alien, or nonresident alien as a purchaser of agricultural land as defined in section 9H.1.

[C66, 71, 73, 75, 77, 79, 81, S81, §428A.1; 81 Acts, ch 141, §1; 82 Acts, ch 1027, §1]

85 Acts, ch 96, §1; 87 Acts, ch 133, §1; 87 Acts, ch 198, §4; 89 Acts, ch 271, §1; 91 Acts, ch 267, §317; 92 Acts, ch 1073, §12; 92 Acts, ch 1212, §35; 96 Acts, ch 1167, §6; 99 Acts, ch 175, §1; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §93

Referred to in §428A.2, 428A.4

428A.2 Exceptions.

The tax imposed by this chapter shall not apply to:

1. Any executory contract for the sale of land under which the vendee is entitled to or does take possession thereof, or any assignment or cancellation thereof.

2. Any instrument of mortgage, assignment, extension, partial release, or satisfaction thereof.

3. Any will.

4. Any plat.

5. Any lease.

6. Any deed, instrument, or writing in which the United States or any agency or instrumentality thereof or the state of Iowa or any agency, instrumentality, or governmental or political subdivision thereof is the grantor, assignor, transferor, or conveyor; and any deed, instrument or writing in which any of such unit of government is the grantee or assignee where there is no consideration.

7. Deeds for cemetery lots.

8. Deeds which secure a debt or other obligation, except those included in the sale of real property.

9. Deeds for the release of a security interest in property excepting those pertaining to the sale of real estate.

10. Deeds which, without additional consideration, confirm, correct, modify, or supplement a deed previously recorded.

11. Deeds between husband and wife, or parent and child, without actual consideration. A cancellation of indebtedness alone which is secured by the property being transferred and

which is not greater than the fair market value of the property being transferred is not actual consideration within the meaning of this subsection.

12. Tax deeds.

13. Deeds of partition where the interest conveyed is without consideration. However, if any of the parties take shares greater in value than their undivided interest a tax is due on the greater values, computed at the rate set out in section 428A.1.

14. The making or delivering of instruments of transfer resulting from a corporate merger, consolidation, or reorganization or a merger, consolidation, or reorganization of a limited liability company under the laws of the United States or any state thereof, where such instrument states such fact on the face thereof.

15. Deeds between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deeds are given for no actual consideration other than for shares or for debt securities of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company. For purposes of this subsection, a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company is a corporation, partnership, limited partnership, limited liability partnership, or limited liability company where the majority of the voting stock of the corporation, or of the ownership shares of the partnership, limited partnership, limited liability partnership, or limited liability company is held by and the majority of the stockholders, partners, or members are persons related to each other as spouse, parent, grandparent, lineal ascendants of grandparents or their spouses and other lineal descendants of the grandparents or their spouses, or persons acting in a fiduciary capacity for persons so related and where all of its stockholders, partners, or members are natural persons or persons acting in a fiduciary capacity for the benefit of natural persons.

16. Deeds for the transfer of property or the transfer of an interest in property when the deed is executed between former spouses pursuant to a decree of dissolution of marriage.

17. Deeds transferring easements.

18. Deeds giving back real property to lienholders in lieu of forfeitures or foreclosures.

19. Deeds executed by public officials in the performance of their official duties.

20. Deeds transferring distributions of assets to heirs at law or devisees under a will.

21. Deeds in which the consideration is five hundred dollars or less.

[C66, 71, 73, 75, 77, 79, 81, §428A.2; 82 Acts, ch 1027, §2 – 4]

87 Acts, ch 198, §5; 89 Acts, ch 271, §2; 91 Acts, ch 191, §25; 95 Acts, ch 175, §1; 96 Acts, ch 1170, §1

Referred to in §428A.1, 428A.4, 455B.172

428A.3 Who liable for tax.

Any person, firm or corporation who grants, assigns, transfers, or conveys any land, tenement, or realty by a deed, writing, or instrument subject to the tax imposed by this chapter shall be liable for such tax but no public official shall be liable for a tax with respect to any instrument executed by the public official in connection with official duties.

[C66, 71, 73, 75, 77, 79, 81, §428A.3]

428A.4 Recording refused.

1. The county recorder shall refuse to record any deed, instrument, or writing, taxable under section 428A.1 for which payment of the tax determined on the full amount of the consideration in the transaction has not been paid. However, if the deed, instrument, or writing, is exempt under section 428A.2, the county recorder shall not refuse to record the document if there is filed with or endorsed on it a statement signed by either the grantor or grantee or an authorized agent, that the instrument or writing is excepted from the tax under section 428A.2. The validity of an instrument as between the parties, and as to any person who would otherwise be bound by the instrument, is not affected by the failure to comply

with this section. If an instrument is accepted for recording or filing contrary to this section the failure to comply does not destroy or impair the record as notice.

2. The county recorder shall refuse to record any deed, instrument, or writing by which any real property in this state shall be granted, assigned, transferred, or otherwise conveyed, except those transfers exempt from tax under section 428A.2, subsections 2 through 5, 7 through 13, and 16 through 21, or under section 428A.2, subsection 6, except in the case of a federal agency or instrumentality, until the declaration of value has been submitted to the county recorder. A declaration of value shall not be required with a deed given in fulfillment of a recorded real estate contract provided the deed has a notation that it is given in fulfillment of a contract.

[C66, 71, 73, 75, 77, 79, 81, §428A.4]

83 Acts, ch 135, §1; 87 Acts, ch 133, §2; 2009 Acts, ch 27, §16

428A.5 Documentation of payment.

The amount of tax imposed by this chapter shall be paid to the county recorder in the county where the real property is located and the amount received shall appear on the face of the document or instrument. The method of documentation of a transfer tax shall be approved by the department of revenue.

[C66, 71, 73, 75, 77, 79, 81, §428A.5]

83 Acts, ch 135, §2; 99 Acts, ch 175, §2; 2001 Acts, ch 44, §19; 2003 Acts, ch 145, §286; 2009 Acts, ch 27, §17

Referred to in §428A.1

428A.6 Reserved.

428A.7 Forms provided by director of revenue.

The director of revenue shall prescribe the form of the declaration of value and shall include an appropriate place for the inclusion of special facts and circumstances relating to the actual sales price in real estate transfers. The director shall provide an adequate number of the declaration of value forms to each county recorder in the state. If the declaration of value form requires or provides for the inclusion of the social security number or federal tax identification number of a seller or buyer, the department shall provide that the social security number or federal tax identification number remains confidential and cannot be obtained by public examination.

[C66, 71, 73, 75, 77, 79, 81, §428A.7]

83 Acts, ch 135, §3; 2003 Acts, ch 145, §286; 2009 Acts, ch 112, §1

428A.8 Remittance to state treasurer — portion retained in county.

1. *a.* On or before the tenth day of each month the county recorder shall determine and pay to the treasurer of state eighty-two and three-fourths percent of the receipts from the real estate transfer tax collected during the preceding month and the treasurer of state shall deposit and transfer the receipts as provided in subsection 2.

b. The county recorder shall deposit the remaining seventeen and one-fourth percent of the receipts in the county general fund.

c. Any tax or additional tax found to be due shall be collected by the county recorder. If the county recorder is unable to collect the tax, the director of revenue shall collect the tax in the same manner as taxes are collected in chapter 422, division III. If collected by the director of revenue, the director shall pay the county its proportionate share of the tax. Section 422.25, subsections 1, 2, 3, and 4, and sections 422.26, 422.28 through 422.30, and 422.73, consistent with this chapter, apply with respect to the collection of any tax or additional tax found to be due, in the same manner and with the same effect as if the deed, instrument, or writing were an income tax return within the meaning of those statutes.

d. The county recorder shall keep records and make reports with respect to the real estate transfer tax as the director of revenue prescribes.

2. The treasurer of state shall deposit or transfer the receipts paid the treasurer of state

pursuant to subsection 1 to either the general fund of the state, the housing trust fund created in section 16.181, or the shelter assistance fund created in section 16.41 as follows:

a. For the fiscal year beginning July 1, 2009, ninety percent of the receipts shall be deposited in the general fund, five percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

b. For the fiscal year beginning July 1, 2010, eighty-five percent of the receipts shall be deposited in the general fund, ten percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

c. For the fiscal year beginning July 1, 2011, eighty percent of the receipts shall be deposited in the general fund, fifteen percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

d. For the fiscal year beginning July 1, 2012, seventy-five percent of the receipts shall be deposited in the general fund, twenty percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

e. For the fiscal year beginning July 1, 2013, seventy percent of the receipts shall be deposited in the general fund, twenty-five percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

f. For the fiscal year beginning July 1, 2014, and each succeeding fiscal year, sixty-five percent of the receipts shall be deposited in the general fund, thirty percent of the receipts shall be transferred to the housing trust fund, and five percent of the receipts shall be transferred to the shelter assistance fund.

3. Notwithstanding subsection 2, the amount of money that shall be transferred pursuant to this section to the housing trust fund in any one fiscal year shall not exceed three million dollars. Any money that otherwise would be transferred pursuant to this section to the housing trust fund in excess of that amount shall be deposited in the general fund of the state.

[C66, 71, 73, 75, 77, 79, 81, §428A.8]

83 Acts, ch 123, §176, 209; 83 Acts, ch 135, §4; 91 Acts, ch 267, §318; 94 Acts, ch 1201, §28; 97 Acts, ch 201, §22; 2001 Acts, ch 150, §18; 2003 Acts, ch 145, §286; 2008 Acts, ch 1179, §56; 2010 Acts, ch 1031, §266

Referred to in §16.41, 331.427

428A.9 Refund of tax.

To receive a refund from the state the taxpayer shall petition the state appeal board for a refund of the amount of overpayment of the tax paid to the treasurer of state. To receive a refund from the county the taxpayer shall petition the board of supervisors for a refund of the remaining portion of the overpayment paid to that county.

2001 Acts, ch 150, §19

428A.10 Penalty.

Any person, firm or corporation liable for the tax imposed by this chapter who knowingly fails to comply with this chapter relating to the payment of the real estate transfer tax is guilty of a simple misdemeanor.

[C66, 71, 73, 75, 77, 79, 81, §428A.10]

83 Acts, ch 135, §5

428A.11 Enforcement.

The director of revenue shall enforce the provisions of this chapter and may prescribe rules for their detailed and efficient administration.

[C66, 71, 73, 75, 77, 79, 81, §428A.11]

2003 Acts, ch 145, §286

428A.12 Reserved.

428A.13 Nonapplicability.

This chapter shall not apply with respect to any deed, instrument, or writing where such deed, instrument, or writing may not under the Constitution of this state or under the Constitution or laws of the United States be made the subject of taxation by this state.

[C66, 71, 73, 75, 77, 79, 81, §428A.13]

428A.14 Reserved.

428A.15 Penal provisions.

Any person who willfully enters false information on the declaration of value shall be guilty of a simple misdemeanor.

[C79, 81, §428A.15]

CHAPTER 429

NOTIFICATION OF TAXPAYERS

Referred to in §440.2, 441.47

429.1 Notice of assessment.
429.2 Appeal.
429.3 Judicial review.

429.1 Notice of assessment.

The department of revenue shall, at the time of making the assessment of property as provided in chapters 428, 433, 434, 437, and 438, inform the person assessed, by mail, of the valuation put upon the taxpayer's property. The notice shall contain a notice of the taxpayer's right of appeal to the director of revenue as provided in section 429.2.

[C81, §429.1]

86 Acts, ch 1241, §37; 2002 Acts, ch 1150, §12; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §19, 75

For future amendment to this section, effective July 1, 2024, see 2018 Acts, ch 1158, §13, 28

429.2 Appeal.

1. The taxpayer shall have thirty days from the date of the notice of assessment to appeal the assessment to the director of revenue. Thereafter, the proceedings before the director of revenue shall conform to the provisions of subsection 2 and chapter 17A.

2. The following rules shall apply to the appeal proceedings in addition to those stated in chapter 17A:

a. The department's assessment shall be presumed correct and the burden of proof shall be on the taxpayer with respect to all issues raised on appeal, including any challenge of the department's valuation.

b. The burden of proof must be carried by a preponderance of the evidence.

c. The director of revenue shall consider all evidence and witnesses offered by the taxpayer and the department, including but not limited to evidence relating to the proper valuation of the property involved.

d. The director of revenue shall make an independent determination of the value of the property based solely upon the director's review of the evidence presented.

e. Upon the request of a party, the director of revenue shall set the case for hearing within

one year of the date of the request, unless for good cause shown, by application and ruling thereon after notice and not ex parte, the hearing date is continued by the director of revenue.

[C31, 35, §6982-d3; C39, §**6982.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §428.30; C81, §429.2]

94 Acts, ch 1133, §9, 16; 99 Acts, ch 151, §44, 89; 2006 Acts, ch 1010, §109, 110; 2015 Acts, ch 109, §20, 75; 2016 Acts, ch 1128, §7, 16, 24

Referred to in §429.1

2016 amendment to subsection 2, paragraph c, takes effect May 27, 2016, and applies retroactively to May 22, 2015; 2016 Acts, ch 1128, §16, 24

429.3 Judicial review.

Judicial review of the action of the director of revenue may be sought by the taxpayer in accordance with the terms of chapter 17A.

[C31, 35, §6982-d4; C39, §**6982.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, §428.31; C81, §429.3]

94 Acts, ch 1133, §10, 16; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §21, 75

CHAPTER 430

RESERVED

CHAPTER 430A

LOAN AGENCIES TAX

Repealed by 2007 Acts, ch 185, §6

CHAPTER 431

RESERVED

CHAPTER 432

INSURANCE COMPANIES TAX

Referred to in §15.293A, 15.333A, 15.355, 15E.43, 15E.44, 15E.52, 15E.62, 15E.305, 404A.2, 441.47, 476B.2, 476B.6, 476B.7, 476C.4, 476C.6, 508C.19, 514E.1, 514E.2

432.1 Tax on gross premiums — exclusions.
432.2 Mutual service corporations.
432.3 Receipts — certificate of authority.
432.4 Deduction for debts.
432.5 Risk retention groups.
432.6 Personal and real property.
432.7 Assessment.
432.8 Reserved.
432.9 Debts deductible.
432.10 Sufficiency of remitted tax — notice.
432.11 Premium tax exemption for basic benefit health plans. Repealed by 2002 Acts, ch 1119, §111.
432.12 Premium tax credit for employer sponsored health plan premium credit. Repealed by 2001 Acts, ch 69, §38, 39.
432.12A Historic preservation tax credit.
432.12B Venture capital fund investment tax credit. Repealed by 2010 Acts, ch 1138, §25, 26.
432.12C Investment tax credits.
432.12D Endow Iowa tax credit.
432.12E Tax credits for wind energy production and renewable energy.
432.12F Economic development region revolving fund contribution tax credits. Repealed by 2010 Acts, ch 1138, §15, 16.
432.12G Workforce housing investment tax credit.
432.12H Tax credit for certain sales taxes paid by third-party developers.
432.12I Iowa fund of funds tax credit.
432.12J Film qualified expenditure tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.
432.12K Film investment tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.
432.12L Redevelopment tax credit.
432.12M Innovation fund investment tax credit.
432.13 Premium tax exemption — hawk-i program — state employee benefits.
432.14 Statute of limitations.

432.1 Tax on gross premiums — exclusions.

Every insurance company or association of whatever kind or character, not including fraternal beneficiary associations, and nonprofit hospital and medical service corporations, shall, as required by law, pay to the director of the department of revenue, or to a depository designated by the director, as taxes, an amount equal to the following, except that the premium tax applicable to county mutual insurance associations shall be governed by section 518.18:

1. *a.* The applicable percent, as provided in subsection 2, of the gross amount of premiums received during the preceding calendar year by every life insurance company or association, not including fraternal beneficiary associations, or the gross payments or deposits collected from holders of fraternal beneficiary association certificates, on contracts of insurance covering risks resident in this state during the preceding year, including contracts for group insurance and annuities and without including or deducting any amounts received or paid for reinsurance.

b. In determining the gross amount of premiums to be taxed hereunder, there shall be excluded all premiums received from policies or contracts issued in connection with a pension, annuity, profit-sharing plan or individual retirement annuity qualified or exempt under sections 401, 403, 404, 408 or 501(a) of the federal Internal Revenue Code as now or hereafter amended and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, all dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

c. In determining the gross amount of premiums to be taxed, there shall be excluded all consideration received in connection with an annuity contract, whether or not such contract is qualified or exempt under the federal Internal Revenue Code as now or hereafter amended, and all premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values, and all dividends that, during said year, have been paid in cash

or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

2. The *"applicable percent"* for purposes of subsection 1 of this section and section 432.2 is the following:

a. For calendar years beginning before the 2003 calendar year, two percent.

b. For the 2003 calendar year, one and three-fourths percent.

c. For the 2004 calendar year, one and one-half percent.

d. For the 2005 calendar year, one and one-fourth percent.

e. For the 2006 and subsequent calendar years, one percent.

3. The applicable percent, as provided in subsection 4, of the gross amount of premiums written, and assessments and fees received during the preceding calendar year by every company or association other than life on contracts of insurance other than life for business done in this state, including all insurance upon property situated in this state except surplus lines insurance, after deducting the amounts returned upon canceled policies, certificates, and rejected applications but not including the gross premiums written, and assessments and fees received in connection with ocean marine insurance authorized in section 515.48. For surplus lines insurance, the applicable percent, as provided in subsection 4, shall be calculated on the amount of premiums written on surplus lines insurance policies where the home state of the insured, as defined in chapter 515I, is Iowa.

4. The *"applicable percent"* for purposes of subsection 3 is the following:

a. For calendar years beginning before the 2004 calendar year, two percent.

b. For the 2004 calendar year, one and three-fourths percent.

c. For the 2005 calendar year, one and one-half percent.

d. For the 2006 calendar year, one and one-fourth percent.

e. For the 2007 and subsequent calendar years, one percent.

5. Except as provided in subsection 6, the premium tax shall be paid on or before March 1 of the year following the calendar year for which the tax is due. The commissioner may suspend or revoke the license of a company or association that fails to pay its premium tax on or before the due date.

6. *a.* Each insurance company and association transacting business in this state whose Iowa premium tax liability for the preceding calendar year was one thousand dollars or more shall remit on or before June 1, on a prepayment basis, an amount equal to one-half of the premium tax liability for the preceding calendar year.

b. In addition to the prepayment amount in paragraph *"a"*, each life insurance company or association which is subject to tax under subsection 1 of this section and each mutual health service corporation which is subject to tax under section 432.2 shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 calendar year, four percent.

(2) For prepayment in the 2004 calendar year, twenty-one percent.

(3) For prepayment in the 2005 and subsequent calendar years, fifty percent.

c. In addition to the prepayment amount in paragraph *"a"*, each insurance company or association, other than a life insurance company or association, which is subject to tax under subsection 3 shall remit on or before August 15, on a prepayment basis, an additional amount equal to the following percent of the premium tax liability for the preceding calendar year as follows:

(1) For prepayment in the 2003 and 2004 calendar years, eleven percent.

(2) For prepayment in the 2005 calendar year, twenty-six percent.

(3) For prepayment in the 2006 and subsequent calendar years, fifty percent.

d. The sums prepaid by a company or association under this subsection shall be allowed as credits against its premium tax liability for the calendar year during which the payments are made. If a prepayment made under this subsection exceeds the annual premium tax liability, the excess shall be allowed as a credit against subsequent prepayment or tax liabilities. The commissioner of insurance shall authorize the department of revenue to make a cash refund to an insurer, in lieu of a credit against subsequent prepayment or tax liabilities, if the insurer demonstrates the inability to recoup the funds paid via a credit. The

commissioner shall adopt rules establishing eligibility criteria for such a refund and a refund process. The commissioner may suspend or revoke the license of a company or association that fails to make a prepayment on or before the due date.

[C51, §464; R60, §718; C73, §807; C97, §1333; S13, §1333, 1333-d; C24, 27, 31, 35, 39, §**7021, 7022, 7025;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.1; 81 Acts, ch 142, §1; 82 Acts, ch 1231, §1]

88 Acts, ch 1159, §1; 2002 Acts, ch 1119, §169; 2002 Acts, ch 1158, §2 – 6; 2003 Acts, ch 108, §73; 2003 Acts, ch 145, §286; 2004 Acts, ch 1175, §337, 338, 348; 2005 Acts, ch 70, §2; 2006 Acts, ch 1117, §3; 2007 Acts, ch 137, §2; 2012 Acts, ch 1025, §17, 22

Referred to in §87.4, 432.2, 432.5, 432A.9, 507A.4, 507A.9, 511.40, 514B.31, 515.24, 515I.2, 515I.3, 515I.10, 518.18, 518A.35, 520.19

432.2 Mutual service corporations.

Notwithstanding section 432.1, a hospital service corporation, medical service corporation, pharmaceutical service corporation, optometric service corporation, and any other service corporation operating under chapter 514 shall pay as taxes to the director of revenue an amount equal to the applicable percent, as provided in section 432.1, subsection 2, of the gross amount of payments received during the preceding calendar year for subscriber contracts covering residents in this state after deducting the amounts returned to subscribers upon canceled subscriber contracts and rejected applications. Section 432.1, subsections 5 and 6, apply to the tax imposed by this section.

85 Acts, ch 239, §1; 2002 Acts, ch 1158, §7; 2003 Acts, ch 145, §286

Referred to in §432.1

432.3 Receipts — certificate of authority.

At the time of filing the annual tax return and the final payment of said taxes, said companies and associations shall take duplicate receipts therefor, one of which shall be filed with the commissioner of insurance, and upon filing of said receipt, and not until then, the commissioner of insurance shall issue the annual certificate as provided by law.

[C73, §807; C97, §1333; S13, §1333; C24, 27, 31, 35, 39, §**7023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.3; 81 Acts, ch 142, §2]

432.4 Deduction for debts.

No deduction or exemption from the taxes herein provided shall be allowed for or on account of any indebtedness owing by any such insurance company or association; provided, however, that companies doing a fire insurance business may deduct from the gross amount of premiums received, the amount of premiums returned upon canceled policies issued upon property situated in this state.

[C97, §1333; S13, §1333; C24, 27, 31, 35, 39, §**7024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.4]

432.5 Risk retention groups.

A risk retention group organized and operating pursuant to Pub. L. No. 99-563, also known as the Risk Retention Amendments of 1986, shall pay as taxes to the director of revenue an amount equal to the applicable percent, as provided in section 432.1, subsection 4, of the gross amount of the premiums written during the previous calendar year for risks placed in this state. A resident or nonresident producer shall report and pay the taxes on the premiums for risks that the producer has placed in this state with or on behalf of a risk retention group. The failure of a risk retention group to pay the tax imposed in this section shall result in the risk retention group being considered an unauthorized insurer under chapter 507A.

87 Acts, ch 138, §1; 2003 Acts, ch 145, §286; 2004 Acts, ch 1110, §4; 2006 Acts, ch 1117, §4

Referred to in §515E.4

432.6 Personal and real property.

Every insurance corporation or association organized under the laws of this state, not including corporations with capital stock, county mutuals, and fraternal beneficiary associations, which county mutuals and fraternal beneficiary associations are not organized for pecuniary profit, shall, on or before the twenty-sixth day of January in each year, for the

purpose of assessment of its property, furnish to the assessor of the assessment district in which its principal place of business is located, a statement verified by its president, showing specifically with reference to the year next preceding the first day of January then last past:

1. A duplicate of the statement required by law to be made to the commissioner of insurance for the said year last past.

2. A detailed statement of all its property and assets of every kind and nature whatsoever, and the value of each item thereof, including surplus, guaranty, and reserve fund, and the amount of each.

[S13, §1333-b; C24, 27, 31, 35, 39, §**7027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.6]

Referred to in §432.7

432.7 Assessment.

The assessor shall, upon the receipt of the statements, and from other information acquired by the assessor, assess against every corporation or association referred to in section 432.6, the actual value of each parcel of real estate situated in the assessment district of the assessor, and all the property shall be assessed at the same rate, and for the same purposes as the property of private individuals, as provided in section 441.21.

[S13, §1333-b; C24, 27, 31, 35, 39, §**7028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.7]

89 Acts, ch 296, §58

432.8 Reserved.

432.9 Debts deductible.

In ascertaining the indebtedness or liability of such corporation, company, or association, a debt shall be deemed to exist on account of its liability on the policies, certificates or other contracts of insurance issued by it equal to the amount of the surplus or other funds accumulated by any such corporation or association for the purpose of fulfilling its policies, certificates, or other contracts of insurance, and which can be used for no other purpose.

[S13, §1333-c; C24, 27, 31, 35, 39, §**7030;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §432.9]

432.10 Sufficiency of remitted tax — notice.

The commissioner of insurance shall determine whether or not the tax remitted is correct. If the tax remitted is not sufficient, the commissioner shall notify the delinquent company of the amount of such delinquency and certify the amount thereof to the department of revenue which shall proceed to collect such delinquency.

[C71, 73, 75, 77, 79, 81, §432.10]

2003 Acts, ch 145, §286

432.11 Premium tax exemption for basic benefit health plans. Repealed by 2002 Acts, ch 1119, §111.

432.12 Premium tax credit for employer sponsored health plan premium credit. Repealed by 2001 Acts, ch 69, §38, 39.

432.12A Historic preservation tax credit.

The taxes imposed under this chapter shall be reduced by a historic preservation tax credit allowed under chapter 404A.

2002 Acts, ch 1003, §4, 5; 2007 Acts, ch 165, §7, 9; 2014 Acts, ch 1118, §11, 12; 2015 Acts, ch 30, §122; 2017 Acts, ch 29, §124

432.12B Venture capital fund investment tax credit. Repealed by 2010 Acts, ch 1138, §25, 26.

432.12C Investment tax credits.

1. The tax imposed under this chapter shall be reduced by an investment tax credit authorized pursuant to section 15E.43 for an investment in a qualifying business.

2. The taxes imposed under this chapter shall be reduced by investment tax credits authorized pursuant to section 15.333A and section 15E.193B, subsection 6, Code 2014.

2002 Acts, ch 1006, §10, 13; 2006 Acts, ch 1158, §60; 2013 Acts, ch 70, §21; 2013 Acts, ch 90, §106; 2014 Acts, ch 1130, §40; 2015 Acts, ch 138, §123, 126, 127

2015 amendment to subsection 1 takes effect July 2, 2015, and applies to equity investments in a qualifying business made on or after that date; 2015 Acts, ch 138, §126, 127

432.12D Endow Iowa tax credit.

The tax imposed under this chapter shall be reduced by an endow Iowa tax credit authorized pursuant to section 15E.305.

2003 Acts, 1st Ex, ch 2, §87, 89

432.12E Tax credits for wind energy production and renewable energy.

The taxes imposed under this chapter shall be reduced by tax credits for wind energy production allowed under chapter 476B and for renewable energy allowed under chapter 476C.

2004 Acts, ch 1175, §407, 418; 2005 Acts, ch 160, §5, 14

432.12F Economic development region revolving fund contribution tax credits. Repealed by 2010 Acts, ch 1138, §15, 16.

432.12G Workforce housing investment tax credit.

The taxes imposed under this chapter shall be reduced by a workforce housing investment tax credit allowed under section 15.355, subsection 3.

2014 Acts, ch 1130, §22, 24 – 26

432.12H Tax credit for certain sales taxes paid by third-party developers.

The taxes imposed under this chapter shall be reduced by a tax credit authorized pursuant to section 15.331C for certain sales taxes paid by a third-party developer.

2006 Acts, ch 1158, §61

432.12I Iowa fund of funds tax credit.

The taxes imposed under this chapter shall be reduced by a tax credit authorized pursuant to section 15E.66, if redeemed, for investments in the Iowa fund of funds.

2006 Acts, ch 1158, §62

432.12J Film qualified expenditure tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.

432.12K Film investment tax credit. Repealed by 2012 Acts, ch 1136, §38 – 41.

432.12L Redevelopment tax credit.

The taxes imposed under this chapter shall be reduced by a redevelopment tax credit allowed under chapter 15, subchapter II, part 9.

2008 Acts, ch 1173, §11; 2009 Acts, ch 41, §129

432.12M Innovation fund investment tax credit.

The taxes imposed under this chapter shall be reduced by an innovation fund investment tax credit allowed under section 15E.52.

2011 Acts, ch 130, §44, 47, 71

432.13 Premium tax exemption — hawk-i program — state employee benefits.

1. Premiums collected by participating insurers under chapter 514I are exempt from premium tax.

2. Premiums received for benefits acquired on behalf of state employees by the

department of administrative services pursuant to section 8A.402, subsection 1, and by the state board of regents pursuant to chapter 262, are exempt from premium tax.

98 Acts, ch 1196, §1, 16; 99 Acts, ch 200, §19, 23; 2003 Acts, ch 145, §259; 2012 Acts, ch 1138, §120

432.14 Statute of limitations.

Within five years after the tax return is filed or within five years after the tax return became due, whichever is later, the commissioner of insurance shall examine the return and determine the tax. An assessment or a claim for credit must be made within five calendar years after the annual tax filing is made. For a five-year period preceding the current calendar year, a company may apply for a credit, or the commissioner may make an assessment, as appropriate. The period of examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

98 Acts, ch 1057, §1

CHAPTER 432A

MARINE INSURANCE TAX

Referred to in §441.47

432A.1 Amount of tax on underwriting profit.
432A.2 Profit within this state.
432A.3 Profit within United States.
432A.4 Computation of net earned premiums.
432A.5 Expenses incurred.
432A.6 Computation of tax on ocean marine insurance profit.
432A.7 Tax payable annually.
432A.8 Filing tax return.
432A.9 Underwriting profits tax in lieu of other taxes.

432A.1 Amount of tax on underwriting profit.

Every insurer authorized to do the business of selling marine insurance in this state, as authorized in section 515.48, shall, with respect to all insurance written within this state upon hulls, freights, or disbursements, or upon goods, wares, merchandise and all other personal property and interests therein, in the course of exportation from or importation into any country, or transportation coastwise including transportation by land or water from point of origin to final destination in respect to or appertaining to or in connection with, any and all risks or perils of navigation, transit or transportation and upon the property while being prepared for and while awaiting shipment, and during any delays, storage, transshipment or reshipment incident thereto, including war risks and marine builder's risks, pay a tax of six and one-half percent on its taxable underwriting profit ascertained as provided in section 432A.2, from such insurance written within this state.

[C75, 77, 79, 81, §432A.1]

432A.2 Profit within this state.

The underwriting profit on such insurance written within this state shall be that proportion of the total underwriting profit of such insurer from such insurance written within the United States which the amount of net premiums of such insurer from such insurance written within this state bears to the total amount of net premiums of such insurer from such insurance written within the United States.

[C75, 77, 79, 81, §432A.2]

Referred to in §432A.1

432A.3 Profit within United States.

The underwriting profit of such insurer on such insurance written within the United States shall be determined by deducting from the net earned premiums on such ocean marine

insurance written within the United States during the taxable year which is the calendar year preceding the date on which such tax is due, the following items:

1. Net losses incurred, which means gross losses incurred during such calendar year under ocean marine insurance contracts written within the United States, less reinsurance claims collected or collectible and less net salvages or recoveries collected or collectible from any source applicable to the corresponding losses under such contracts.

2. Net expenses incurred in connection with such ocean marine contracts, including all state and federal taxes in connection therewith, but in no event shall the aggregate amount of such net expenses deducted exceed forty percent of the net premiums on such ocean marine insurance contracts, ascertained as provided in section 432A.4.

3. Net dividends paid or credited to policyholders on such ocean marine insurance contracts.

[C75, 77, 79, 81, §432A.3]

432A.4 Computation of net earned premiums.

In determining the amount of the tax imposed by this chapter, net earned premiums on ocean marine insurance contracts written within the United States during the taxable year shall be arrived at by deducting from gross premiums written on such contracts during the taxable year all return premiums, premiums on policies not taken, premiums paid for reinsurance of such contracts and net unearned premiums on all such outstanding contracts at the end of the taxable year, and adding to such amount net unearned premiums on such outstanding marine insurance contracts at the end of the calendar year preceding the taxable year.

[C75, 77, 79, 81, §432A.4]

Referred to in §432A.3

432A.5 Expenses incurred.

In determining the amount of the tax imposed by this chapter, net expenses incurred shall be determined as the sum of the following:

1. Specific expenses incurred on such ocean marine insurance business, consisting of all commissions, agency expenses, taxes, licenses, fees, loss adjustment expenses, and all other expenses incurred directly and specifically in connection with such business, less recoveries or reimbursements on account of or in connection with such commissions or other expenses collected or collectible because of reinsurance or from any other source.

2. General expenses incurred on such ocean marine insurance business, consisting of that proportion of general or overhead expenses incurred in connection with such business which the net premiums on such ocean marine insurance written during the taxable year bear to the total net premiums written by such insurer from all classes of insurance written by it during the taxable year. Within the meaning of this subsection, general or overhead expenses shall include salaries of officers and employees, printing and stationery, all taxes of this state and of the United States, except as included in subsection 1, and all other expenses of such insurer, not included in subsection 1, after deducting expenses specifically chargeable to any or all other classes of insurance business.

[C75, 77, 79, 81, §432A.5]

432A.6 Computation of tax on ocean marine insurance profit.

In determining the amount of the tax imposed by this chapter, the taxable underwriting profit of such insurer on such ocean marine insurance business written within this state, shall be ascertained as follows:

1. In the case of every such insurer which has written any such business within this state during three calendar years immediately preceding the year in which such taxes were payable, the taxable underwriting profit shall be determined by adding or subtracting, as the case may be, the underwriting profit or loss on all such insurance written within the United States, ascertained as hereinbefore provided, for each of such three years and dividing by three.

2. In the case of every such insurer other than as specified in subsection 1 such

taxable underwriting profit, if any, shall be the underwriting profit, if any, on such ocean marine insurance business written within this state during the taxable year, ascertained as hereinbefore provided, but after such insurer has written such ocean marine insurance business within this state during three calendar years, an adjustment shall be made on the three-year average basis by ascertaining the amount of tax payable in accordance with subsection 1.

[C75, 77, 79, 81, §432A.6]

432A.7 Tax payable annually.

The tax imposed by this chapter shall be paid annually, on or before the first day of June, by every insurer authorized to do the business of marine insurance in this state during any one or more of the preceding three calendar years, and the calendar year next preceding such June 1 shall be deemed the taxable year within the meaning of this section.

[C75, 77, 79, 81, §432A.7]

432A.8 Filing tax return.

Every insurer liable to pay the tax shall, on or before June 1 of each year, file with the commissioner of insurance a tax return in accordance with or upon forms prescribed by the commissioner of insurance. The tax shown to be due, if any, shall be paid to the director of revenue who shall issue to the insurer a receipt in duplicate, one of which shall be filed with the commissioner of insurance before issuance of the annual certificate as provided by law.

[C75, 77, 79, 81, §432A.8]

2003 Acts, ch 145, §286

432A.9 Underwriting profits tax in lieu of other taxes.

The tax imposed by this chapter shall be paid upon the marine underwriting profits, if any, upon all marine insurance business written in this state each calendar year. The tax on gross premiums under section 432.1 shall not be levied on marine insurance premiums reportable in a tax return prescribed by the commissioner of insurance to record taxable underwriting profit, if any, defined herein. The tax return required shall be in lieu of all other tax requirements imposed by section 432.1.

[C75, 77, 79, 81, §432A.9]

CHAPTER 433

TELEGRAPH AND TELEPHONE COMPANIES TAX

Referred to in §29C.24, 331.401, 427.1(2), 427.1(40)(d), 427.1(40)(e), 427.1(40)(g), 427A.1, 427B.17, 429.1, 441.19, 441.21, 441.47, 441.73

433.1 Statement required.
433.2 Additional statement.
433.3 Failure to make statement.
433.4 Assessment and exemption.
433.4A Competitive long distance telephone company property.
433.5 Actual value per mile — exemption value per mile.
433.6 Taxable value. Repealed by 2013 Acts, ch 123, §35, 38, 39.
433.7 Hearing.
433.8 Assessment in each county — how certified.
433.9 Entry of certificate.
433.10 Rate of taxation — collection.
433.11 Other real property.
433.12 Definitions.
433.13 Line operated by railroad.
433.14 Maps required.
433.15 Failure to file.
433.16 Applicability — future repeal.

433.1 Statement required.

Every telegraph and telephone company operating a line in this state shall, on or before the first day of May in each year, furnish to the department of revenue a statement verified by its president or secretary showing:

1. The total number of miles owned, operated, or leased within the state, with a separate showing of the number leased.

2. The average number of poles per mile, and the whole number of poles on its lines in this state.

3. The total number of miles in each separate line or division thereof, also the average number of separate wires thereon.

4. The whole number of stations on each line, and the value of the same, including furniture.

5. The whole number of instruments on each separate line, and the gross rental charges per instrument, where the same are rented to patrons of the company making the return, together with the number of stations maintained, other than railroad stations.

6. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, on business originating and terminating in this state.

7. The gross receipts and operating expenses of said company for the year ending December 31 next preceding, and not included in the statement made under subsection 6 hereof.

8. The total capital stock of said company.

9. The number of shares of capital stock issued and outstanding, and the par or face value of each share.

10. The market value of such shares of stock on the first day of January next preceding, and if such shares have no market value, the actual value thereof.

11. All real estate and other property owned by such company and subject to local taxation within this state.

12. The specific real estate, together with the permanent improvements thereon, owned by such company and situated outside this state and taxed as other real estate in the state where located, with a specific description of each piece, where located, and the purpose for which the same is used, and the actual value thereof in the locality where situated.

13. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

14. The total length of the lines of said company.

15. The total length of the lines of said company outside this state.

[C97, §1328; S13, §1328; C24, 27, 31, 35, 39, §**7031;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.1]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §22, 75

Referred to in §433.2, 433.3

433.2 Additional statement.

Upon the receipt of the statements required in section 433.1 from the several companies, the department of revenue shall examine the statements. If the department deems the statements insufficient and that further information is requisite, the department shall require the officer making the statements to make such other or further statement as the department may desire.

[C97, §1329; S13, §1329; C24, 27, 31, 35, 39, §**7032;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.2]

2003 Acts, ch 145, §286; 2014 Acts, ch 1092, §92; 2015 Acts, ch 109, §23, 75

433.3 Failure to make statement.

In case of failure or refusal of any company to make out or deliver to the department of revenue the statements required in section 433.1, such company shall forfeit and pay to the state one hundred dollars for each day such report is delayed beyond the first day of May, to be sued and recovered in any proper form of action in the name of the state, and on the relation of the director of revenue, and such penalty, when collected, shall be paid into the general fund of the state.

[C97, §1329; S13, §1329; C24, 27, 31, 35, 39, §**7033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.3]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §24, 75

433.4 Assessment and exemption.

1. The department of revenue shall on or before October 31 each year, find the actual

value of the property of telegraph and telephone companies in this state that is used by the companies in the transaction of telegraph and telephone business, taking into consideration the information obtained from the statements required, and any further information the department can obtain, using the same as a means for determining the actual value of the property of the companies within this state. The department shall also take into consideration the valuation of all property of the companies, including franchises and the use of the property in connection with lines outside the state, and making these deductions as may be necessary on account of extra value of property outside the state as compared with the value of property in the state, in order that the actual value of the property of the company within this state may be ascertained. The assessment shall include all property of every kind and character whatsoever, real, personal, or mixed, used by the companies in the transaction of telegraph and telephone business. The property so included in the assessment shall not be taxed in any other manner than as provided in this chapter.

2. *a.* For assessment years beginning on or after January 1, 2013, each company assessed for taxation under this chapter shall receive a partial exemption from taxation on the value of the company's property as provided in this subsection.

b. For the assessment year beginning January 1, 2013, the total amount of the exemption for each company shall be equal to the sum of the following amounts:

(1) An amount equal to twenty percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds zero dollars but does not exceed twenty million dollars.

(2) An amount equal to seventeen and five-tenths percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds twenty million dollars but does not exceed fifty-five million dollars.

(3) An amount equal to twelve and five-tenths percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds fifty-five million dollars but does not exceed five hundred million dollars.

(4) An amount equal to ten percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds five hundred million dollars.

c. For the assessment year beginning January 1, 2014, and each assessment year thereafter, the total amount of the exemption for each company shall be equal to the sum of the following amounts:

(1) An amount equal to forty percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds zero dollars but does not exceed twenty million dollars.

(2) An amount equal to thirty-five percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds twenty million dollars but does not exceed fifty-five million dollars.

(3) An amount equal to twenty-five percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds fifty-five million dollars but does not exceed five hundred million dollars.

(4) An amount equal to twenty percent of the actual value of the property of such company for that assessment year, as determined under subsection 1, that exceeds five hundred million dollars.

3. For the assessment years beginning January 1, 2019, January 1, 2020, and January 1, 2021, following the partial exemption from taxation under subsection 2, each company assessed for taxation under this chapter shall receive an additional exemption from taxation on the value of the company's property as provided in this subsection.

a. For the assessment year beginning January 1, 2019, the amount of the additional exemption for each company shall be equal to twenty-five percent of the amount of the company's actual value, as determined under subsection 1, remaining following application of the exemption under subsection 2 for the assessment year.

b. For the assessment year beginning January 1, 2020, the amount of the additional exemption for each company shall be equal to fifty percent of the amount of the company's

actual value, as determined under subsection 1, remaining following application of the exemption under subsection 2 for the assessment year.

c. For the assessment year beginning January 1, 2021, the amount of the additional exemption for each company shall be equal to seventy percent of the amount of the company's actual value, as determined under subsection 1, remaining following application of the exemption under subsection 2 for the assessment year.

[C97, §1330; S13, §1330; C24, 27, 31, 35, 39, §**7034;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.4]

95 Acts, ch 83, §23; 2003 Acts, ch 145, §286; 2009 Acts, ch 60, §9; 2013 Acts, ch 123, §31, 38, 39; 2014 Acts, ch 1092, §93; 2015 Acts, ch 109, §25, 75; 2018 Acts, ch 1158, §14

Referred to in §433.5, 433.8

433.4A Competitive long distance telephone company property.

For assessment years beginning before January 1, 2022, the director of revenue shall assess the property of a long distance telephone company, as defined in section 476.1D, subsection 10, Code 2018, previously classified by the utilities board as a competitive long distance telephone company under section 476.1D, subsection 10, Code 2018, which property is first assessed for taxation in this state on or after January 1, 1996, in the same manner as all other property assessed as commercial property by the local assessor under chapters 427, 427A, 427B, 428, and 441.

2019 Acts, ch 152, §42 – 44

Section applies retroactively to July 1, 2018; 2019 Acts, ch 152, §44

NEW section

433.5 Actual value per mile — exemption value per mile.

1. The department of revenue shall ascertain the actual value per mile of the property of each company within this state by dividing the total actual value, as ascertained under section 433.4, subsection 1, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the actual value per mile of line of the property of such company within this state.

2. The department of revenue shall ascertain the exemption value per mile of the property of each company within this state by dividing the amount of the total exemption for that company determined under section 433.4, subsections 2 and 3, by the number of miles of line of such company within the state, and the result shall be deemed and held to be the exemption value per mile of line for that company.

[S13, §1330-a; C24, 27, 31, 35, 39, §**7035;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.5]

2003 Acts, ch 145, §286; 2013 Acts, ch 123, §32, 38, 39; 2015 Acts, ch 109, §26, 75; 2018 Acts, ch 1158, §15

433.6 Taxable value. Repealed by 2013 Acts, ch 123, §35, 38, 39.

433.7 Hearing.

At the time of determination of value by the department of revenue, any company interested shall have the right to appear, by its officers or agents, before the department of revenue and be heard on the question of the valuation of its property for taxation.

[S13, §1330-a; C24, 27, 31, 35, 39, §**7037;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.7]

2003 Acts, ch 145, §286; 2009 Acts, ch 60, §10; 2010 Acts, ch 1061, §58; 2015 Acts, ch 109, §27, 75

433.8 Assessment in each county — how certified.

The department of revenue shall, for the purpose of determining what amount shall be assessed to each company in each county of the state into which the line of the said company extends, certify to the several county auditors of the respective counties into, over, or through which said line extends the number of miles of line in the county for that company, the actual value per mile of line for that company, and the exemption value per mile of line for that

company for exemptions received pursuant to section 427.1, subsection 40, section 433.4, or any other exemptions. In no case, however, shall the taxable value of the property be reduced below zero.

[S13, §1330-b; C24, 27, 31, 35, 39, §**7038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.8]

2003 Acts, ch 145, §286; 2013 Acts, ch 123, §33, 38, 39; 2015 Acts, ch 109, §28, 75; 2015 Acts, ch 120, §42, 45

Referred to in §331.512, 433.9

2015 amendment by 2015 Acts, ch 120, §42, applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 120, §45

433.9 Entry of certificate.

At the first meeting of the board of supervisors held after the certification made under section 433.8 is received by the county auditor, the board shall cause such certification to be entered in its minute book, and make and enter therein an order stating the length of the lines, the actual value of the property, and the exempted value of the property of each of said companies situated in each city, township, or lesser taxing district in its county, as fixed by the department of revenue. The value certified by the department of revenue, following application of the percentage of actual value under section 441.21, and following the application of the exemption value certified by the department of revenue, shall constitute the taxable value of said property for taxing purposes, and the taxes on said property when collected by the county treasurer shall be disposed of as other taxes on real estate. The county auditor shall transmit a copy of said order to the council or trustees of each city or township in which the lines of said company extend.

[S13, §1330-c; C24, 27, 31, 35, 39, §**7039;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.9]

2003 Acts, ch 145, §286; 2013 Acts, ch 123, §34, 38, 39; 2015 Acts, ch 109, §29, 75

Referred to in §331.512

433.10 Rate of taxation — collection.

All telegraph and telephone property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purposes as the property of individuals within such counties, cities, townships, or lesser taxing districts, and the county treasurer shall collect such taxes at the same time and in the same manner as other taxes, and the same penalties for the nonpayment shall be due and collectible as for the nonpayment of individual taxes.

[S13, §1330-d; C24, 27, 31, 35, 39, §**7040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.10]

Referred to in §331.512, 331.559

433.11 Other real property.

Land, lots, and other real property belonging to a telegraph company or telephone company not used exclusively in its telegraph or telephone business are subject to assessment and taxation on the same basis as other property of individuals in the counties where situated.

[S13, §1330-e; C24, 27, 31, 35, 39, §**7041;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.11]

89 Acts, ch 296, §59

Referred to in §427.1(2)

433.12 Definitions.

1. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Company"* as used in this chapter means any person, partnership, association, corporation, or syndicate that owns or operates, or is engaged in operating, any telegraph or telephone line, whether formed or organized under the laws of this state or elsewhere.

"*Company*" includes a city that owns or operates a municipal utility providing local exchange services pursuant to chapter 476.

[S13, §1330-f; C24, 27, 31, 35, 39, §**7042;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.12]

95 Acts, ch 83, §24; 99 Acts, ch 63, §6, 8; 2000 Acts, ch 1148, §1; 2008 Acts, ch 1032, §106

433.13 Line operated by railroad.

No telegraph line shall be assessed which is owned and operated by any railroad company exclusively for the transaction of its business, and which has been duly reported as such in its annual report under the laws providing for the taxation of railroad property.

[C97, §1332; C24, 27, 31, 35, 39, §**7043;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.13]

433.14 Maps required.

On or before the first day of August 1904, each telephone or telegraph company owning or operating a telephone or telegraph line, any part of which lies within the state of Iowa, shall file with the several county auditors of the counties within which any part of its line is located, a map of all its lines within said county, except its line within any platted city, drawn to a scale of not less than one inch to four miles, on which the location of the line or lines of said company is correctly shown. The map of any line situated upon any highway or street which is the dividing line between taxing districts shall show on which side of said street or highway said line is situated and shall locate all points at which said line may cross said street or highway. A statement showing the length of pole line in each taxing district of each company shall be filed when no map of the pole lines of such company is required under the terms of this section. A telephone or telegraph company whose line is situated upon the right-of-way of a railway may file, in lieu of the map required to be filed by the provisions of this section, a certificate setting forth along what lines of railway said company's telephone or telegraph line extends. On or before the first day of March 1905, and annually thereafter, like maps, statements, or certificates shall be filed with the several county auditors of counties in which any part of said lines may have been extended, constructed, relocated, or taken down entirely, during the preceding calendar year, showing the correct location of all such new or relocated lines, and the location of any part abandoned or taken down, as the same existed on the thirty-first day of December preceding; provided county auditors of the several counties shall, upon application of any company owning or operating a telephone or telegraph line in their respective counties, furnish a map or maps accurately showing the boundaries of all taxing districts in said county, and the public highways located within such taxing districts.

[S13, §1400-a; C24, 27, 31, 35, 39, §**7044;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.14]

Referred to in §331.512, 433.15, 437.15

433.15 Failure to file.

In the event of the failure or refusal of any telephone or telegraph company, owning or operating any telephone or telegraph line not situated upon the right-of-way of a railway, to file the map required under section 433.14, at the time and according to the conditions named, then the county auditor may cause the map to be prepared by the county surveyor and the cost of it shall, in the first place, be audited and paid by the board of supervisors of the county and the amount shall be by the board levied as a special tax against the company and the property of the company, which shall be collected in the same manner as county taxes.

[S13, §1400-b; C24, 27, 31, 35, 39, §**7045;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §433.15]

83 Acts, ch 123, §178, 209

Referred to in §331.427, 331.512, 437.15

Collection of taxes, see chapter 445

433.16 Applicability — future repeal.

1. This chapter applies to the assessment and taxation of telephone and telegraph company property for assessment years beginning before January 1, 2022.

2. This chapter is repealed on July 1, 2024.
2018 Acts, ch 1158, §16

CHAPTER 434

RAILWAY COMPANIES TAX

Referred to in §29C.24, 331.401, 426C.1, 426C.4, 427A.1, 427B.17, 429.1, 441.21, 441.47, 441.73

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434.19	Failure to file.
434.20	Property assessed by local authorities.
434.21	Roadbeds.
434.22	Levy and collection of tax.
434.23	Rates — purposes.

434.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

434.2 When assessed — statement required.

On or before October 31 each year, the department of revenue shall assess all of the property of each railway corporation in the state, excepting the lands, lots, and other real estate belonging to the railway corporation and not used in the operation of any railway, excepting railway bridges across the Mississippi and Missouri rivers, and excepting grain elevators. For the purpose of making the assessment, the president, vice president, general manager, general superintendent, receiver, or such other officer of the railway corporation as the department of revenue may designate, shall, on or before the first day of April in each year, furnish to the department of revenue a verified statement showing in detail for the year ended December 31 next preceding:

1. The whole number of miles of railway owned, operated, or leased by such corporation or company within and without the state.
2. The whole number of miles of railway owned, operated, or leased within the state, including double tracks and sidetracks, the mileage of the main line and branch lines to be stated separately, and showing the number of miles of track in each county.
3. A full and complete statement of the cost and actual present value of all buildings of every description owned by said railway company within the state not otherwise assessed.
4. The total number of ties per mile used on all its tracks within the state.
5. The weight of rails per yard in main line, double tracks, and sidetracks.
6. The number of miles of telegraph lines owned and used within the state.
7. The total number of engines, and passenger, chair, dining, official, express, mail, baggage, freight, and other cars, including handcars and boarding cars used in constructing and repairing such railway, in use on its whole line, and the sleeping cars owned by it, and the number of each class on its line within the state, each class to be valued separately.
8. Any and all other movable property owned by said railway within the state, classified and scheduled in such manner as may be required by the department of revenue.
9. The gross earnings of the entire road, and the gross earnings in this state.
10. The operating expenses of the entire road, and the operating expenses within this state.

11. The net earnings of the entire road, and the net earnings within this state.

[C73, §810, 1317, 1318; C97, §1334; S13, §1334; C24, 27, 31, 35, 39, §**7046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.1]

C2001, §434.2

2003 Acts, ch 145, §286; 2009 Acts, ch 60, §11; 2015 Acts, ch 109, §30, 31, 75; 2019 Acts, ch 59, §130

Referred to in §434.14

Unnumbered paragraph 1 amended

434.3 through 434.5 Reserved.

434.6 Sleeping and dining cars.

In addition to the matters required to be contained in the statement made by the company for the purposes of taxation, such statement shall show the number of sleeping and dining cars not owned by such corporation, but used by it in operating its railway in this state during each month of the year for which the return is made, the value of each car so used, and also the number of miles each month said cars have been run or operated on such railway within the state, and the total number of miles said cars have been run or operated each month within and without the state. Such statement shall show the average daily sleeping car and dining car service or wheelage operated on each part or division of the line or system within the state, designating the points on the line where variations occur, with the mileage of that part having the same daily service or wheelage.

[C97, §1340; S13, §1340; C24, 27, 31, 35, 39, §**7051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.6]

Referred to in §434.16

434.7 Gross earnings.

For the purpose of making reports to the department of revenue, the gross earnings of railway companies, owning or operating a line or lines of railway partly within this state and partly within another state, or other states, or territory, or territories, upon their line or lines within this state, shall be ascertained and reported by said railway companies as follows, to wit: The aggregate of the earnings upon business originating and terminating within this state, upon business originating in this state and terminating elsewhere, upon business originating elsewhere and terminating in this state, and upon business neither originating nor terminating in this state but carried on or done over the line or lines in this state or over some part thereof, shall be reported; and with respect to all such interstate business the earnings in this state for the purpose of report shall be actually computed upon the basis of the length of haul or carriage in this state as compared with the length of haul or carriage elsewhere. It is hereby declared that for the purpose of making reports looking to the assessment of railway property for taxation, the gross earnings or business done or carried partly within this state and partly in another state, or other states, or territories, shall be that proportion of the entire earnings of such business that the haul or carriage in this state bears to the entire haul or carriage.

[S13, §1340-a; C24, 27, 31, 35, 39, §**7052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.7]

2003 Acts, ch 145, §286

Referred to in §434.10, 434.12

434.8 Method of accounting.

The director of revenue shall have the power to prescribe such rules and regulations with respect to the keeping of accounts by the railway companies doing business in this state as will insure the accurate division of earnings as aforesaid, and uniformity in reporting the same to the department of revenue.

[S13, §1340-b; C24, 27, 31, 35, 39, §**7053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.8]

2003 Acts, ch 145, §286

Referred to in §434.10, 434.12

434.9 Net earnings.

The director of revenue shall have the power to prescribe a method for all railway companies doing business in this state, together with the rules and regulations, for the ascertainment of the net earnings of the railway lines in this state, to the end that all such railway companies, in ascertaining and making report of net earnings, shall proceed upon the same basis and in a uniform manner.

[S13, §1340-c; C24, 27, 31, 35, 39, §**7054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.9]

2003 Acts, ch 145, §286

Referred to in §434.10, 434.12

434.10 Reports additional.

The reports provided for in sections 434.7 to 434.9 are not in lieu of, but in addition to, the reports provided for by law, and they shall be made at the time and as a part of the reports already required.

[S13, §1340-d; C24, 27, 31, 35, 39, §**7055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.10]

Referred to in §434.12

434.11 Additional rules and regulations.

The rules, regulations, method, and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or print to the said several railway companies and shall be and become binding upon said railway companies as provided in chapter 17A, provided, however, that the director shall have the power to prescribe supplemental or additional rules, regulations, and requirements in the manner prescribed by chapter 17A.

[S13, §1340-e; C24, 27, 31, 35, 39, §**7056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.11]

2003 Acts, ch 145, §286

Referred to in §434.12

434.12 Refusal to obey.

If any railway company shall fail or refuse to obey or conform to the rules, regulations, method, and requirements so made or prescribed by the director of revenue under the provisions of sections 434.7 to 434.11 or to make the reports therein provided, the department of revenue shall proceed to assess the property of such railway company so failing or refusing, according to the best information obtainable, and shall then add to the taxable valuation of such railway company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

[S13, §1340-f; C24, 27, 31, 35, 39, §**7057;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.12]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §32, 75

434.13 Operating expenses.

There shall not be included in said operating expenses any payments for interest or discount, or construction of new tracks, except needed sidings, for raising or lowering tracks above or below crossings at grade in cities, for new equipment except replacements, for reducing any bonded or permanent debt, nor for any other item of operating expenses not fairly and reasonably chargeable as such in railway accounts.

[C97, §1335; C24, 27, 31, 35, 39, §**7058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.13]

434.14 Amended statement.

The department of revenue may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 434.2, or any other items deemed by the department important, to be furnished the department by such railway corporation within thirty days from such demand, in such form as the department may designate, which shall be

verified as required for the original statement. The returns, both original and amended, shall show such other facts as the department, in writing, shall require.

[C73, §1318; C97, §1335; C24, 27, 31, 35, 39, §**7059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.14]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §33, 75

434.15 Assessment of railways.

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire railway within the state, except as otherwise provided, and the actual value so ascertained shall be assessed as provided by section 441.21, and shall include the right-of-way, roadbed, bridges, culverts, rolling stock, depots, station grounds, shops, buildings, gravel beds, and all other property, real and personal, exclusively used in the operation of such railway. In assessing said railway and its equipments, the department of revenue shall take into consideration the gross earnings per mile for the year ending January 1, preceding, and any and all other matters necessary to enable the department to make a just and equitable assessment of said railway property. If a part of any railway is without this state, then, in estimating the value of its rolling stock and movable property, the department shall take into consideration the proportion which the business of that part of the railway lying within the state bears to the business of the railway without this state.

Trackless trolleys, buses, cars and vehicles used for the transportation of passengers owned and operated by any urban transit company as a part of an urban transit system shall not be included in the determination of the value of an urban transit system for taxation purposes.

[C73, §1319; C97, §1336; C24, 27, 31, 35, 39, §**7060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.15]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §34, 75

Referred to in §434.16, 443.22

434.16 Assessment of sleeping and dining cars.

The department of revenue shall, at the time of the assessment of other railway property for taxation, assess for taxation the average number of sleeping and dining cars as provided in section 434.6 so used by such corporation each month and the assessed value of said cars shall bear the same proportion to the entire value thereof that the monthly average number of miles such cars have been run or operated within the state shall bear to the monthly average number of miles such cars have been used or operated within and without the state. Such valuation shall be in the same ratio as that of the property of individuals, and shall be added to the assessed valuation of the corporation, fixed under section 434.15.

[C97, §1341; C24, 27, 31, 35, 39, §**7061;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.16]

2003 Acts, ch 145, §286; 2008 Acts, ch 1031, §51; 2015 Acts, ch 109, §35, 75

See §441.21

434.17 Certification to county auditors.

On or before October 31 each year, the department of revenue shall transmit to the county auditor of each county, through and into which any railway may extend, a statement showing the length of the main track within the county, and the assessed value per mile of the same, as fixed by a ratable distribution per mile of the assessed valuation of the whole property.

[C73, §1320; C97, §1337; S13, §1337; C24, 27, 31, 35, 39, §**7062;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.17]

2003 Acts, ch 145, §286; 2009 Acts, ch 60, §12; 2015 Acts, ch 109, §36, 75

Referred to in §434.22

434.18 Plats.

Every railroad company owning or operating a line of railroad within this state shall, on or before the first day of August 1902, place on file in the office of the county auditor of each county in the state into which any part of the lines of any said company lies, a plat of the lines of said companies within said county, showing the length of their said lines and the area of the land owned or occupied by said companies in each government subdivision of land not included within the platted portion of any city, within each of said counties, and the length

of the said lines within the platted portion of cities. Companies having on file such plats of part or all of their lines, in any of said counties, shall be required to file plats only of that part of their lines not fully shown as above required on the plats now on file. On the first day of January of each year hereafter, like plats shall be filed of all new lines or extensions of existing lines built or completed within the calendar year preceding.

[S13, §1337-a; C24, 27, 31, 35, 39, §**7063;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.18]

Referred to in §434.19

434.19 Failure to file.

In the event of the failure or refusal of any railroad company to file the plats required under section 434.18, at the time or according to the conditions named, then the county auditor may cause them to be prepared by the county surveyor and their cost shall, in the first place, be audited and paid by the board of supervisors, and the amount shall be levied by the board as a special tax against the company and the property of the company, which shall be collected as county taxes.

[S13, §1337-b; C24, 27, 31, 35, 39, §**7064;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.19]

83 Acts, ch 123, §179, 209

Referred to in §331.427

434.20 Property assessed by local authorities.

Lands, lots, and other real estate belonging to any railway company, not used exclusively in the operation of the several roads, and all railway bridges across the Mississippi and Missouri rivers, and grain elevators, shall be subject to assessment and taxation on the same basis as property of individuals in the several counties where situated.

[C73, §808; C97, §1342; C24, 27, 31, 35, 39, §**7065;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.20]

See also §427.13

434.21 Roadbeds.

No real estate used by railway corporations for roadbeds shall be included in the assessment to individuals of the adjacent property, but all such real estate shall be the property of such companies for the purpose of taxation.

[C73, §809; C97, §1344; C24, 27, 31, 35, 39, §**7066;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.21]

434.22 Levy and collection of tax.

At the first meeting of the board of supervisors held after the statement of the department of revenue under section 434.17 is received by the county auditor, the board shall cause the same to be entered on its minute book, and make and enter in the minute book an order stating the length of the main track and the assessed value of each railway lying in each city, township, or lesser taxing district in its county, through or into which the railway extends, as fixed by the department of revenue, which shall constitute the taxable value of the property for taxing purposes; and the taxes on the property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of the order to the council or trustees of the city or township.

[C73, §1321; C97, §1338; C24, 27, 31, 35, 39, §**7067;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.22]

2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §55; 2015 Acts, ch 109, §37, 75; 2016 Acts, ch 1073, §117

Referred to in §331.512, 331.559

434.23 Rates — purposes.

All such railway property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships, and lesser taxing districts.

[C73, §1322; C97, §1339; C24, 27, 31, 35, 39, §**7068;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §434.23]

CHAPTER 435

PROPERTY TAXES ON MANUFACTURED AND MOBILE HOMES

Referred to in §29C.24, 321.24, 321.30, 321.46, 321.101, 321.123, 427A.1, 441.47, 445.1, 555B.2, 555B.3, 555C.1, 555C.3, 557B.1

This chapter not enacted as a part of this title;
transferred from chapter 135D in Code 1993

435.1 Definitions.
435.2 Placement and taxation.
435.3 through 435.17 Reserved.
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435.35 Existing home outside of manufactured home community or mobile home park — exemption. Repealed by 2009 Acts, ch 133, §191.

435.1 Definitions.

The following definitions shall apply to this chapter:

1. Unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Home"* means a mobile home or a manufactured home.

3. *"Manufactured home"* means a factory-built structure built under authority of 42 U.S.C. §5403, that is required by federal law to display a seal from the United States department of housing and urban development, and was constructed on or after June 15, 1976.

4. *"Manufactured home community"* means the same as land-leased community defined in sections 335.30A and 414.28A. The term *"manufactured home community"* shall not be construed to include manufactured or mobile homes, buildings, tents, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

5. *"Mobile home"* means any vehicle without motive power used or so manufactured or constructed as to permit its being used as a conveyance upon the public streets and highways and so designed, constructed, or reconstructed as will permit the vehicle to be used as a place for human habitation by one or more persons; but shall also include any such vehicle with motive power not registered as a motor vehicle in Iowa. A *"mobile home"* is not built to a mandatory building code, contains no state or federal seals, and was built before June 15, 1976.

6. *"Mobile home park"* means a site, lot, field, or tract of land upon which three or more mobile homes or manufactured homes, or a combination of any of these homes, are placed on developed spaces and operated as a for-profit enterprise with water, sewer or septic, and electrical services available. The term *"mobile home park"* shall not be construed to include

manufactured or mobile homes, buildings, tents, or other structures temporarily maintained by any individual, educational institution, or company on their own premises and used exclusively to house their own labor or students.

7. *"Modular home"* means a factory-built structure which is manufactured to be used as a place of human habitation, is constructed to comply with the Iowa state building code for modular factory-built structures, as adopted pursuant to section 103A.7, and must display the seal issued by the state building code commissioner.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135D.1]

86 Acts, ch 1245, §1114

C93, §435.1

94 Acts, ch 1110, §3 – 6, 24; 95 Acts, ch 57, §10, 26; 97 Acts, ch 121, §15, 16; 98 Acts, ch 1107, §17, 18, 33; 2000 Acts, ch 1148, §1; 2001 Acts, ch 153, §11; 2002 Acts, ch 1119, §200, 201; 2004 Acts, ch 1086, §71; 2005 Acts, ch 3, §72; 2009 Acts, ch 133, §145

Referred to in §16.45, 358C.13, 384.84, 403.22, 423.3, 426A.11, 427.1(30), 435.24, 441.21, 555B.1, 555C.1, 557B.1, 562B.7, 657A.1

435.2 Placement and taxation.

1. If a mobile home is placed outside a mobile home park, the home is to be assessed and taxed as real estate.

2. If a manufactured home is placed in a manufactured home community or a mobile home park, the home must be titled and is subject to the manufactured or mobile home square foot tax. If a manufactured home is placed outside a manufactured home community or a mobile home park, the home must be titled and is to be assessed and taxed as real estate.

3. For the purposes of this chapter, a modular home shall not be construed to be a mobile home or manufactured home. If a modular home is placed inside or outside a manufactured home community or a mobile home park, the home shall be considered real property and is to be assessed and taxed as real estate. However, if a modular home is placed in a manufactured home community or mobile home park which was in existence on or before January 1, 1998, that modular home shall be subject to property tax pursuant to section 435.22. This subsection shall not prohibit the location of a modular home within a manufactured home community or mobile home park.

2009 Acts, ch 133, §146; 2010 Acts, ch 1069, §53, 147

435.3 through 435.17 Reserved.

435.18 Penalty.

Any person violating any provision of this chapter shall be guilty of a simple misdemeanor.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §135D.18]

C93, §435.18

Referred to in §435.24

435.19 through 435.21 Reserved.

435.22 Annual tax — credit.

1. The owner of each mobile home or manufactured home located within a manufactured home community or mobile home park shall pay to the county treasurer an annual tax. However, when the owner is any educational institution and the home is used solely for student housing or when the owner is the state of Iowa or a subdivision of the state, the owner shall be exempt from the tax. The annual tax shall be computed as follows:

a. Multiply the number of square feet of floor space each home contains when parked and in use by twenty cents. In computing floor space, the exterior measurements of the home shall be used as shown on the certificate of title, but not including any area occupied by a hitching device.

b. (1) If the owner of the home is an Iowa resident, has attained the age of twenty-three years on or before December 31 of the base year, and has an income when included with that of a spouse which is less than eight thousand five hundred dollars per year, the annual tax shall not be imposed on the home. If the income is eight thousand five hundred dollars or

more but less than sixteen thousand five hundred dollars, the annual tax shall be computed as follows:

If the Household Income is:	Annual Tax Per Square Foot:
$ 8,500 — 9,499.99	3.0 cents
9,500 — 10,499.99	6.0
10,500 — 12,499.99	10.0
12,500 — 14,499.99	13.0
14,500 — 16,499.99	15.0

(2) For purposes of this paragraph *"b"*, *"income"* means income as defined in section 425.17, subsection 7, and *"base year"* means the calendar year preceding the year in which the claim for a reduced rate of tax is filed. The home reduced rate of tax shall only be allowed on the home in which the claimant is residing at the time the claim for a reduced rate of tax is filed or was residing at the time of the claimant's death in the case of a claim filed on behalf of a deceased claimant by the claimant's legal guardian, spouse, or attorney, or by the executor or administrator of the claimant's estate.

(3) Beginning with the 1998 base year, the income dollar amounts set forth in this paragraph *"b"* shall be multiplied by the cumulative adjustment factor for that base year as determined in section 425.23, subsection 4.

2. The amount thus computed shall be the annual tax for all homes, except as follows:

a. For the sixth through ninth years after the year of manufacture the annual tax is ninety percent of the tax computed according to subsection 1, paragraph *"a"* or *"b"*, whichever is applicable.

b. For all homes ten or more years after the year of manufacture the annual tax is eighty percent of the tax computed according to subsection 1, paragraph *"a"* or *"b"*, whichever is applicable.

3. The tax shall be figured to the nearest even whole dollar.

4. *a.* A claim for credit for manufactured or mobile home tax due shall not be paid or allowed unless the claim is actually filed with the county treasurer between January 1 and June 1, both dates inclusive, immediately preceding the fiscal year during which the home taxes are due. However, in case of sickness, absence, or other disability of the claimant, or if in the judgment of the county treasurer good cause exists, the county treasurer may extend the time for filing a claim for credit through September 30 of the same calendar year. The county treasurer shall certify to the director of revenue on or before November 15 each year the total dollar amount due for claims allowed.

b. The forms for filing the claim shall be provided by the department of revenue. The forms shall require information as determined by the department.

c. In case of sickness, absence, or other disability of the claimant or if, in the judgment of the director of revenue, good cause exists and the claimant requests an extension, the director may extend the time for filing a claim for credit or reimbursement. However, any further time granted shall not extend beyond December 31 of the year in which the claim was required to be filed. Claims filed as a result of this paragraph shall be filed with the director who shall provide for the reimbursement of the claim to the claimant.

d. The director of revenue shall certify the amount due to each county, which amount shall be the dollar amount which will not be collected due to the granting of the reduced tax rate under subsection 1, paragraph *"b"*.

e. The amounts due each county shall be paid by the department of revenue on December 15 of each year, drawn upon warrants payable to the respective county treasurers. The county treasurer in each county shall apportion the payment in accordance with section 435.25.

f. There is appropriated annually from the general fund of the state to the department of revenue an amount sufficient to carry out this subsection.

[C66, §135D.22; C71, 73, 75, §135D.22, 135D.28; C77, 79, 81, §135D.22; 82 Acts, ch 1251, §1]

83 Acts, ch 172, §2; 83 Acts, ch 189, §1, 2, 4, 6; 86 Acts, ch 1244, §26; 87 Acts, ch 198, §1; 87 Acts, ch 210, §1; 88 Acts, ch 1139, §1; 89 Acts, ch 190, §1; 90 Acts, ch 1250, §1; 91 Acts, ch 267, §513; 92 Acts, 2nd Ex, ch 1001, §215, 216, 225

C93, §435.22

94 Acts, ch 1110, §7 – 9, 24; 94 Acts, ch 1165, §30, 50; 96 Acts, ch 1167, §7, 8; 98 Acts, ch 1107, §19, 33; 98 Acts, ch 1177, §15, 16; 99 Acts, ch 152, §19, 20, 40; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §90

Referred to in §331.429, 331.559, 335.30A, 414.28A, 435.2, 435.26A, 435.27, 435.33

435.23 Exemptions — prorating tax.

1. The manufacturer's and retailer's inventory of mobile homes, manufactured homes, or modular homes not in use as a place of human habitation shall be exempt from the annual tax. All travel trailers, fifth-wheel travel trailers, and towable recreational vehicles shall be exempt from this tax. The homes, travel trailers, fifth-wheel travel trailers, and towable recreational vehicles in the inventory of manufacturers and retailers shall be exempt from personal property tax.

2. The homes coming into Iowa from out of state and located in a manufactured home community or mobile home park shall be liable for the tax computed pro rata to the nearest whole month, for the time the home is actually situated in Iowa.

[C66, 71, 73, 75, 77, 79, 81, §135D.23]

87 Acts, ch 210, §2

C93, §435.23

94 Acts, ch 1110, §10, 24; 2001 Acts, ch 153, §16; 2010 Acts, ch 1108, §11, 15; 2011 Acts, ch 25, §46; 2019 Acts, ch 67, §19, 20

Referred to in §331.559

2019 amendment to subsection 1 applies to manufacturer-dealer agreements pertaining to the sale of new towable recreational vehicles entered into or renewed on or after January 1, 2020; 2019 Acts, ch 67, §20

Subsection 1 amended

435.24 Collection of tax.

1. The annual tax is due and payable to the county treasurer on or after July 1 in each fiscal year and is collectible in the same manner and at the same time as ordinary taxes as provided in sections 445.36, 445.37, and 445.39. Interest at the rate prescribed by law shall accrue on unpaid taxes. Both installments of taxes may be paid at one time. The September installment represents a tax period beginning July 1 and ending December 31. The March installment represents a tax period beginning January 1 and ending June 30. A mobile home, manufactured home, or modular home coming into this state from outside the state, put in use from a retailer's inventory, or put in use at any time after July 1 or January 1, and located in a manufactured home community or mobile home park, is subject to the taxes prorated for the remaining unexpired months of the tax period, but the purchaser is not required to pay the tax at the time of purchase. Interest attaches the following April 1 for taxes prorated on or after October 1. Interest attaches the following October 1 for taxes prorated on or after April 1. If the taxes are not paid, the county treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9. The owner of a home who sells the home between July 1 and December 31 and obtains a tax clearance statement is responsible only for the September tax payment and is not required to pay taxes for subsequent tax periods. If the owner of a home located in a manufactured home community or mobile home park sells the home, obtains a tax clearance statement, and obtains a replacement home to be located in a manufactured home community or mobile home park, the owner shall not pay taxes under this chapter for the newly acquired home for the same tax period that the owner has paid taxes on the home sold. Interest for delinquent taxes shall be calculated to the nearest whole dollar. In calculating interest each fraction of a month shall be counted as an entire month.

2. The home owners upon issuance of a certificate of title or upon transporting to a new site shall file the address, township, and school district, of the location where the home is parked with the county treasurer's office. Failure to comply is punishable as set out in section 435.18. When the new location is outside of a manufactured home community or mobile

home park, the county treasurer shall provide to the assessor a copy of the tax clearance statement for purposes of assessment as real estate on the following January 1.

3. Each manufactured home community or mobile home park owner shall notify monthly the county treasurer concerning any home arriving in or departing from the manufactured home community or park without a tax clearance statement. The records of the owner shall be open to inspection by a duly authorized representative of any law enforcement agency. The manufactured home community or mobile home park owner or manager shall make an annual report to the county treasurer due June 1 of the homes sited in the manufactured home community or mobile home park, listing the owner and mailing address of each home located in the manufactured home community or mobile home park. The report is delinquent if not filed with the county treasurer by June 30. In addition to the annual report, the owner or manager shall also report any changes of homes or owners in a report due December 1, which is delinquent if not filed by December 31. However, if no changes have occurred since the June annual report, the December report is not required to be filed.

4. The tax is a lien on the vehicle senior to any other lien upon it except a judgment obtained in an action to dispose of an abandoned home under section 555B.8. The home bearing a current registration issued by any other state and remaining within this state for an accumulated period not to exceed ninety days in any twelve-month period is not subject to Iowa tax. However, when one or more persons occupying a home bearing a foreign registration are employed in this state, there is no exemption from the Iowa tax. This tax is in lieu of all other taxes general or local on a home.

5. Before a home may be moved from its present site by any person, a tax clearance statement in the name of the owner must be obtained from the county treasurer of the county where the present site is located certifying that taxes are not owing under this section for previous years and that the taxes have been paid for the current tax period. When a person moves a home from real property to a retailer's stock or to a manufactured home community or mobile home park, as defined in section 435.1, a tax clearance statement shall be applied for, and issued, from the county treasurer of the county where the present site is located. When the home is moved to another county in this state, the county treasurer shall forward a copy of the tax clearance statement to the county treasurer of the county in which the home is being relocated. However, a tax clearance statement is not required for a home in a manufacturer's or retailer's stock which has not been used as a place for human habitation. A tax clearance form is not required to move an abandoned home. A tax clearance form is not required in eviction cases provided the manufactured home community or mobile home park owner or manager advises the county treasurer that the tenant is being evicted. If a retailer acquires a home from a person other than a manufacturer, the person shall provide a tax clearance statement in the name of the owner of record to the retailer. The tax clearance statement shall be provided by the county treasurer in a method prescribed by the department of transportation.

6. *a.* As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of current year home taxes. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of current year home taxes.

b. Partial payment of taxes which are delinquent may be made to the county treasurer.

For the installment being paid, payment shall first be applied toward any interest, fees, and costs accrued and the remainder applied to the tax due. A partial payment must equal or exceed the interest, fees, and costs of the installment being paid. A partial payment made under this paragraph shall be apportioned in accordance with section 445.57, however, such partial payment may, at the discretion of the county treasurer, be apportioned either on or before the tenth day of the month following the receipt of the partial payment or on or before the tenth day of the month following the due date of the next semiannual tax installment. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

7. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent taxes.

[C66, 71, 73, 75, 77, 79, 81, §135D.24; 82 Acts, ch 1251, §2]

83 Acts, ch 5, §1, 2, 4, 5; 85 Acts, ch 70, §1; 86 Acts, ch 1139, §1; 86 Acts, ch 1245, §1115; 87 Acts, ch 210, §3 – 5; 88 Acts, ch 1138, §11, 18; 90 Acts, ch 1080, §2; 91 Acts, ch 191, §2, 3; 92 Acts, ch 1016, §1

C93, §435.24

94 Acts, ch 1110, §11, 12, 24; 99 Acts, ch 83, §7; 2000 Acts, ch 1085, §5; 2001 Acts, ch 153, §16; 2005 Acts, ch 34, §11, 26; 2010 Acts, ch 1108, §12, 15; 2012 Acts, ch 1138, §103

Referred to in §331.559, 331.653, 435.25, 435.27, 435.29, 445.5, 445.57

435.25 Apportionment and collection of taxes.

1. The tax and interest for delinquent taxes collected under section 435.24 shall be apportioned in the same manner as though they were the proceeds of taxes levied on real property at the same location as the home.

2. Chapters 446, 447, and 448 apply to the sale of a home for the collection of delinquent taxes and interest, the redemption of a home sold for the collection of delinquent taxes and interest, and the execution of a tax sale certificate of title for the purchase of a home sold for the collection of delinquent taxes and interest in the same manner as though a home were real property within the meaning of these chapters to the extent consistent with this chapter. The certificate of title shall be issued by the county treasurer. The treasurer shall charge ten dollars for each certificate of title, except that the treasurer shall issue a tax sale certificate of title to the county at no charge.

3. When a home is removed from the county where delinquent taxes, regular or special, are owing, or when it is administratively impractical to pursue tax collection through the remedies of this section, all taxes, regular and special, interest, and costs shall be abated by resolution of the county board of supervisors. The resolution shall direct the treasurer to strike from the tax books the reference to that home.

[C66, 71, 73, 75, 77, 79, 81, §135D.25; 82 Acts, ch 1251, §3]

87 Acts, ch 210, §6, 7; 88 Acts, ch 1134, §26; 92 Acts, ch 1016, §2

C93, §435.25

94 Acts, ch 1110, §13, 24; 2018 Acts, ch 1041, §127

Referred to in §331.559, 435.22

Apportionment of property taxes, see §445.38

435.26 Conversion to real property.

1. *a.* A mobile home or manufactured home which is located outside a manufactured home community or mobile home park shall be converted to real estate by being placed on a permanent foundation and shall be assessed for real estate taxes. A home, after conversion to real estate, is eligible for the homestead tax credit and the military service tax exemption as provided in sections 425.2 and 426A.11. A taxable mobile home or manufactured home which is located outside of a manufactured home community or mobile home park as of January 1, 1995, is also exempt from the permanent foundation requirements of this chapter until the home is relocated.

b. If a security interest is noted on the certificate of title, the home owner shall tender to

the secured party a mortgage on the real estate upon which the home is to be located in the unpaid amount of the secured debt, and with the same priority as or a higher priority than the secured party's security interest, or shall obtain the written consent of the secured party to the conversion, in which latter case the lien notation on the certificate of title shall suffice to preserve the lienholder's security in the home separate from any interest in the land.

2. After complying with subsection 1, the owner shall notify the assessor who shall inspect the new premises for compliance. If a security interest is noted on the certificate of title, the assessor shall require an affidavit, as defined in section 622.85, from the home owner, declaring that the owner has complied with subsection 1, paragraph "*b*", and setting forth the method of compliance.

a. If compliance with subsection 1, paragraph "*b*", has been accomplished by the secured party accepting the tender of a mortgage, the assessor shall collect the home vehicle title and enter the property upon the tax rolls.

b. If compliance with subsection 1, paragraph "*b*", has been accomplished by the secured party consenting to the conversion without accepting a mortgage, the secured party shall retain the home vehicle title and the assessor shall note the conversion on the assessor's records and enter the property upon the tax rolls. So long as a security interest is noted on the certificate of title, the title to the home will not be merged with title to the land, and the sale or foreclosure of an interest in the land shall not affect title to the home or any security interest in the home.

3. When the property is entered on the tax rolls, the assessor shall also enter on the tax rolls the title number last assigned to the mobile home or manufactured home and the manufacturer's identification number.

[C66, 71, 73, 75, 77, 79, 81, §135D.26]

83 Acts, ch 64, §1; 85 Acts, ch 98, §2; 89 Acts, ch 260, §1; 91 Acts, ch 191, §4, 5

C93, §435.26

94 Acts, ch 1110, §14, 24; 98 Acts, ch 1107, §20, 21, 33; 99 Acts, ch 114, §26; 2001 Acts, ch 153, §16; 2003 Acts, ch 108, §74; 2009 Acts, ch 133, §147

Referred to in §331.559, 435.27, 657A.1

435.26A Surrender of title.

1. A person who owns a manufactured home that is located in a manufactured home community and is installed on a permanent foundation may surrender the manufactured home's certificate of title to the county treasurer for the purpose of assuring eligibility for funds available from mortgage lending programs sponsored by the federal national mortgage association, the federal home loan mortgage corporation, the United States department of agriculture, or any other federal governmental agency or instrumentality that has similar requirements for mortgage lending programs.

2. *a.* Upon receipt of a certificate of title from a manufactured home owner, a county treasurer shall notify the state department of transportation that the certificate of title has been surrendered, remove the registration of title from the county treasurer's records, and destroy the certificate of title.

b. The manufactured home owner or the owner's representative shall provide to the county recorder the identifying data of the manufactured home, including the owner's name, the name of the manufacturer, the model name, the year of manufacture, and the serial number of the home, along with the legal description of the real estate on which the manufactured home is located. In addition, evidence shall be provided of the surrender of the certificate of title. After the surrender of the certificate of title of a manufactured home under this section, conveyance of an interest in the manufactured home shall not require transfer of title so long as the manufactured home remains on the same real estate site.

3. After the surrender of a manufactured home's certificate of title under this section, the manufactured home shall continue to be taxed under section 435.22 and is not eligible for the homestead tax credit or the military service tax exemption. A foreclosure action on a manufactured home whose title has been surrendered under this section shall be conducted as a real estate foreclosure. A tax lien and its priority shall remain the same on a manufactured home after its certificate of title has been surrendered.

4. The certificate of title of a manufactured home shall not be surrendered under this section if an unreleased security interest is noted on the certificate of title.

5. An owner of a manufactured home who has surrendered a certificate of title under this section and requires another certificate of title for the manufactured home is required to apply for a certificate of title under chapter 321. If supporting documents for the reissuance of a title are not available or sufficient, the procedure for the reissuance of a title specified in the rules of the state department of transportation shall be used.

2003 Acts, ch 24, §7, 10; 2003 Acts, ch 179, §128, 159; 2003 Acts, 1st Ex, ch 2, §26, 209; 2011 Acts, ch 25, §143

435.26B Affidavit in lieu of surrender of certificate of title — manufactured and mobile homes.

1. If there is no record that a certificate of title has been issued or surrendered for a manufactured home or mobile home that is located outside a manufactured home community or mobile home park, that has been converted to real estate by being placed on a permanent foundation, and that is entered on the tax rolls, the owner may effectuate a surrender of the certificate of title by recording with the county recorder an affidavit that includes all of the following:

a. The full legal name, Iowa driver's license number or Iowa nonoperator's identification card number, bona fide residence, and mailing address of the owner, and any other identification information required by the state department of transportation. If the owner is a firm, association, or corporation, the affidavit shall contain the bona fide business address and federal employer identification number of the owner.

b. A description of the manufactured or mobile home including, insofar as the specified data may exist with respect to a manufactured or mobile home, the manufacturer, model, year of manufacture, and identification number or other assigned number.

c. A statement of the affiant's title or ownership interest and a statement of all liens, encumbrances, or security interests upon the manufactured or mobile home, including the names and mailing addresses of all persons having any such liens, encumbrances, or security interests.

d. A statement of any facts or information known to the affiant that could affect the validity of title or the existence or validity of any lien, encumbrance, or security interest on the manufactured or mobile home.

e. The name and address of the person from whom the owner purchased or acquired the manufactured or mobile home, including information related to the location and date of purchase or acquisition.

f. The affidavit shall also include an attached written opinion by an attorney licensed to practice law in this state who has examined the abstract of title of the land upon which the manufactured or mobile home is situated. The opinion shall state the names of the owners and holders of mortgages, liens, or other encumbrances on the land upon which the manufactured or mobile home is situated and shall note the encumbrances, along with any bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

g. A statement that the manufactured or mobile home is located outside a manufactured home community or mobile home park, has been converted to real estate by being placed on a permanent foundation, and has been entered on the tax rolls. This statement shall be endorsed by the city or county assessor, as applicable, and include the legal description of the real property upon which the manufactured or mobile home is situated.

h. A statement that the owner has made a diligent search and inquiry but has been unable to locate and produce a manufacturer's certificate of origin or a certificate of title for the manufactured or mobile home and that the owner has no knowledge that a certificate of title has previously been issued or surrendered for the manufactured or mobile home.

i. (1) An endorsement by the state department of transportation that the department has searched its records and has no record of a certificate of title or a surrender of a certificate of title for the manufactured or mobile home and that the department has no record of any ownership interest contrary to the ownership interest asserted by the affiant.

The endorsement shall also specify that the state department of transportation is unable to identify any lien, encumbrance, or security interest contrary to those specified by the affiant.

(2) The state department of transportation shall not conduct any search of records or provide any endorsement until the affidavit has been completed, executed, and endorsed pursuant to paragraphs *"a"* through *"h"* and the affiant has paid a fee not to exceed two hundred dollars. The state department of transportation shall set the amount of the fee by rule.

(3) Following endorsement of the affidavit, the state department of transportation shall return the affidavit to the owner for recording.

(4) If the state department of transportation has endorsed an affidavit, the department shall not issue a certificate of title for the manufactured or mobile home unless the manufactured or mobile home is reconverted under section 435.27.

2. Recording the affidavit with all necessary endorsements and attachments shall establish the surrender of the certificate of title.

3. After the surrender of the certificate of title under this section, a conveyance of an interest in the manufactured or mobile home shall not require a transfer of title if the manufactured or mobile home remains located on the same real property that is identified in the affidavit under subsection 2.

4. A foreclosure action on a manufactured or mobile home for which the certificate of title was surrendered under this section shall be conducted as a real estate foreclosure.

5. A tax lien and its priority shall not be modified as a result of a surrender of title under this section.

6. The state department of transportation shall adopt rules under chapter 17A to implement this section. The rules adopted by the state department of transportation shall include a standardized form for an affidavit required under this section.

2010 Acts, ch 1108, §13, 15; 2010 Acts, ch 1193, §53, 80

435.27 Reconversion.

1. A mobile home or manufactured home converted to real estate under section 435.26 may be reconverted to a home as provided in this section when it is moved to a manufactured home community or mobile home park or a manufactured or mobile home retailer's inventory. When the home is located within a manufactured home community or mobile home park, the home shall be taxed pursuant to section 435.22, subsection 1, paragraph *"a"*.

2. *a.* If the vehicular frame of the home can be modified to return it to the status of a mobile home or manufactured home, the owner or a secured party holding a mortgage or certificate of title pursuant to section 435.26 who has obtained possession of the home may apply to the county treasurer as provided in section 321.20 for a certificate of title for the home. If a mortgage exists on the real estate, a security interest in the home shall be given to a secured party not applying for reconversion and noted on the certificate of title with the same priority or a higher priority than the secured party's mortgage interest. A reconversion shall not occur without the written consent of every secured party holding a mortgage or certificate of title.

b. If the secured party has elected to retain the home vehicle title pursuant to section 435.26, subsection 2, paragraph *"b"*, an owner applying for reconversion shall present to the county treasurer written consent to the reconversion from all secured parties and an affirmation from the secured party holding the title that the title is in its possession and is intact. Upon receipt of the affirmation, the county treasurer shall notify the assessor of the reconversion, which notification constitutes compliance by the owner with subsection 3.

3. After compliance with subsection 2 and receipt of the title, the owner shall notify the assessor of the reconversion. The assessor shall remove the assessed valuation of the home from assessment rolls as of the succeeding January 1 when the home becomes subject to taxation as provided under section 435.24.

85 Acts, ch 98, §1
CS85, §135D.27
89 Acts, ch 260, §2

C93, §435.27
94 Acts, ch 1110, §15, 24; 98 Acts, ch 1107, §22, 33; 2001 Acts, ch 153, §16, 18; 2002 Acts, ch 1119, §57; 2011 Acts, ch 25, §135, 143
Referred to in §435.26B

435.28 County treasurer to notify assessor.
Upon issuance of a certificate of title to a mobile home or manufactured home which is not located in a manufactured home community or mobile home park or retailer's inventory, the county treasurer shall notify the assessor of the existence of the home for tax assessment purposes.
94 Acts, ch 1110, §16, 24; 2001 Acts, ch 153, §16; 2010 Acts, ch 1108, §14, 15

435.29 Civil penalty.
The person who moves the mobile home or manufactured home without having obtained a tax clearance statement as provided in section 435.24 shall pay a civil penalty of one hundred dollars. The penalty money shall be credited to the general fund of the county.
85 Acts, ch 70, §2
CS85, §135D.29
C93, §435.29
94 Acts, ch 1110, §17, 24; 98 Acts, ch 1107, §23, 33

435.30 through 435.32 Reserved.

435.33 Rent reimbursement.
A home owner who qualifies for a reduced tax rate provided in section 435.22 and who rents a space upon which to set the home shall be entitled to the protections provided in sections 425.33 through 425.36 and if the home owner who qualifies for a reduced tax rate believes that a landlord has increased the home owner's rent because the home owner is eligible for a reduced tax rate, the provisions of sections 425.33 and 425.36 shall be applicable.
[C77, 79, 81, §135D.33]
C93, §435.33
94 Acts, ch 1110, §18, 24; 2019 Acts, ch 59, §131
Section amended

435.34 Modular home exemption. Repealed by 2009 Acts, ch 133, §191. See §435.2(3).

435.35 Existing home outside of manufactured home community or mobile home park — exemption. Repealed by 2009 Acts, ch 133, §191. See §435.26(1).

CHAPTER 436

EXPRESS COMPANIES TAX

Repealed by 2002 Acts, ch 1150, §23

CHAPTER 437

ELECTRIC TRANSMISSION LINES TAX

Referred to in §29C.24, 331.401, 427A.1, 427B.17, 429.1, 437A.7, 437A.16, 441.19, 441.21, 441.47, 441.73

See chapter 437A for taxes on certain electricity and natural gas providers

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437.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Company"* means an electric cooperative referred to in section 437A.7, subsection 3, paragraph *"c"*.

3. *"Electric cooperative"* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere.

4. *"Transmission lines"* means electric lines and associated facilities operating at thirty-four thousand five hundred volts or higher voltage, and substations, transformers, and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side.

[SS15, §1346-r; C24, 27, 31, 35, 39, §**7089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.1]

95 Acts, ch 83, §25; 98 Acts, ch 1194, §32, 40; 2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201

Referred to in §420.207

437.2 Statement required.

Every company owning or operating a transmission line or lines for the conduct of electric energy and which line or lines are located within the state, and which said line or lines are also located wholly or partly outside cities, shall, on or before the first day of May in each year, furnish to the department of revenue a verified statement as to its entire line or lines within this state, when all of said line or lines are located outside cities, and as to such portion of its line or lines within this state as are located outside cities, when such line or lines are located partly outside and partly inside cities, showing:

1. The total number of miles of line owned, operated, or leased, located outside cities within this state, with a separate showing of the number of miles leased.

2. The location and length of each division within the state and the character of poles, towers, wires, substation equipment, and other construction of each such division, designating the length and portion thereof in each separate county into which each such division extends.

[SS15, §1346-k; C24, 27, 31, 35, 39, §**7090;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.2]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §38, 75

Referred to in §437.5, 437.6, 437.11, 437.13, 437.15

437.3 Verification.

The verification of any statement required by law shall be made by some member, officer, or agent of the company having knowledge of the facts.

[SS15, §1346-r; C24, 27, 31, 35, 39, §**7091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.3]

98 Acts, ch 1194, §33, 40

Referred to in §420.207

437.4 Additional statement.

Upon receipt of the statements from the companies, the department of revenue shall examine the statements, and if the department deems them insufficient, and that further information is required, the department shall require the company making the statements to make other or further statement as the department deems necessary, notifying the company by mail.

[SS15, §1346-l; C24, 27, 31, 35, 39, §**7092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.4]

86 Acts, ch 1241, §39; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §39, 75

Referred to in §437.5

437.5 Failure to furnish.

In case of the total failure or refusal to make any statement required by sections 437.2 and 437.4 to be made by May 1 in any year, or of failure or refusal to make other or further statement within thirty days from the time the notice is received by the company that the additional statement is required by the department of revenue, the company shall forfeit and pay to the state, one hundred dollars for each day the total failure or refusal to make any report is continued beyond the first day of May of the year in which it is required, or in case of any other or further report required by the department for each day it is delayed beyond thirty days from the receipt of the notice by the company that the additional report is required. The forfeiture shall be sued for and recovered in any proper form of action in the name of the state and on relation of the director of revenue of the state, and the penalty, when collected, shall be paid into the general fund of the state.

[SS15, §1346-l; C24, 27, 31, 35, 39, §**7093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.5]

86 Acts, ch 1241, §40; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §40, 75

437.6 Actual value.

On or before October 31 each year, the department of revenue shall proceed to find the actual value of that part of such transmission line or lines referred to in section 437.2, owned or operated by any company, that is located within this state but outside cities, including the whole of such line or lines when all of such line or lines owned or operated by said company is located wholly outside of cities, taking into consideration the information obtained from the statements required by this chapter, and any further information obtainable, using the same as a means of determining the actual cash value of such transmission line or lines or part thereof, within this state, located outside of cities. The department shall then ascertain the value per mile of such transmission line or lines owned or operated by each company specified in section 437.2, by dividing the total value as above ascertained by the number of miles of line of such company within the state located outside of cities, and the result shall be deemed and held to be the actual value per mile of said transmission line or lines of each of said companies within the state located outside of cities.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7094;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.6]

2003 Acts, ch 145, §286; 2009 Acts, ch 60, §13; 2015 Acts, ch 109, §41, 75

Referred to in §437.11

437.7 Taxable value.

The taxable value of such line or lines of which the department of revenue by this chapter is required to find the value, shall be determined by taking the percentage of the actual value

so ascertained, as provided by section 441.21, and the ratio between the actual value and the assessed or taxable value of the transmission line or lines of each of said companies located outside of cities shall be the same as in the case of the property of private individuals.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.7]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §42, 75

Referred to in §437.11

437.8 Hearing.

At the time of determination of value by the department of revenue, any company interested shall have the right to appear by its officers, agents, and attorneys before the department, and be heard on the question of the value of its property for taxation.

[SS15, §1346-m; C24, 27, 31, 35, 39, §**7096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.8]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §43, 75

Referred to in §437.11

437.9 County assessment — certification.

The department of revenue shall, for the purpose of determining what amount shall be assessed to any one of the companies in each county of the state into which the line or lines of the company extend, multiply the assessed or taxable value per mile of line of the company, as ascertained according to the provisions of this chapter, by the number of miles of line in each of the counties, and the result thereof shall be certified by the department to the several county auditors of the respective counties into, over, or through which the line or lines extend.

[SS15, §1346-n; C24, 27, 31, 35, 39, §**7097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.9]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §44, 75; 2017 Acts, ch 54, §54

Referred to in §437.10, 437.11

437.10 Levy and collection of tax.

At the first meeting of the board of supervisors held after the statements of the department of revenue under section 437.9 are received by the county auditor, the board shall cause such statement to be entered in its minute book and make and enter in the minute book an order stating the length of the lines and the assessed value of the property of each of the companies situated in each township or lesser taxing district in each county outside cities, as fixed by the department of revenue, which shall constitute the taxable value of the property for taxing purposes. The county auditor shall transmit a copy of the order to the trustees of each township and to the proper taxing boards in lesser taxing districts into which the line or lines of the company extend in the county. The taxes on the property when collected by the county treasurer shall be disposed of as other taxes on real estate.

[SS15, §1346-o; C24, 27, 31, 35, 39, §**7098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.10]

2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §56; 2015 Acts, ch 109, §45, 75; 2016 Acts, ch 1073, §118

Referred to in §331.512

437.11 Rate — purposes.

Such portions of the transmission line or lines within the state referred to in section 437.2, as are located outside cities, shall be taxable upon said assessment provided for by sections 437.6 to 437.9 at the same rate, by the same officers and for the same purposes as property of individuals within such counties, townships or lesser taxing districts, outside cities, and the county treasurer shall collect said taxes at the same time and in the same manner as other taxes, and the same penalties shall be due and collectible as for the nonpayment of individual taxes.

[SS15, §1346-p; C24, 27, 31, 35, 39, §**7099;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.11]

437.12 Assessment exclusive.

Every transmission line or part of a transmission line, of which the department of revenue is required by this chapter to find the value, shall be exempt from other assessment or taxation either under sections 428.24 to 428.26, or under any other law of this state except as provided in this chapter.

[SS15, §1346-q; C24, 27, 31, 35, 39, §**7100;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.12]

95 Acts, ch 83, §26; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §46, 75

437.13 Local assessment.

All lands, buildings, machinery, poles, towers, wires, station and substation equipment, and other construction owned or operated by any company referred to in section 437.2, and where this property is located within any city within this state, shall be listed and assessed for taxation in the same manner as provided in sections 428.24, 428.25, and 428.29, for the listing and assessment of that part of the lands, buildings, machinery, tracks, poles, and wires within the limits of any city belonging to individuals or corporations furnishing electric light or power, and where this property, except the capital stock, is situated partly within and partly without the limits of a city. All personal property of every company owning or operating any transmission line referred to in section 437.2, used or purchased by it for the purpose of the transmission line, shall be listed and assessed in the assessment district where usually kept and housed and under sections 428.26 and 428.29.

[SS15, §1346-q; C24, 27, 31, 35, 39, §**7101;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.13]

95 Acts, ch 83, §27

437.14 Cooperative corporations or associations — assessment. Repealed by 98 Acts, ch 1194, §39, 40. See chapter 437A.

437.15 Reassessment — procedure and requirements.

Sections 433.14, 433.15, 439.1, and 439.2 shall apply to the property of transmission lines which are referred to in section 437.2.

[SS15, §1346-t; C24, 27, 31, 35, 39, §**7103;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §437.15]

For future amendment to this section, effective July 1, 2024, see 2018 Acts, ch 1158, §17, 28

CHAPTER 437A

TAXES ON ELECTRICITY AND NATURAL GAS PROVIDERS

Referred to in §29C.24, 257.3, 331.433A, 384.15A, 427.1(2), 427.1(35)(a), 427.1(36)(a), 427.1(37)(a), 427A.1, 427B.17, 428.28, 441.47, 441.73, 476.6, 476B.2, 476B.6, 476B.7, 476B.8, 476C.4, 476C.6

Legislative findings; 98 Acts, ch 1194, §1

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SUBCHAPTER I

INTRODUCTORY PROVISIONS

437A.1 Classification of chapter.

The provisions of this chapter are classified and designated as follows:

1. Subchapter I Introductory Provisions.
2. Subchapter II Generation, Transmission, and Delivery Taxes.
3. Subchapter III Statewide Property Tax.
4. Subchapter IV General Provisions.

98 Acts, ch 1194, §2, 40; 2017 Acts, ch 54, §55

437A.2 Purposes.

The purposes of this chapter are to replace property taxes imposed on electric companies, natural gas companies, electric cooperatives, and municipal utilities with a system of taxation which will remove tax costs as a factor in a competitive environment by imposing like generation, transmission, and delivery taxes on similarly situated competitors who generate, transmit, or deliver electricity or natural gas in the same competitive service area, to preserve revenue neutrality and debt capacity for local governments and taxpayers, to preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of electricity and natural gas in this state, and to provide a system of taxation which reduces existing administrative burdens on state government.

98 Acts, ch 1194, §3, 40

437A.3 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *a.* *"Assessed value"* means the base year assessed value, as adjusted by section 437A.19, subsection 2.

(1) *"Base year assessed value"*, for a taxpayer other than an electric company, natural gas company, or electric cooperative, means the value attributable to property identified in section 427A.1, subsection 1, paragraph *"h"*, certified by the department of revenue to the county auditors for the assessment date of January 1, 1997, and the value attributable to property identified in section 427A.1 and section 427B.17, subsection 8, as certified by the local assessors to the county auditors for the assessment date of January 1, 1997, provided, that for a taxpayer subject to section 437A.17A, such value shall be the value certified by the department of revenue and local assessors to the county auditors for the assessment date of January 1, 1998.

(2) However, *"base year assessed value"*, for purposes of property of a taxpayer that is a

municipal utility, if the property is not a major addition, and the property was initially assessed to the taxpayer as of January 1, 1998, and is not located in a county where the taxpayer had property that was assessed for purposes of this chapter as of January 1, 1997, means the value attributable to such property for the assessment date of January 1, 1998.

(3) For taxpayers that are electric companies, natural gas companies, and electric cooperatives, *"base year assessed value"* means the average of the total of these values for each taxpayer for the assessment dates of January 1, 1993, through January 1, 1997, allocated among taxing districts in proportion to the allocation of the taxpayer's January 1, 1998, assessed value among taxing districts.

(4) *"Base year assessed value"* does not include value attributable to steam-operating property.

b. For new cogeneration facilities, the assessed value shall be determined as provided in section 437A.16A.

2. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

3. *"Centrally assessed property tax"* means property tax imposed with respect to the value of property determined by the director pursuant to section 427.1, subsection 2, Code 1997, section 428.29, Code 1997, and chapters 437 and 438, Code 1997, and allocated to electric service and natural gas service. For purposes of this subsection, *"natural gas service"* means such service provided by natural gas pipelines permitted pursuant to chapter 479.

4. *a.* *"Cogeneration facility"* means a facility with a capacity of two hundred megawatts or less that uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy and, except for ownership, meets the criteria to be a qualifying cogeneration facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601 et seq., and related federal regulations.

b. *"New cogeneration facility"* means any of the following:

(1) A cogeneration facility, regardless of capacity, which is first placed into service on or after January 1, 2009, that uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy and meets the criteria to be a qualifying cogeneration facility as defined in the federal Public Utility Regulatory Policies Act of 1978, 16 U.S.C. §2601 et seq., and related federal regulations.

(2) A cogeneration facility in service prior to January 1, 2009, that became subject to the replacement generation tax under section 437A.6 for the first time on or after January 1, 2009.

5. *"Consumer"* means an end user of electricity or natural gas used or consumed within this state. *"Consumer"* includes any master-metered facility even though the electricity or natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A *"master-metered facility"* means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

6. *"Delivery"* means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

7. *"Director"* means the director of revenue.

8. *"Electric company"* means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. *"Electric company"* includes a combination natural gas company and electric company. *"Electric company"* does not include an electric cooperative or a municipal utility.

9. *"Electric competitive service area"* means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the

electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

10. *"Electric cooperative"* means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider. *"Generation and transmission electric cooperative"* means an electric cooperative which owns both transmission lines and property which is used to generate electricity. *"Distribution electric cooperative"* means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

11. *a. "Electric power generating plant"* means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

b. "New electric power generating plant" means any of the following:

(1) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, municipal utility, or any other taxpayer, and that initially generates electricity subject to replacement generation tax under section 437A.6 on or after January 1, 2003.

(2) An electric power generating plant that is owned by or leased to an electric company, electric cooperative, municipal utility, or any other taxpayer, that initially generated electricity subject to replacement generation tax under section 437A.6 before January 1, 2003, and that is sold, leased, or transferred, in full or in part, on or after January 1, 2003. If any portion of an electric power generating plant is sold, the entire plant shall be treated as if it were a new electric power generating plant.

12. *"Incorporated city utility provider"* means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

13. *"Lease"* means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. *"Capital lease"* means a lease classified as a capital lease under generally accepted accounting principles.

14. *a. "Local amount"* means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

b. "Local amount" for the purposes of determining the local taxable value for a new electric power generating plant shall annually be determined to be equal up to the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the taxable value of the new electric power generating plant. *"Local amount"* for the purposes of determining the local assessed value for a new electric power generating plant shall be annually determined to be the percentage share of the taxable value of the new electric power generating plant allocated as the local amount multiplied by the total assessed value of the new electric power generating plant.

15. *"Local taxing authority"* means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

16. *"Local taxing district"* means a geographic area with a common consolidated property tax rate.

17. *"Low capacity factor electric power generating plant"* means, for any tax year, an electric power generating plant, with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. *"Net capacity factor"* means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active

state until it is decommissioned. *"Net actual generation"* means net electrical megawatt hours produced by a plant during the preceding calendar year.

18. *"Major addition"* means either of the following:

a. Any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

(1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

(2) An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this subparagraph, *"electric power generating plant"* means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F or 476A in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.

(3) Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(4) Any property described in section 437A.16 in this state acquired by a person not previously subject to taxation under this chapter.

b. (1) Any acquisition on or after January 1, 2004, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in electric transmission operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(2) For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

19. *"Municipal electric cooperative association"* means an electric cooperative, the membership of which is composed entirely of municipal utilities.

20. *"Municipal utility"* means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

21. *"Natural gas company"* means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. *"Natural gas company"* includes a combination natural gas company and electric company. *"Natural gas company"* does not include a municipal utility.

22. *a.* *"Natural gas competitive service area"* means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

(a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.

(b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.

(c) Davis county.

(d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Carroll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer road and Tenth street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Graettinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Ewoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Remsen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

(ai) The city of Sac City in Sac county and the area within two miles of the city limits.

(aj) The city of Sanborn in O'Brien county and the area within two miles of the city limits.

(ak) The city of Sioux Center in Sioux county and the area within two miles of the city limits.

(al) The city of Tipton in Cedar county and the area within two miles of the city limits.

(am) The city of Waukee in Dallas county and the area within two miles of the city limits of Waukee as of January 1, 1999, not including any part of the cities of Clive, Urbandale, or West Des Moines.

(an) The city of Wayland plus Jefferson and Trenton townships in Henry county.

(ao) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.

(ap) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.

(aq) The city of Whittemore in Kossuth county and the area within two miles of the city limits.

(ar) Scott, Canaan, and Wayne townships in Henry county.

(as) The city of Woodbine in Harrison county and the area within two miles of the city limits.

(at) Nishnabotna township in Crawford county.

(2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships; Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Nodaway, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Breast townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennezette, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county; Wapello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Franklin, Grant, Spring Grove, Jackson, Boulder, Washington, Otter Creek, Maine, Buffalo, and Fayette townships; Monroe township west and north of Otter Creek to its intersection with County Home road, and north of County Home road in Linn county; the city of Walford in Linn county; Farmington township in Cedar county; Wapsinonoc, Goshen, Moscow, Wilton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kossuth county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Cerro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the south half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis

townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships in Sac county; Reading township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennezette, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Harlan, Fremont, Oran, and Jefferson townships; Winneshiek county; Allamakee county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montrose, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. *"Township"* includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

23. *"Operating property"* means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

24. *"Pole miles"* means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. *"Conduit bank"* means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

25. *"Purchasing member"* means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

26. *"Replacement tax"* means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. *"Self-generator"* means a person, other than an electric company, natural gas company,

electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, *"on-site facility"* means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, *"parcel of land"* includes each separate parcel of land shown on the tax list.

28. *"Statewide amount"* means the acquisition cost of any major addition which is not a local amount.

29. *"Tax year"* means a calendar year beginning January 1 and ending December 31.

30. *"Taxable value"* means as defined in section 437A.19, subsection 2, paragraph *"e"*.

31. *"Taxpayer"* means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

32. *"Transfer replacement tax"* means the excise tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

33. *"Transmission line"* means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

34. *"Utilities board"* means the utilities board created in section 474.1.

98 Acts, ch 1194, §4, 40; 99 Acts, ch 114, §27; 99 Acts, ch 152, §21 – 23, 40; 2000 Acts, ch 1114, §2, 18; 2000 Acts, ch 1148, §1; 2001 Acts, ch 145, §1, 2, 13; 2001 Acts, 1st Ex, ch 4, §5, 36; 2002 Acts, ch 1119, §58, 200, 201; 2003 Acts, ch 106, §2 – 6, 15; 2003 Acts, ch 145, §286; 2004 Acts, ch 1096, §1, 4; 2006 Acts, ch 1010, §112; 2007 Acts, ch 150, §1; 2009 Acts, ch 133, §148; 2010 Acts, ch 1161, §1 – 3, 11; 2011 Acts, ch 25, §91; 2012 Acts, ch 1023, §49, 50; 2013 Acts, ch 90, §248; 2014 Acts, ch 1092, §94

Referred to in §437A.15, 437A.16A, 476.86

SUBCHAPTER II

GENERATION, TRANSMISSION, AND DELIVERY TAXES

Referred to in §437A.1

437A.4 Replacement tax imposed on delivery of electricity.

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

a. The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph *"a"*, the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transference, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability

allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

b. The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

c. The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph "*a*" for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association's purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric cooperative association to its purchasing municipal utility members. For purposes of this subsection, "*excess property tax liability*" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 3, paragraph "*c*", is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph "*c*", subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to

consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of electric-related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

a. Delivery of electricity generated by a low capacity factor electric power generating plant.

b. Delivery of electricity to a city from such city's municipal utility, provided such electricity is used by the city for the public purposes of the city.

c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.

d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. *a.* If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "*a*" and "*b*", with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "*a*", and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "*e*", for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph "*a*", and subsection 2, shall be as follows:

(1) If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

(2) If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

b. For purposes of paragraph "*a*", subparagraphs (1) and (2), in computing the tax rate under subsection 1, paragraph "*a*", and subsection 2, for tax year 1999, the director shall

use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph *"c"*, in lieu of the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

c. The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

d. Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph *"a"*, and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph *"e"*, to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

e. For purposes of this section, *"base year amount"* means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs *"a"* and *"b"*, with respect to any electric competitive service area.

9. *a.* After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph *"c"*, subparagraph (4), to the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

b. After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a generation and transmission electric cooperative, and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph *"c"*, subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

c. If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph *"c"*, subparagraph (4).

d. Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs *"a"* and *"b"* are reported as provided in section 437A.8, subsection 1, paragraph *"f"*. The new electric delivery tax rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall

be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §5, 40; 2011 Acts, ch 25, §92

Referred to in §437A.3, 437A.8, 437A.15, 437A.17A

437A.5 Replacement tax imposed on delivery of natural gas.

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the following:

a. The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph *"a"*, the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each such natural gas competitive service area.

c. (1) Notwithstanding paragraphs *"a"* and *"b"*, a natural gas delivery rate of one and eleven-hundredths of a cent (.0111) per therm of natural gas is imposed on all natural gas delivered to or consumed by a new electric power generating plant for purposes of generating electricity within the state during the tax year. However, if a new electric power generating plant is exempt from a replacement generation tax pursuant to section 437A.6, subsection 1, paragraph *"b"*, the natural gas delivery rate for the municipal service area that the new plant serves shall instead apply for deliveries of natural gas by the municipal gas utility.

(2) The provisions of subsection 8 shall not apply to the therms of natural gas subject to the delivery tax set forth in this paragraph.

(3) If the new electric power generating plant is part of a cogeneration facility or new cogeneration facility, the natural gas delivery rate for that plant shall be the lesser of the natural gas delivery rate established in this paragraph *"c"* or the rate per therm of natural gas as in effect at the time of the initial natural gas deliveries to the plant for the natural gas competitive service area where the new electric power generating plant is located.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally assessed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of

natural gas-related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. *a.* Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities that are placed in service on or after January 1, 1999, and that are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

b. This subsection shall not apply to natural gas delivered to or consumed by new electric power generating plants.

7. *a.* Delivery of natural gas to a city from such city's municipal utility is not subject to the replacement delivery tax imposed under subsection 1, paragraph "*a*", and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

b. Subsection 2 does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

c. Subsection 1 does not apply to natural gas which is delivered, by a pipeline that is not permitted pursuant to chapter 479, into a facility owned by or leased to a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, if the person who consumes the gas uses the gas for the purpose of bypassing the local natural gas company or municipal utility, regardless of whether such facility existed on January 1, 1999.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "*a*" and "*b*", with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "*a*", and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "*e*", for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph "*a*", and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported

by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. (1) For purposes of paragraphs "*a*" and "*b*", in computing the tax rate under subsection 1, paragraph "*a*", and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, paragraph "*a*", in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

(2) The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

(3) Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "*a*", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "*e*", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

(4) For purposes of this subsection, "*base year amount*" means for calendar years prior to tax year 1999, the sum of the therms of natural gas delivered to consumers within a natural gas competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "*a*" and "*b*", with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

98 Acts, ch 1194, §6, 40; 2000 Acts, ch 1114, §3, 4, 17, 18; 2003 Acts, ch 106, §7, 8, 15; 2010 Acts, ch 1161, §4, 11; 2011 Acts, ch 25, §93, 143

Referred to in §437A.3, 437A.8, 437A.17A

437A.6 Replacement tax imposed on electric generation.

1. A replacement generation tax of six hundredths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every person generating electricity, except electricity generated by the following:

a. A low capacity factor electric power generating plant.

b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F or 476A.

c. Wind energy conversion property subject to section 427B.26 or eligible for a tax credit under chapter 476B.

d. Methane gas conversion property subject to section 427.1, subsection 29, to the extent the property is used in connection with, or in conjunction with, a publicly owned sanitary landfill or used to collect waste that would otherwise be collected by, or deposited with, a publicly owned sanitary landfill.

e. Facilities owned by or leased to a state university or university of science and technology, to the extent electricity generated by such facilities is consumed exclusively by such state university or university of science and technology.

f. On-site facilities wholly owned by or leased in their entirety to a self-generator.

2. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand eight hundred forty-seven ten-thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on

every hydroelectric generating power plant with a generating capacity of one hundred megawatts or greater.

3. In lieu of the replacement generation tax imposed in subsection 1, a replacement generation tax of one thousand ninety-nine ten-thousandths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every electric company which owns a joint interest in an electric power generating plant in this state and which has a joint interest in less than five pole miles of transmission lines in this state.

4. For purposes of this section, if a generation facility is jointly owned or leased, the number of kilowatt-hours of electricity subject to the replacement generation tax shall be the number of kilowatt-hours of electricity generated and dispatched by the jointly held generation facility to the account of the taxpayer.

5. For purposes of this section, the number of kilowatt-hours generated by a generation facility shall exclude any kilowatt-hours used to operate that generation facility.

98 Acts, ch 1194, §7, 40; 2000 Acts, ch 1114, §5, 6, 17, 18; 2001 Acts, ch 145, §3, 13; 2001 Acts, 1st Ex, ch 4, §6, 36; 2004 Acts, ch 1175, §408, 418; 2009 Acts, ch 179, §225 – 227

Referred to in §437A.3, 437A.4, 437A.5, 437A.8, 437A.16, 476B.6

437A.7 Replacement tax imposed on electric transmission.

1. *a.* A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

(1) Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

(2) Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.

(3) Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

(4) Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

b. The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. In lieu of the replacement transmission tax imposed in subsection 1, a municipal utility whose replacement transmission tax liability for the tax year 1999 was limited to the tax imposed by this section and whose anticipated tax revenues from a taxpayer, as defined in section 437A.15, subsection 4, for the tax year 1999, exceeded its replacement transmission tax by more than one hundred thousand dollars shall be subject to replacement transmission tax on all transmission lines owned by or leased to the municipal utility as of the last day of the tax year 2000 as follows:

a. Three thousand twenty-five dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.

b. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.

3. The following shall not be subject to the replacement transmission tax:

a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F or 476A.

b. Transmission lines owned by or leased to a lessor when the transmission lines are subject to the replacement transmission tax payable by the lessee or sublessee.

c. Any electric cooperative which owns, leases, or owns and leases in total less than seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

4. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

98 Acts, ch 1194, §8, 40; 99 Acts, ch 152, §24, 40; 2001 Acts, ch 145, §4, 13; 2001 Acts, 1st Ex, ch 4, §7, 36; 2003 Acts, ch 106, §9, 15; 2011 Acts, ch 25, §143

Referred to in §437.1, 437A.3, 437A.4, 437A.8, 437A.16

437A.8 Return and payment requirements — rate adjustments.

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.

b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.

d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or leased by the taxpayer on the last day of the tax year.

e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph "*a*", section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph "*a*", section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.

f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph "*a*" or "*b*", and the date on which the one-hundred-eighty-day requirement under such paragraph was met.

2. Each taxpayer subject to a municipal transfer replacement tax, on or before March 31 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:

a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.

b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in section 437A.4, subsection 5, and section 437A.5, subsection 5.

c. The transfer replacement taxes imposed by section 437A.4, subsection 1, paragraph "*b*", and section 437A.5, subsection 1, paragraph "*b*", due for the tax year.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.

4. *a.* At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes

among local taxing districts and report such allocations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

b. If a distribution electric cooperative member or a municipal utility purchasing member subject to section 437A.15, subsection 3, paragraph "*b*", does not make timely payment of the correct amount of replacement tax to the generation and transmission electric cooperative, the generation and transmission electric cooperative shall notify the director in writing within ten days after September 10. The director shall then notify the generation and transmission electric cooperative in writing within five days after delivery of notice to the director of the paid amount to be remitted to the appropriate county treasurer and shall also notify the county treasurer. The generation and transmission electric cooperative shall remit the amount determined by the director to the appropriate county treasurer by September 30. If the generation and transmission electric cooperative timely notifies the director and timely remits to the county treasurer the amounts of replacement tax, as determined by the director, the generation and transmission electric cooperative shall not be liable for that unpaid replacement tax due from the distribution electric cooperative member or municipal utility purchasing member. The generation and transmission electric cooperative shall also not be liable for a special utility property tax levy, if any, and shall not be entitled to a tax credit, if any, attributable to the unpaid replacement tax. The county treasurer and the director shall enforce payment of the replacement tax against the appropriate distribution electric cooperative member or municipal utility purchasing member pursuant to sections 437A.9 through 437A.13. The county treasurer shall enforce payment of the special utility property tax levy, if any, against the appropriate distribution electric cooperative member or municipal utility purchasing member. For purposes of this paragraph:

(1) Written notice to the director must be either delivered to the director by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail directed to the attention of the director, be personally delivered to the director, or be served on the director by personal service during business hours. If the notice is mailed, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the director is made.

(2) Written notice to a generation and transmission electric cooperative must be delivered to the cooperative by electronic means, United States postal service, or a common carrier, by ordinary, certified, or registered mail, directed to the attention of the manager of the cooperative, be personally delivered to the manager of the cooperative, or be served on the manager of the cooperative by personal service during business hours. For the purpose of mailing, a notice is considered delivered on the date of the postmark. If a postmark date is not present on the mailed article, the date of receipt of notice shall be considered the date of the mailing. A notice is considered delivered on the date personal service or personal delivery to the office of the manager of the cooperative is made.

c. If a generation and transmission electric cooperative, after notice, does not timely pay the correct amount of replacement tax or special utility property tax levy attributable to the excess property tax liability to the appropriate county treasurer, after receiving the required payment from the distribution electric cooperative member or municipal utility

purchasing member, such replacement tax shall be enforced solely against the generation and transmission electric cooperative under sections 437A.9 through 437A.13, and shall not be enforced against the paying distribution electric cooperative member or municipal utility purchasing member, and the special utility property tax levy shall be enforced solely against the generation and transmission electric cooperative.

d. Notwithstanding paragraph *"a"*, a taxpayer who owns or leases a new electric power generating plant and who has no other operating property in the state of Iowa except for operating property directly serving the new electric power generating plant as described in section 437A.16 shall pay the replacement generation tax associated with the allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remaining replacement generation tax, if any, to the director according to paragraph *"a"* for remittance of the tax to county treasurers. The director shall notify each taxpayer on or before August 31 following a tax year of its remaining replacement generation tax to be remitted to the director. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

If a taxpayer has paid an amount of replacement tax, penalty, or interest which was deposited into the property tax relief fund and which was not due, all of the provisions of section 437A.14, subsection 1, paragraph *"b"*, shall apply with regard to any claim for refund or credit filed by the taxpayer. The director shall have sole discretion as to whether the erroneous payment will be refunded to the taxpayer or credited against any replacement tax due, or to become due, from the taxpayer that would be subject to deposit in the property tax relief fund.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less, provided that all electric companies, electric cooperatives, municipal utilities, and natural gas companies shall file a return, regardless of the taxpayer's replacement tax liability.

7. Following the determination of electric and natural gas delivery tax rates by the director pursuant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in determining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph *"a"*, and section 437A.5, subsection 3, paragraph *"a"*. Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph *"e"*, for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is

determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

98 Acts, ch 1194, §9, 40; 2000 Acts, ch 1114, §7, 17, 18; 2001 Acts, ch 145, §5 – 8, 13; 2003 Acts, ch 106, §10, 15; 2010 Acts, ch 1161, §5, 11

Referred to in §437A.4, 437A.5, 437A.9, 437A.14, 437A.15, 437A.16, 437A.16A, 437A.17B, 437A.24

437A.9 Failure to file return — incorrect return.

1. As soon as practicable after a return required by section 437A.8, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade any tax or in the case of a failure to file a return. The chief financial officer of a city shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

2. If a return required by section 437A.8, subsection 1, is not filed, or if such return when filed is incorrect or insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

98 Acts, ch 1194, §10, 40

Referred to in §421.10, 437A.8, 437A.22

437A.10 Judicial review.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing authorities, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

98 Acts, ch 1194, §11, 40; 99 Acts, ch 152, §25, 40

Referred to in §437A.8, 437A.22

437A.11 Lien — actions authorized.

1. Whenever a taxpayer who is liable to pay a tax imposed by subchapter II refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording

the lien. The requirement for recording, as applied to the tax imposed by subchapter II, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

2. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

a. The name of the taxpayer.

b. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.

c. Time the notice of lien was filed for recording.

d. Date of notice.

e. Amount of lien then due.

f. Date of assessment.

g. Date when the lien is satisfied.

3. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, shall index the notice in the index, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

4. The county treasurer or chief financial officer of the city shall pay recording fees as provided in section 331.604, for the recording of the lien, or for its satisfaction.

5. Upon the payment of the replacement tax as to which a county treasurer or chief financial officer of a city has filed notice with a county recorder, the county treasurer or chief financial officer of the city shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall record the notice of satisfaction showing the applicable entries specified in sections 558.49 and 558.52.

6. Section 445.3 applies with respect to the replacement taxes and special utility property tax levies and penalties and interest imposed by this chapter, except for the provisions limiting the commencement of actions. In addition, at the county treasurer's discretion, chapters 446, 447, and 448 apply in the enforcement of the special utility property tax levies, but any tax deed issued shall not extinguish a tax lien or judgment lien for replacement taxes that has attached to the property.

98 Acts, ch 1194, §12, 40; 2000 Acts, ch 1114, §8, 18; 2001 Acts, ch 44, §20; 2009 Acts, ch 27, §18 – 20

Referred to in §331.604, 437A.8, 437A.15

437A.12 Service of notice.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

98 Acts, ch 1194, §13, 40

Referred to in §437A.8, 437A.22

437A.13 Penalties — offenses — limitation.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

98 Acts, ch 1194, §14, 40
Referred to in §437A.8, 437A.15, 437A.22

437A.14 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.

1. *a.* If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. (1) Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

(2) If an amount of overpaid replacement tax is attributable to payment of excess property tax liability as described in section 437A.15, subsection 3, paragraph "*b*", a claim for refund or credit may only be made by, and a refund or credit shall only be made to, the person who

made such excess payment. Such claim shall not be made by the person who collected the tax from another person.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area shall not be divulged to any person or entity, other than the taxpayer, the department of revenue, or the internal revenue service for use in a matter unrelated to tax administration. This prohibition precludes persons or entities other than the taxpayer, the department of revenue, or the internal revenue service from obtaining such information from the department of revenue. A subpoena, order, or process which requires the department of revenue to produce such information to a person or entity, other than the taxpayer, the department of revenue, or internal revenue service, for use in a nontax proceeding is void.

4. *a.* Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

b. Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, is not a violation of this section.

5. Local taxing authority employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

98 Acts, ch 1194, §15, 40; 99 Acts, ch 152, §26, 27, 40; 2000 Acts, ch 1114, §9, 17, 18; 2009 Acts, ch 133, §246; 2011 Acts, ch 25, §94, 143; 2012 Acts, ch 1021, §77

Referred to in §437A.8, 437A.22, 476B.2, 476B.7, 476C.6

437A.15 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. *a.* (1) All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying

the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

(2) When allocating natural gas delivery taxes on deliveries of natural gas to a new electric power generating plant, ten percent of those natural gas delivery taxes shall be allocated over new gas property built to directly serve the new electric power generating plant and ninety percent of those natural gas delivery taxes shall be allocated to the general property tax equivalents of all gas property within the natural gas competitive service area or areas where the new gas property is located.

b. Notwithstanding other provisions of this section, if excess property tax liability has been assigned pursuant to section 437A.4, subsection 3, paragraph "*c*", subparagraph (4), and has not been removed, the allocation of electric delivery replacement tax attributable to the excess property tax liability shall be made by the director and the department of management so as to allocate the electric delivery replacement tax attributable to the excess property tax liability among those local taxing districts in which the property associated with the excess property tax liability is located. In order to ensure that the electric delivery replacement tax attributable to the excess property tax liability is paid to the appropriate county treasurer for disposition to the local taxing districts, each distribution electric cooperative member and each municipal utility purchasing member subject to section 437A.4, subsection 3, paragraph "*c*", subparagraph (4), shall pay to the appropriate generation and transmission electric cooperative the electric delivery replacement tax attributable to the excess property tax liability by September 10. The amount of electric delivery replacement tax attributable to the excess property tax liability shall equal that percentage of total electric delivery replacement tax liability that the excess property tax liability bears to the total property tax liability contained in the electric delivery tax component. The generation and transmission electric cooperative shall pay the electric delivery replacement tax attributable to the excess property tax liability to the appropriate county treasurer.

c. If paragraph "*b*" is applicable, on or before August 1, the director shall notify each distribution electric cooperative member, each municipal utility purchasing member, and each generation and transmission electric cooperative of the amount of electric delivery replacement tax to be paid to the generation and transmission electric cooperative. On or before August 1, the director shall notify the generation and transmission electric cooperative of the amount of replacement tax liability attributable to the excess property tax liability that is payable to each county treasurer. The director shall determine the amount of any special utility property tax levy or tax credit attributable to the excess property tax liability which shall be reflected in the amount required to be paid by each distribution electric cooperative member and each municipal utility purchasing member to the generation and transmission electric cooperative.

d. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer's replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

e. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437A.3, subsection 18, paragraph "*a*", subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under paragraph "*a*" of this subsection, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major

addition was acquired shall be applied to the prorated assessed value of the major addition. For purposes of this paragraph, *"prorated assessed value of the major addition"* means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

f. Notwithstanding the provisions of this section, if a taxpayer is a municipal utility or a municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A, the assessed value, other than the local amount, of a new electric power generating plant shall be allocated to each taxing district in which the municipal utility or municipal owner is serving customers and has electric meters in operation in the ratio that the number of operating electric meters of the municipal utility or municipal owner located in the taxing district bears to the total number of operating electric meters of the municipal utility or municipal owner in the state as of January 1 of the tax year. If the municipal utility or municipal owner of an electric power facility financed under the provisions of chapter 28F or 476A has a new electric power generating plant but the municipal utility or municipal owner has no operating electric meters in this state, the municipal utility or municipal owner shall pay the replacement generation tax associated with the new electric power generating plant allocation of the local amount to the county treasurer of the county in which the local amount is located and shall remit the remaining replacement generation tax, if any, to the director at the times contained in section 437A.8, subsection 4, for remittance of the tax to the county treasurers. All remaining replacement generation tax revenues received by the director shall be deposited in the property tax relief fund created in section 426B.1, and shall be distributed as provided in section 426B.2.

4. *a.* On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to assessed value under section 437A.19, subsection 2, paragraph *"a"*, subparagraph (6). *"Anticipated tax revenues from a taxpayer"* means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437A.13.

b. It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection

shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. *a.* The department of management, in consultation with the department of revenue, shall coordinate the utility replacement tax task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders. The director of the department of management and the director of revenue shall serve as co-chairpersons of the task force.

b. The task force shall study the effects of the replacement taxes under this chapter and chapter 437B on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, 2024. If the task force recommends modifications to the replacement tax that will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

98 Acts, ch 1194, §16, 40; 99 Acts, ch 152, §28, 40; 2000 Acts, ch 1114, §10, 11, 17, 18; 2001 Acts, ch 145, §9; 2002 Acts, ch 1050, §37; 2003 Acts, ch 106, §11 – 13, 15; 2003 Acts, ch 145, §286; 2004 Acts, ch 1096, §2, 4; 2005 Acts, ch 25, §1; 2006 Acts, ch 1010, §113; 2007 Acts, ch 150, §2; 2009 Acts, ch 133, §149, 150; 2010 Acts, ch 1161, §6, 11; 2011 Acts, ch 25, §143; 2013 Acts, ch 94, §9, 35, 36; 2016 Acts, ch 1128, §8, 16, 19; 2019 Acts, ch 152, §64

Referred to in §437A.7, 437A.8, 437A.14, 437B.11

2016 amendment to subsection 7, paragraph b, takes effect May 27, 2016, and applies retroactively to January 1, 2016; 2016 Acts, ch 1128, §16, 19

Subsection 7, paragraph b amended

437A.16 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas subject to replacement tax or transfer replacement tax is exempt from taxation except as otherwise provided by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs "*a*" through "*f*", and section 437A.7, subsection 3.

98 Acts, ch 1194, §17, 40; 99 Acts, ch 152, §29, 40

Referred to in §437A.3, 437A.8, 437A.15, 437A.18, 437A.19, 437A.20

437A.16A New cogeneration facilities.

1. *a.* Except as otherwise provided by this chapter, the property of a new cogeneration facility subject to replacement tax that is primarily and directly used in the production, generation, transmission, or delivery of electricity shall be exempt from taxation by means of applying a credit, as computed in this section, representing the value of this exempt property against the assessed value of the entire new cogeneration facility as determined by the local assessor under the provisions of chapters 427, 427A, 427B, 428, 441, and any other applicable abatement and exemption provisions under this Code.

b. Following the March 31 due date for the replacement tax return as required by section 437A.8, the director shall annually determine the assessed value of the new cogeneration facility exempt property by dividing the prior year's replacement tax liability attributable to that facility by the current fiscal year's consolidated taxing district rate for the taxing district where the facility is located, then multiplying the quotient by one thousand. The director shall certify this value to the local assessor on or before April 10 of the current calendar year. The assessor shall apply this certified value as a credit against the total assessed value of the facility. The allowable credit shall not exceed the total value of the new cogeneration facility as determined by the local assessor for the assessment year and any excess credits shall not be applied to any other assessment year.

c. A credit shall not be applied to a new cogeneration facility for the first year the facility becomes subject to the replacement tax if it first became subject to the replacement tax after January 1 of that year. For the first year in which the new cogeneration facility is subject to the replacement tax as of January 1 of that year, the taxpayer shall estimate the total replacement taxes due for that year and report that estimate to the director by March 31, and the director shall base the determination of assessed value from that estimate. If the estimate varies by more than five percent from the actual replacement tax liability for the year in which the facility was first subject to the replacement tax as of January 1, the director shall adjust the next year's assessed value calculation by increasing or decreasing the current replacement tax calculation to reflect the difference between the estimate and the actual replacement tax owed for the year in which the facility was first subject to replacement tax as of January 1.

2. The director shall classify each new cogeneration facility as a separate taxpayer for reporting purposes and shall allocate the entire replacement tax attributable to the new cogeneration facility to the local taxing district or districts where that facility is located. The assessed value of the exempt property of the new cogeneration facility shall be the basis for determining the statewide property tax imposed by section 437A.18.

3. Any cogeneration facility placed in service prior to January 1, 2009, that did not qualify as a self-generator under section 437A.3, subsection 27, as of January 1, 2009, shall be subject exclusively to the replacement tax.

2010 Acts, ch 1161, §7, 11

Referred to in §427B.17, 437A.3, 437A.18

437A.17 Statutes applicable — rate calculations.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

98 Acts, ch 1194, §18, 40

437A.17A Centrally assessed property tax adjustment.

A municipal utility whose property tax assessment for the 1998 assessment year was adjusted by the department of revenue to include depreciation and whose property tax assessment for the 1997 assessment year did not include depreciation in determining its assessment shall be entitled to file a property tax adjustment form provided by the department. The tax adjustment form shall be filed by July 1, 1999. The tax adjustment form shall include an adjusted centrally assessed property tax computation determined by multiplying the centrally assessed property tax which was payable in the fiscal year beginning July 1, 1998, based upon valuation determined for the 1997 assessment year

allocated to electric service and natural gas service by the percentage of adjustment for depreciation made by the department for the 1998 assessment year. The adjusted centrally assessed property tax allocated to electric service and natural gas service shall be used to determine the replacement delivery tax rates in accordance with sections 437A.4 and 437A.5.

99 Acts, ch 152, §30, 40; 2003 Acts, ch 145, §286
Referred to in §437A.3

437A.17B Reimbursement for renewable energy.

A person in possession of a wind energy tax credit certificate issued pursuant to chapter 476B or a renewable energy tax credit certificate issued pursuant to chapter 476C may apply to the director for a reimbursement of the amount of taxes imposed and paid by the person pursuant to this chapter in an amount not more than the person received in wind energy tax credit certificates pursuant to chapter 476B or renewable energy tax credit certificates pursuant to chapter 476C. To obtain the reimbursement, the person shall include with the return required under section 437A.8 the wind energy tax credit certificates issued to the person pursuant to chapter 476B, or the renewable energy tax credit certificates issued to the person pursuant to chapter 476C, and provide any other information the director may require. The director shall direct a warrant to be issued to the person for an amount equal to the tax imposed and paid by the person pursuant to this chapter but for not more than the amount of the wind energy tax credit certificates or renewable energy tax credit certificates included with the return.

2005 Acts, ch 160, §6, 14; 2008 Acts, ch 1128, §3, 15; 2014 Acts, ch 1093, §15
Referred to in §476B.8, 476C.6

437A.17C Reimbursement for soy-based transformer fluid. Repealed by its own terms; 2008 Acts, ch 1004, §4.

SUBCHAPTER III

STATEWIDE PROPERTY TAX

Referred to in §437A.1

437A.18 Tax imposition.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in sections 437A.16 and 437A.16A on the assessment date of January 1.

98 Acts, ch 1194, §19, 40; 2010 Acts, ch 1161, §8, 11
Referred to in §437A.16A, 443.2

437A.19 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 1998, and that was transferred or disposed of in the preceding calendar year, by local taxing district.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 1998, and that was transferred or disposed of in the preceding calendar year, by local taxing district.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

(7) All other transferred taxpayer property, in addition to any transferred property reported under subparagraphs (3) and (4), by local taxing district.

(8) Any gas or transmission property at acquisition cost of more than one million dollars that was transferred or disposed of in the preceding calendar year by local taxing district.

b. For purposes of this section:

(1) *"Book value"* means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) *"Taxpayer property"* means property described in section 437A.16.

(3) *"To dispose of"* means to sell, abandon, decommission, or retire an asset.

(4) *"Transfer"* means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, *"taxpayer"* includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. *a.* Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

(1) Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

(2) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph *"a"*, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value. Any value for a taxpayer owning, or owning an interest in, a new electric power generating plant in excess of a local amount, where such taxpayer owns no other taxpayer property in this state, shall not be allocated to any local taxing districts.

(3) In the case of taxpayer property described in subsection 1, paragraph *"a"*, subparagraphs (3), (4), and (7), decrease the assessed value of taxpayer property in each local taxing district by the assessed value reported within such local taxing district.

(4) In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

(5) In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

(6) In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. An adjustment to the base year assessed value of taxpayer property shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

b. In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

c. The director, on or before October 31 of each assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

d. Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the taxable value of taxpayer property reported to county auditors pursuant to this subsection.

e. In addition to reporting the assessed values as described in this subsection, the director, on or before October 31 of each assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, *"taxable value"* means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the current fiscal year's consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. A taxpayer who paid more than five hundred thousand dollars in replacement tax in the previous tax year or who believes the taxpayer's replacement tax liability will vary more than ten percent from the previous tax year shall report to the director by October 1 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to all of the taxpayer's property subject to replacement tax for the current tax year. The department shall utilize the estimated replacement tax liability as reported by the taxpayer or the taxpayer's prior year's replacement tax amounts to estimate the current tax year's taxable value for that property. Furthermore, a taxpayer who has a new major addition of operating property which is put into service for the first time in the current calendar year shall report to the director by October 1 of the current calendar year, or at the time the major addition is put into service, whichever time is later, on forms prescribed by the director, the cost of the major addition and, if not previously reported, shall report the estimated replacement taxes which that asset will generate in the current calendar year. For the purposes of computing the taxable value of property in a taxing district, the taxing district's share of the estimated replacement tax liability shall be the taxing district's percentage share of the "assessed value allocated by property tax equivalent" multiplied by the total estimated replacement tax. "Assessed value allocated by property tax equivalent" shall be determined by dividing the taxpayer's current year assessed valuation in a taxing district by one thousand, and then multiplying by the prior year's consolidated tax rate.

98 Acts, ch 1194, §20, 40; 99 Acts, ch 152, §31, 40; 2000 Acts, ch 1114, §12, 18; 2001 Acts, ch 145, §10; 2003 Acts, ch 106, §14, 15; 2004 Acts, ch 1096, §3, 4; 2007 Acts, ch 150, §3, 4; 2009 Acts, ch 60, §14; 2009 Acts, ch 133, §151; 2010 Acts, ch 1161, §9 – 11

Referred to in §437A.3, 437A.15

437A.20 Tax exemptions.

Except as provided in section 437A.16, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 1999, such exemption shall continue until the exemption expires, is phased out, or is repealed. The property of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

98 Acts, ch 1194, §21, 40

437A.21 Return and payment requirements.

1. Each electric company, natural gas company, electric cooperative, municipal utility, and other person whose property is subject to the statewide property tax shall file with the director a return, on or before March 31 following the assessment year, including, but not limited to, the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2000.

3. If an electric company, natural gas company, electric cooperative, municipal utility, or person is not required to file a statewide property tax return on or before February 28, 2000, but is required to file a return after such date, the return shall be filed on or before the due date. This subsection also applies in the event of a consolidation.

4. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

5. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown to be due on the return.

6. Notwithstanding subsections 1 through 5, a taxpayer is not required to file a return under this section or to remit any statewide property tax for any tax year in which the taxpayer's statewide property tax liability is one dollar or less.

98 Acts, ch 1194, §22, 40; 2000 Acts, ch 1114, §13, 18; 2001 Acts, ch 145, §11, 13
Referred to in §437A.24

437A.22 Statutes applicable.

1. Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

2. *a.* Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

b. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

(1) The name of the taxpayer.
(2) The name "State of Iowa" as claimant.
(3) Time the notice of lien was filed for recording.
(4) Date of notice.
(5) Amount of lien then due.
(6) Date of assessment.
(7) Date when the lien is satisfied.

c. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

d. The director, from moneys appropriated to the department of revenue for this purpose, shall pay recording fees as provided in section 331.604 for the recording of the lien, or for its satisfaction.

e. Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

98 Acts, ch 1194, §23, 40; 2001 Acts, ch 44, §21; 2003 Acts, ch 145, §286; 2009 Acts, ch 27, §21 – 23; 2010 Acts, ch 1069, §54
Referred to in §421.10

437A.23 Deposit of tax proceeds.

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available, as appropriated by the general assembly, to the department of revenue for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

98 Acts, ch 1194, §24, 40; 99 Acts, ch 208, §17; 2003 Acts, ch 145, §286

SUBCHAPTER IV

GENERAL PROVISIONS

Referred to in §437A.1

437A.24 Records.

Each electric company, natural gas company, electric cooperative, municipal utility, and other person who is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of five years following the later of the original due date for filing a return pursuant to sections 437A.8 and 437A.21 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

98 Acts, ch 1194, §25, 40; 2001 Acts, ch 145, §12

437A.25 Rules.

The director of revenue may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

98 Acts, ch 1194, §26, 40; 2003 Acts, ch 145, §286

CHAPTER 437B

TAXES ON RATE-REGULATED WATER UTILITIES

Referred to in §29C.24, 257.3, 331.433A, 384.15A, 427A.1, 427B.17, 428.24, 428.26, 428.28, 437A.15, 441.47, 441.73, 476.6

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437B.1 Purposes.

The purposes of this chapter are to replace property taxes imposed on rate-regulated water utilities with a system of taxation which will remove fluctuations in property taxes

by imposing a system of taxation based on the delivery of water, to preserve revenue neutrality and debt capacity for local governments and taxpayers, to preserve neutrality in the allocation and cost impact of any replacement tax among and upon consumers of rate-regulated water utilities in this state, and to provide a system of taxation which reduces existing administrative burdens on state government.

2013 Acts, ch 94, §10, 35, 36

437B.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Centrally assessed property tax"* means property tax imposed with respect to the value of property determined by the director pursuant to sections 428.24 to 428.29, Code 2013, and allocated to water service.

2. *"Consumer"* means an end user of water used or consumed within the service area of a water utility. *"Consumer"* includes any master-metered facility even though the water delivered to such facility may ultimately be used by another person. A person to whom water is delivered by a master-metered facility is not a consumer. A *"master-metered facility"* means any multi-occupancy premises where units are separately rented or owned and where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

3. *"Delivery"* means the physical transfer of water, excluding nonrevenue water, to a consumer for sale. Physical transfer to a consumer occurs when transportation of water ends and such water becomes available for use or consumption by a consumer.

4. *"Director"* means the director of revenue.

5. *"Lease"* means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to deliver water using operating property within this state is not a lease. *"Capital lease"* means a lease classified as a capital lease under generally accepted accounting principles.

6. *"Local taxing authority"* means a city, county, community college, school district, or other taxing authority located in this state and authorized to certify a levy on property located within such authority for the payment of bonds and interest or other obligations of such authority.

7. *"Local taxing district"* means a geographic area with a common consolidated property tax rate.

8. *a.* *"Major addition"* means any acquisition on or after January 1, 2012, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

(1) A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.

(2) A water treatment plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this subparagraph, *"water treatment plant"* means buildings and equipment used in that portion of the potable water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

(3) Water utility operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.

(4) Any water utility property in this state acquired by a person not previously subject to taxation under this chapter pursuant to section 437B.12.

b. For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

9. *"Nonrevenue water"* means the difference between the total number of gallons of water carried through the water utility's distribution system and the number of gallons of water delivered to consumers using the water utility's distribution system.

10. *"Operating property"* means all property owned by or leased to a water utility, not otherwise taxed separately, which is necessary to and without which the water utility could not perform the activities of a water utility.

11. *"Replacement tax"* means the excise tax imposed on the delivery of water under section 437B.3.

12. *"Service area"* means the geographical area within this state to which the water utility delivers water and related services. A water utility's service area shall be that area described in the water utility's tariff filed with the utilities board.

13. *"Tax year"* means a calendar year beginning January 1 and ending December 31.

14. *"Taxable value"* means as defined in section 437B.15, subsection 2, paragraph *"e"*.

15. *"Taxpayer"* means a water utility or other person subject to the replacement tax imposed under section 437B.3.

16. *"Utilities board"* means the utilities board created in section 474.1.

17. *"Water utility"* or *"rate-regulated water utility"* means a person engaged primarily in the production, delivery, service, or sale of water in a service area, whether formed or organized under the laws of this state or elsewhere, and subject to the rate and service regulation of the utilities board pursuant to chapter 476. *"Water utility"* does not include a cooperative, municipal utility, or other entity engaged primarily in such activities that is not under the jurisdiction of the utilities board.

2013 Acts, ch 94, §11, 35, 36; 2013 Acts, ch 140, §67, 68

Referred to in §437B.11

437B.3 Replacement tax imposed on delivery of water.

1. A replacement delivery tax is imposed on each water utility that delivers water to a consumer within the water utility's service area. The replacement delivery tax imposed by this section is equal to the number of gallons of water delivered to consumers in the water utility's service area by the taxpayer during the tax year multiplied by the replacement delivery tax rate in effect for the service area.

2. The replacement delivery tax rate for each service area shall be calculated by the director as follows:

a. The director shall determine the centrally assessed property tax liability allocated to water delivery for those water utilities operating within the service area for the assessment year 2011 based on property tax amounts due and payable as the result of that assessment year.

b. The director shall determine the number of gallons of water delivered to consumers in the service area which would have been subject to taxation under this section in calendar year 2011, had such section been in effect for calendar year 2011.

c. The director shall determine a replacement delivery tax rate for each service area by dividing the centrally assessed property tax liability, as determined in paragraph *"a"*, by the number of gallons of water delivered, as specified in paragraph *"b"*.

3. *a.* If for any tax year after calendar year 2012, the total number of gallons of water required to be reported by a water utility pursuant to section 437B.4, subsection 1, paragraph *"a"*, increases or decreases by more than the threshold percentage from the average of the base year amounts for that water utility for the immediately preceding five calendar years, the replacement tax rate imposed under subsection 1 for that tax year shall be recalculated by the director for that water utility so that the total of the tentative replacement delivery taxes required to be reported pursuant to section 437B.4, subsection 1, paragraph *"b"*, for that water utility with respect to the tax imposed under subsection 1, shall be as follows:

(1) If the number of gallons of water required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by the water utility for that water utility for the immediately preceding tax year.

(2) If the number of gallons of water required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by the water utility for that water utility for the immediately preceding tax year.

b. For purposes of paragraph *"a"*, subparagraphs (1) and (2), in computing the tax rate under subsection 1, for tax year 2013, the director shall use the centrally assessed property tax liability allocated to water sales computed pursuant to subsection 2, paragraph *"a"*, or the water utility's centrally assessed property tax liability for the assessment year 2010, whichever is greater, in lieu of the taxes required to be reported for that water utility for the

immediately preceding tax year. In addition, notwithstanding the provisions of this section to the contrary, for tax years 2013, 2014, and 2015, if the total amount of replacement delivery taxes imposed on the water utility in any of those tax years is less than the utility's centrally assessed property tax liability for the assessment year 2010, the replacement tax rate imposed under subsection 1 for that tax year shall be recalculated by the director so that the total amount of replacement delivery taxes imposed on the water utility for such tax year equals the water utility's centrally assessed property tax liability for the assessment year 2010.

c. For purposes of this section, *"base year amount"* means for calendar years prior to tax year 2013, the number of gallons of water delivered to consumers by the water utility which would have been subject to taxation under this section had this section been in effect for such calendar year, and for tax years after calendar year 2012, the number of gallons of water required to be reported by the water utility pursuant to section 437B.4, subsection 1.

d. The threshold percentage shall be five percent.

4. The replacement delivery tax rate in effect for each service area shall be published by the director in the Iowa administrative bulletin on or before May 31 of each year.

5. If recalculation of the replacement delivery tax rate is required pursuant to subsection 3, the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the end of the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1 and required to be shown on any affected water utility's return pursuant to section 437B.4, subsection 1, paragraph *"b"*, to reflect the adjusted replacement delivery tax rate for the tax year, and report such adjustment to the affected water utility on or before June 30 following the end of the tax year. The new replacement delivery tax rate shall apply prospectively, until such time as further adjustment is required.

6. For a service area established as the result of the formation or organization of a new water utility on or after January 1, 2013, the director shall to the extent possible determine a replacement delivery tax rate for the new service area using the procedures of this section and for the information for the year that the water utility was first under the jurisdiction of the utilities board.

2013 Acts, ch 94, §12, 35, 36
Referred to in §437B.2, 437B.4

437B.4 Return and payment requirements.

1. Each taxpayer, on or before March 31 following a tax year, shall file with the director a return including but not limited to the following information:

a. The total taxable gallons of water delivered by the water utility to consumers within the service area during the tax year.

b. The tentative replacement taxes imposed by section 437B.3 due for the tax year.

2. A return shall be signed by an officer, or other person duly authorized by the water utility, and must be certified as correct and in accordance with forms and rules prescribed by the director.

3. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 5 and by section 437B.3, subsection 3, and notify the taxpayer of any such adjustments in accordance with the requirements of section 437B.3, subsection 5. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437B.11. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2014, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437B.11, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall

have thirty days from the date the notification is mailed to remit one-half of the replacement tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

4. Notwithstanding subsections 1 through 3, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less, provided that all water utilities shall file a return, regardless of the taxpayer's replacement tax liability.

5. Following the determination of replacement delivery tax rates by the director pursuant to section 437B.3, subsection 2, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to the assessment year 2011 used in determining such rates, the director shall recalculate the replacement delivery tax rate for any affected water utility to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of the centrally assessed property tax liability allocated to water service pursuant to section 437B.3, subsection 2, paragraph *"a"*. Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due pursuant to subsection 1, paragraph *"b"*, for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437B.11 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 2013, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

2013 Acts, ch 94, §13, 35, 36

Referred to in §437B.3, 437B.5, 437B.11, 437B.20

437B.5 Failure to file return — incorrect return.

1. As soon as practicable after a return required by section 437B.4, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade any tax or in the case of a failure to file a return.

2. If a return required by section 437B.4, subsection 1, is not filed, or if such return when filed is incorrect or insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form provided by the department. The agreement

shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

2013 Acts, ch 94, §14, 35, 36

Referred to in §421.10, 437B.18

437B.6 Judicial review.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing authorities, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

2013 Acts, ch 94, §15, 35, 36

Referred to in §437B.18

437B.7 Lien — actions authorized.

1. Whenever a taxpayer who is liable to pay a replacement tax imposed by this chapter refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the replacement tax imposed by this chapter, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

2. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

a. The name of the taxpayer.

b. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.

c. Time the notice of lien was filed for recording.

d. Date of notice.

e. Amount of lien then due.

f. Date of assessment.

g. Date when the lien is satisfied.

3. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, shall index the notice in the index, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

4. The county treasurer or chief financial officer of the city shall pay recording fees as provided in section 331.604, for the recording of the lien, or for its satisfaction.

5. Upon the payment of the replacement tax as to which a county treasurer has filed notice with a county recorder, the county treasurer shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall record the notice of satisfaction showing the applicable entries specified in sections 558.49 and 558.52.

6. Section 445.3 applies with respect to the replacement taxes and special utility property tax levies and penalties and interest imposed by this chapter, except for the provisions limiting the commencement of actions. In addition, at the county treasurer's discretion, chapters 446, 447, and 448 apply in the enforcement of the special utility property tax levies, but any tax deed issued shall not extinguish a tax lien or judgment lien for replacement taxes that has attached to the property.

2013 Acts, ch 94, §16, 35, 36
Referred to in §331.604, 437B.11

437B.8 Service of notice.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

2013 Acts, ch 94, §17, 35, 36
Referred to in §437B.18

437B.9 Penalties — offenses — limitation.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

2013 Acts, ch 94, §18, 35, 36
Referred to in §437B.11, 437B.18

437B.10 Correction of errors — refunds or credits of replacement tax paid — information confidential — penalty.

1. *a.* If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

2. *a.* It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the gallons of water delivered by a water utility disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such information pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

b. Local taxing authority employees are deemed to be officers and employees of the state for purposes of this subsection.

3. Unless otherwise expressly permitted by a section referencing this chapter, the gallons of water delivered by a taxpayer in a service area shall not be divulged to any person or entity, other than the taxpayer, the department of revenue, or the internal revenue service for use in a matter unrelated to tax administration. This prohibition precludes persons or entities other than the taxpayer, the department of revenue, or the internal revenue service from obtaining such information from the department of revenue. A subpoena, order, or process which requires the department of revenue to produce such information to a person or entity, other than the taxpayer, the department of revenue, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing authority and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

5. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

2013 Acts, ch 94, §19, 35, 36; 2013 Acts, ch 140, §69

Referred to in §437B.18

437B.11 Allocation of revenue.

1. The director and the department of management shall compute the allocation of all replacement tax revenues among the local taxing districts in accordance with this section

and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. *a.* All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the taxable value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to the procedures required pursuant to section 437B.15. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

b. If, during the tax year, a taxpayer transferred operating property or an interest in operating property to another taxpayer, the transferee taxpayer's replacement tax associated with that property shall be allocated, for the tax year in which the transfer occurred, under this section in accordance with the general allocation formula on the basis of the general property tax equivalents of the transferor taxpayer.

c. Notwithstanding the provisions of this section, if during the tax year a person who was not a taxpayer during the prior tax year acquires a new major addition, as defined in section 437B.2, subsection 8, paragraph "*a*", subparagraph (4), the replacement tax associated with that major addition shall be allocated, for that tax year, under this section in accordance with the general allocating formula on the basis of the general property tax equivalents established under paragraph "*a*" of this subsection, except that the levy rates established and reported to the department of management on or before June 30 following the tax year in which the major addition was acquired shall be applied to the prorated assessed value of the major addition. For purposes of this paragraph, "*prorated assessed value of the major addition*" means the assessed value of the major addition as of January 1 of the year following the tax year in which the major addition was acquired multiplied by the percentage derived by dividing the number of months that the major addition existed during the tax year by twelve, counting any portion of a month as a full month.

4. On or before August 31 following tax years 2013, 2014, and 2015, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437B.4, subsection 3. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437B.4, subsection 5. A recalculation of a special utility property tax levy or credit shall not

be made as a result of a subsequent recalculation of replacement tax liability under section 437B.4, subsection 5, or adjustment to assessed value under section 437B.15. *"Anticipated tax revenues from a taxpayer"* means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437B.7. If a special utility property tax levy payment becomes delinquent, the delinquent payment shall accrue interest and penalty in the same manner and amount as the replacement tax under section 437B.9.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disbursed by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any municipality which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such municipality under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

6. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437B.12 included in such area on January 1, 2011, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. The utility replacement tax task force created in section 437A.15 shall study the effects of the replacement tax on local taxing authorities, local taxing districts, consumers, and taxpayers through January 1, 2019. If the task force recommends modifications to the replacement tax that will further the purposes of tax neutrality for local taxing authorities, local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter, the department of management shall transmit those recommendations to the general assembly.

2013 Acts, ch 94, §20, 35, 36; 2016 Acts, ch 1128, §9, 16, 19

Referred to in §437B.4

2016 amendment to subsection 7 takes effect May 27, 2016, and applies retroactively to January 1, 2016; 2016 Acts, ch 1128, §16, 19

437B.12 Assessment exclusive.

All operating property and all other property that is primarily and directly used in the delivery of water subject to replacement tax is exempt from taxation except as otherwise provided by this chapter.

2013 Acts, ch 94, §21, 35, 36

Referred to in §437B.2, 437B.11, 437B.14, 437B.15, 437B.16

437B.13 Statutes applicable — rate calculations.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

2013 Acts, ch 94, §22, 35, 36

437B.14 Tax imposition.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in section 437B.12 on the assessment date of January 1.

2013 Acts, ch 94, §23, 35, 36
Referred to in §443.2

437B.15 Adjustment to assessed value — reporting requirements.

1. *a.* A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 2013, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

(1) The local amount of any major addition by local taxing district.

(2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars that was originally placed in service by the taxpayer prior to January 1, 2012, and that was transferred or disposed of in the preceding calendar year, listed by local taxing district.

(4) All other taxpayer property without notation of location.

(5) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 404, by situs.

(6) All other transferred taxpayer property, in addition to any transferred property reported under subparagraph (3), listed by local taxing district.

(7) Any water utility operating property at acquisition cost of more than one million dollars that was transferred or disposed of in the preceding calendar year, listed by local taxing district.

b. For purposes of this section:

(1) *"Book value"* means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) *"Taxpayer property"* means property described in section 437B.12.

(3) *"To dispose of"* means to sell, abandon, decommission, or retire an asset.

(4) *"Transfer"* means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, *"taxpayer"* includes a person who would have been a taxpayer in calendar year 2012 had the provisions of this chapter been in effect for the 2012 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. *a.* Beginning January 1, 2013, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

(1) Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

(2) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph *"a"*, subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(3) In the case of taxpayer property described in subsection 1, paragraph *"a"*, subparagraphs (3), (4), and (7), decrease the assessed value of taxpayer property in each local taxing district by the assessed value reported within such local taxing district.

(4) In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

(5) In the event any taxpayer property is eligible for the urban revitalization tax exemption

described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

(6) In the event the assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. An adjustment to the assessed value of taxpayer property shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

b. In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

c. The director, on or before October 31 of each assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

d. Nothing in this chapter shall be interpreted to authorize local taxing authorities to exclude from the calculation of levy rates the taxable value of taxpayer property reported to county auditors pursuant to this subsection.

e. In addition to reporting the assessed values as described in this subsection, the director, on or before October 31 of each assessment year, shall also report to the department of management and to the auditor of each county the taxable value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this chapter, *"taxable value"* means the value for all property subject to the replacement tax annually determined by the director, by dividing the estimated annual replacement tax liability for that property by the current fiscal year's consolidated taxing district rate for the taxing district where that property is located, then multiplying the quotient by one thousand. A taxpayer who paid more than five hundred thousand dollars in replacement tax in the previous tax year or who believes the taxpayer's replacement tax liability will vary more than ten percent from the previous tax year shall report to the director by October 1 of the current calendar year, on forms prescribed by the director, the estimated replacement tax liability that will be attributable to all of the taxpayer's property subject to replacement tax for the current tax year. The department shall utilize the estimated replacement tax liability as reported by the taxpayer or the taxpayer's prior year's replacement tax amounts to estimate the current tax year's taxable value for that property. Furthermore, a taxpayer who has a new major addition of operating property which is put into service for the first time in the current calendar year shall report to the director by October 1 of the current calendar year, or at the time the major addition is put into service, whichever time is later, on forms prescribed by the director, the cost of the major addition and, if not previously reported, shall report the estimated replacement taxes which that asset will generate in the current calendar year. For the purposes of computing the taxable value of property in a taxing district, the taxing district's share of the estimated replacement tax liability shall be the taxing district's percentage share of the assessed value allocated by property tax equivalent multiplied by the total estimated replacement tax. The assessed value allocated by property tax equivalent shall be determined by dividing the taxpayer's current year assessed valuation in a taxing district by one thousand, and then multiplying by the prior year's consolidated tax rate.

2013 Acts, ch 94, §24, 35, 36

Referred to in §437B.2, 437B.11

437B.16 Tax exemptions.

Except as provided in section 437B.12, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 2013, such exemption shall continue until the exemption expires, is phased out,

or is repealed. The property of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

2013 Acts, ch 94, §25, 35, 36

437B.17 Return and payment requirements.

1. Each water utility whose property is subject to the statewide property tax shall file with the director a return, on or before March 31 following the assessment year, including but not limited to the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2014.

3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

4. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for the assessment year and shall remit to the director the statewide property tax required to be shown due on the return.

5. Notwithstanding subsections 1 through 4, a taxpayer is not required to file a return under this section or to remit any statewide property tax for any tax year in which the taxpayer's statewide property tax liability is one dollar or less.

2013 Acts, ch 94, §26, 35, 36

Referred to in §437B.20

437B.18 Statutes applicable.

1. Sections 437B.5, 437B.6, 437B.8, and 437B.9, and section 437B.10, subsection 1, are applicable to water utilities whose property is subject to the statewide property tax.

2. *a.* Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

b. The county recorder of each county shall index each lien showing the applicable entries specified in sections 558.49 and 558.52 and showing, under the names of taxpayers arranged alphabetically, all of the following:

(1) The name of the taxpayer.

(2) The name "State of Iowa" as claimant.

(3) Time the notice of lien was filed for recording.

(4) Date of notice.

(5) Amount of lien then due.

(6) Date of assessment.

(7) Date when the lien is satisfied.

c. The recorder shall endorse on each notice of lien the day, hour, and minute when filed for recording and the document reference number, shall preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

d. The director, from moneys appropriated to the department of revenue for this purpose, shall pay recording fees as provided in section 331.604 for the recording of the lien, or for its satisfaction.

e. Upon the payment of the statewide property tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the

statewide property tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

2013 Acts, ch 94, §27, 35, 36

Referred to in §421.10

437B.19 Deposit of tax proceeds.

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available, as appropriated by the general assembly, to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available, as appropriated by the general assembly, to the department of revenue for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

2013 Acts, ch 94, §28, 35, 36

437B.20 Records.

Each water utility that is subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of five years following the later of the original due date for filing a return pursuant to sections 437B.4 and 437B.17 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

2013 Acts, ch 94, §29, 35, 36

437B.21 Rules.

The director of revenue may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

2013 Acts, ch 94, §30, 35, 36

CHAPTER 438

PIPELINE COMPANIES TAX

Referred to in §29C.24, 331.401, 427A.1, 427B.17, 429.1, 437A.16, 441.19, 441.21, 441.47, 441.73

438.1 Taxation procedure.
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438.19 Scope of chapter.

438.1 Taxation procedure.

Every person, partnership, association, corporation, or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipelines other than natural gas pipelines permitted pursuant to chapter 479, whether such pipelines be owned or leased, shall be taxed as provided in this chapter.

[C31, 35, §7103-d1; C39, §**7103.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.1]

98 Acts, ch 1194, §34, 40; 2008 Acts, ch 1032, §106

Referred to in §438.2

438.2 Definitions.

1. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2. *"Pipeline company"*, as used in this chapter, means any person, partnership, association, corporation, or syndicate that may own or operate or be engaged in operating or utilizing pipelines, other than natural gas pipelines permitted pursuant to chapter 479, for the purposes described in section 438.1.

[C31, 35, §7103-d2; C39, §**7103.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.2]
98 Acts, ch 1194, §35, 40; 2000 Acts, ch 1148, §1; 2008 Acts, ch 1032, §106

438.3 Statement required.

Every pipeline company having lines in the state of Iowa shall annually, on or before the first day of April in each year, make out and deliver to the department of revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December 31 next preceding:

1. The name of the company.

2. The nature of the company, whether a person or persons, an association, partnership, corporation or syndicate, and under the laws of what state organized.

3. The location of its principal office or place of business.

4. The name and post office address of the president, secretary, auditor, treasurer and superintendent or general manager.

5. The name and post office address of the chief officer or managing agent of the company in Iowa.

6. The whole number of miles of pipeline owned, operated or leased within the state, including a classification of the size, kind and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district.

7. A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed.

8. The number, location, size and cost of each pressure pump or station.

9. Any and all other property owned by said pipeline company within the state which property must be classified and scheduled in such a manner as the director of revenue may by rule require.

10. The gross earnings of the entire company, and the gross earnings on business done within this state.

11. The operating expenses of the entire company and the operating expenses within this state.

12. The net earnings of the entire company and the net earnings within this state.

[C31, 35, §7103-d3; C39, §**7103.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.3]
2003 Acts, ch 145, §286; 2008 Acts, ch 1032, §106; 2015 Acts, ch 109, §47, 75
Referred to in §438.12

438.4 Real estate holdings.

Every pipeline company required by law to report to the department of revenue under the provisions of this chapter shall, on or before the first day of April 1932, make to the department a detailed statement showing the amount of real estate owned or used by it on December 31, 1931, for pipeline purposes, the county in which said real estate is situated, including the rights-of-way, pumping or station grounds, buildings, storage or tank yards, equipment grounds for any and all purposes, with the estimated actual value thereof, in such manner as may be required by the department.

[C31, 35, §7103-d4; C39, §**7103.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.4]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §48, 75
Referred to in §438.7

438.5 Statement deemed permanent.

Only one such detailed statement by any pipeline company shall be necessary, and when received by the department of revenue, it shall become the record of the pipeline lands of such company, and be deemed as annually thereafter reported for valuation and assessment by the department.

[C31, 35, §7103-d5; C39, §**7103.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.5]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §49, 75
Referred to in §438.7

438.6 Additional corrective statements.

On or before the first day of April of each subsequent year, such company shall, in like manner, report all real estate acquired for any of the pipeline purposes above named during the preceding calendar year; and also, a list of any real estate, previously reported, disposed of during the same period, which disposition shall be noted by the department of revenue in an appropriate column opposite to the description of said tract in the original report of the same in the record of pipeline land.

[C31, 35, §7103-d6; C39, §**7103.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.6]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §50, 75
Referred to in §438.7

438.7 Consolidated list of real estate.

The department of revenue shall, by some convenient method of binding, arrange the statements required to be made by sections 438.4 to 438.6 so as to form a consolidated list of all real estate reported to the department as being owned or used for pipeline purposes within the state of Iowa.

[C31, 35, §7103-d7; C39, §**7103.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.7]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §51, 75

438.8 Gross earnings.

For the purpose of making reports to the department of revenue, the gross earnings of a pipeline company, owning or operating a line or lines within this state, shall be computed and reported by said company upon such bases as the director may by rule require.

[C31, 35, §7103-d8; C39, §**7103.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.8]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §52, 75

438.9 Accounts — regulation.

The director of revenue may prescribe such rules with respect to the keeping of accounts by the pipeline companies doing business or having property in this state as will insure the accurate division of the accounts and the information to be reported, and uniformity in reporting the same to the department.

[C31, 35, §7103-d9; C39, §**7103.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.9]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §53, 75

438.10 Rules — promulgation.

The rules, method, and requirements herein provided to be made by the director of revenue shall be made and communicated in writing or printing to the said several pipeline companies, and shall be and become binding upon said pipeline companies as provided in chapter 17A; provided that the director shall have the power to prescribe supplemental or additional rules and requirements in the manner prescribed by chapter 17A.

[C31, 35, §7103-d10; C39, §**7103.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.10]
2003 Acts, ch 145, §286

438.11 Refusal to comply — penalty.

If any pipeline company shall fail or refuse to obey and conform to the rules, method, and requirements so made and prescribed by the director of revenue under the provisions of this chapter, or to make the reports herein provided, the department shall proceed to assess the property of such pipeline company so failing or refusing, according to the best

information obtainable, and shall then add to the department's valuation of such pipeline company twenty-five percent thereof, which valuation and penalty shall be separately shown, and together shall constitute the assessment for that year.

[C31, 35, §7103-d11; C39, §**7103.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.11]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §54, 75

438.12 Amended and explanatory statements.

The department of revenue may demand, in writing, detailed, explanatory, and amended statements of any of the items mentioned in section 438.3, or any other item deemed to be important, to be furnished to the department by such pipeline company within thirty days from such demand in such form as the department may designate, which shall be verified as required for the original statement. The returns, both original and amended, shall show such other facts as the department, in writing, shall require.

[C31, 35, §7103-d12; C39, §**7103.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.12]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §55, 75

438.13 Basis of valuation and assessment.

The said property shall be valued at its actual value, and the assessments shall be made upon the taxable value of the entire pipeline property within the state, except as otherwise provided, and the actual and taxable value so ascertained shall be assessed as provided by section 441.21; and shall include the rights-of-way, easements, the pipelines, stations, grounds, shops, buildings, pumps, and all other property, real and personal exclusively used in the operation of such pipeline. In assessing said pipeline company and its equipment, the department of revenue shall take into consideration the gross earnings and the net earnings for the entire property, and per mile, for the year ending December 31 preceding, and any and all other matters necessary to enable the department to make a just and equitable assessment of said pipeline property.

[C31, 35, §7103-d13; C39, §**7103.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.13]
2003 Acts, ch 145, §286; 2015 Acts, ch 109, §56, 75
Referred to in §443.22

438.14 Valuation and certification.

The department of revenue shall on or before October 31 each year determine the value of pipeline property located in each taxing district of the state, and in fixing the value shall take into consideration the structures, equipment, pumping stations, etc., located in the taxing district, and shall transmit to the county auditor of each such county through and into which any pipeline may extend, a statement showing the assessed value of the property in each of the taxing districts of the county. The property shall then be taxed in the county and lesser taxing districts, based upon the valuation so certified, in the same manner as in other property.

[C31, 35, §7103-d14; C39, §**7103.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.14]
2003 Acts, ch 145, §286; 2009 Acts, ch 60, §15; 2015 Acts, ch 109, §57, 75
Referred to in §331.512, 438.15

438.15 Levy and collection of tax.

At the first meeting of the board of supervisors held after the statement of the department of revenue under section 438.14 is received by the county auditor, the board shall cause the same to be entered on its minute book, and make and enter in the minute book an order describing and stating the assessed value of each pipeline lying in each city, township, or lesser taxing district in its county, through or into which the pipeline extends, as fixed by the department of revenue, which shall constitute the assessed value of the property for taxing purposes; and the taxes on the property, when collected by the county treasurer, shall be disposed of as other taxes. The county auditor shall transmit a copy of the order to the council of the city, or the trustees of the township, as the case may be.

[C31, 35, §7103-d15; C39, §**7103.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.15]
2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §57; 2015 Acts, ch 109, §58, 75; 2016 Acts, ch 1073, §119
Referred to in §331.512

438.16 Taxation procedure.

All such pipeline property shall be taxable upon said assessment at the same rates, by the same officers, and for the same purpose as the property of individuals within such counties, cities, townships and lesser taxing districts.

[C31, 35, §7103-d16; C39, §**7103.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.16]

Referred to in §331.512

438.17 Nonpayment of tax — collection.

If said tax is not paid, the county treasurer shall collect the same by whatever method may seem proper.

[C31, 35, §7103-d17; C39, §**7103.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.17]

438.18 Nonpayment of tax — effect.

If said tax is not paid within the fiscal year in which the same is due, the company shall not be permitted thereafter to use the public or private property of the state of Iowa, or to operate in Iowa for any purpose.

[C31, 35, §7103-d18; C39, §**7103.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.18]

438.19 Scope of chapter.

The provisions of this chapter shall not apply to a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. Such local municipal plant shall be taxed in the municipality where located.

[C31, 35, §7103-d19; C39, §**7103.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §438.19]

CHAPTER 439

REASSESSMENT OF TAXES

Referred to in §441.47

439.1 Reassessment and relevy. 439.2 Voluntary payments.

439.1 Reassessment and relevy.

When by reason of nonconformity to any law, or by any omission, informality, or irregularity, or for any other cause, any tax heretofore or hereafter levied and assessed against any person, company, association, or corporation by the director of revenue is invalid or is adjudged illegal, the director may assess and levy a tax against such person, company, association, or corporation for the year or years for which such tax is invalid or illegal, or when necessary may assess and certify the same to the proper county officers, who shall levy such tax as by law in such cases made and provided, with the same force and effect as though done at the proper time and under any valid law, whether in force at the time of said levy and assessment or thereafter enacted.

[S13, §1330-h; C24, 27, 31, 35, 39, §**7104;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §439.1]

2003 Acts, ch 145, §286

Referred to in §437.15, 439.2

439.2 Voluntary payments.

When any person, company, association, or corporation, against whom any tax has been assessed and levied by the director of revenue and held invalid or illegal, shall have paid the same voluntarily or shall otherwise waive such invalidity and illegality, the director shall accept such tax in lieu of the tax to be raised by the reassessment and relevy provided for in section 439.1.

[S13, §1330-i; C24, 27, 31, 35, 39, §**7105;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §439.2]

2003 Acts, ch 145, §286

Referred to in §437.15

CHAPTER 440

ASSESSMENT OF OMITTED PROPERTY

Referred to in §441.47

440.1	Definitions.	440.6	Fraudulent withholding — penalty.
440.2	Assessment of omitted property.	440.7	Entry on tax books.
440.3 and 440.4	Repealed by 97 Acts, ch 158, §48.	440.8	Delinquency.
440.5	Procedure — penalty.		

440.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

440.2 Assessment of omitted property.

When the department of revenue is vested with the power and duty to assess property and an assessment has, for any reason, been omitted, the department shall proceed to assess the property at any time within two years from the date at which such assessment should have been made. The omitted assessment may apply to not more than the assessment year in which the omitted assessment is made and the prior assessment year. Chapter 429 shall apply to assessments of omitted property.

[C27, 31, 35, §7105-a1; C39, §**7105.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.1]

97 Acts, ch 158, §36; 99 Acts, ch 174, §1, 7

C2001, §440.2

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §59, 75

440.3 and 440.4 Repealed by 97 Acts, ch 158, §48. See chapter 429.

440.5 Procedure — penalty.

If it is made to appear that the property is assessable by the department of revenue as omitted property, the department shall proceed in the manner in which the department would have proceeded had the assessment not been omitted, except that the department shall find the value of the omitted property for each year during which it has been omitted but for not more than the two previous assessment years and shall add ten percent to each yearly value as a penalty.

[C27, 31, 35, §7105-a5; C39, §**7105.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.5]

99 Acts, ch 174, §2, 7; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §60, 75

Referred to in §440.6

440.6 Fraudulent withholding — penalty.

In case the property has been fraudulently withheld from assessment, the department of revenue may, in addition to the ten percent penalty under section 440.5, add any additional percent, not exceeding fifty percent.

[C27, 31, 35, §7105-a6; C39, §**7105.6;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.6]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §61, 75; 2016 Acts, ch 1073, §120

440.7 Entry on tax books.

Should an assessment be made at such time in the year that, in the opinion of the department of revenue, said assessment cannot conveniently be entered on the current tax books, the department may direct that the assessment be entered on the first ensuing tax books.

[C27, 31, 35, §7105-a7; C39, §**7105.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.7]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §62, 75

440.8 Delinquency.

A tax based on said assessment shall be deemed delinquent from and after its entry on the tax books.

[C27, 31, 35, §7105-a8; C39, §**7105.8;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §440.8]

CHAPTER 441

ASSESSMENT AND VALUATION OF PROPERTY

Referred to in §306.22, 403.19, 419.11, 421.17, 433.4A, 437A.16A, 461A.25

ASSESSORS

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ASSESSORS

441.1 Office of assessor created.

In every county in the state of Iowa the office of assessor is hereby created. A city having a population of ten thousand or more, according to the latest federal census, may by ordinance provide for the selection of a city assessor and for the assessment of property in the city under the provisions of this chapter. A city desiring to provide for assessment under the provisions of this chapter shall, not less than sixty days before the expiration of the term of the assessor in office, notify the taxing bodies affected and proceed to establish a conference board, examining board, and board of review and select an assessor, all as provided in this chapter. A city desiring to abolish the office of city assessor shall repeal the ordinance establishing the office of city assessor, notify the county conference board and the affected taxing districts, provide for the transfer of appropriate records and other matters, and provide for the abolition of the respective boards and the termination of the terms of office of the assessor and members of the respective boards. The abolition of the city assessor's office shall take effect on July 1 following notification of the abolition unless otherwise agreed to by the affected conference boards. If notification of the proposed abolition is made after January 1, sufficient funds shall be transferred from the city assessor's budget to fund the additional responsibilities transferred to the county assessor for the next fiscal year.

[C50, 54, 58, §405A.1, 441.1; C62, 66, 71, 73, 75, §441.1, 441.51; C77, 79, 81, §441.1]
97 Acts, ch 22, §1

441.2 Conference board.

In each county and each city having an assessor there shall be established a conference board. In counties the conference board shall consist of the mayors of all incorporated cities in the county whose property is assessed by the county assessor, one representative from the board of directors of each high school district of the county, who is a resident of the county, said board of directors appointing said representative for a one-year term and notifying the clerk of the conference board as to their representative, and members of the board of supervisors. In cities having an assessor the conference board shall consist of the members of the city council, school board and county board of supervisors. In the counties the chairperson of the board of supervisors shall act as chairperson of the conference board, in cities having an assessor the mayor of the city council shall act as chairperson of the conference board. In any action taken by the conference board, the mayors of all incorporated cities in the county whose property is assessed by the county assessor shall constitute one voting unit, the members of the city board of education or one representative from the board of directors of each high school district of the county shall constitute one voting unit, the members of the city council shall constitute one voting unit, and the county board of supervisors shall constitute one voting unit, each unit having a single vote and no action shall be valid except by the vote of not less than two out of the three units. The majority vote of the members present of each unit shall determine the vote of the unit. The assessor shall be clerk of the conference board.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §441.21, 442.1, 442.12, 442.13; C50, 54, 58, §441.2, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.2]
Referred to in §331.401

441.3 Examining board.

At a regular meeting of the conference board each voting unit of the conference board shall appoint one person who is a resident of the assessor jurisdiction to serve as a member of an examining board to hold an examination for the positions of assessor or deputy assessor. This examining board shall organize as soon as possible after its appointment with a chairperson and secretary. All its necessary expenditures shall be paid as provided. Members of the board shall serve without compensation. The terms of each shall be for six years.

[C46, §405.1; C50, 54, 58, §405.1, 405A.2, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.3]
88 Acts, ch 1043, §1

441.4 Removal of member.

A member of this examining board may be removed by the voting unit of the conference board by which the member was appointed but only after specific charges have been filed and a public hearing held, if a public hearing is requested by the discharged member of the board. Subsequent appointments and an appointment to fill a vacancy shall be made in the same way as the original appointment.

[C46, 50, 54, 58, §405.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.4]

2013 Acts, ch 90, §107; 2014 Acts, ch 1092, §95

441.5 Examination and certification of applicants — incumbents.

1. For the purpose of examining and certifying candidates for the positions of assessor and deputy assessor, the director of revenue shall prepare an examination and provide for an examination process. The director shall approve one or more examination locations and shall make a list of the approved locations available to applicants. Each applicant shall select an examination location from the list of approved locations. The director shall notify applicants of the date and time of the examination at least thirty days prior to the date of the examination.

2. These examinations shall be conducted by the director of revenue in the same manner as other similar examinations, including secrecy regarding questions prior to the examination and in accordance with other rules as may be prescribed by the director of revenue. The examination shall cover the following and related subjects:

a. Laws pertaining to the assessment of property for taxation, with emphasis on market value assessment as provided in this chapter.

b. Laws on tax exemption.

c. Assessment of real estate and personal property, including market value assessment in accordance with this chapter and including fundamental principles and practices of property appraisal and valuation which are consistent with market value assessment as provided in this chapter.

d. The rights of taxpayers and property owners related to the assessment of property for taxation.

e. The duties of the assessor.

f. Other items related to the position of assessor.

3. Only individuals who possess a high school diploma or its equivalent and who have completed the preliminary education requirements established under subsection 4 are eligible to take the examination. A person desiring to take the examination shall complete an application prior to the administration of the examination. Evidence of successful completion of the preliminary education requirements under subsection 4 shall be included with the application.

4. The director of revenue shall prescribe by rule preliminary education requirements, including a preliminary course of study, that each individual must successfully complete in order to be eligible to take the examination. The course of study prescribed by the director of revenue may include those subjects covered by the examination and listed under subsection 2 and any other subjects or courses the director of revenue deems relevant, including those courses offered and standards established by the international association of assessing officers.

5. The director of revenue shall grade the examination taken. The director shall notify each applicant of the score attained by the applicant on the examination. An individual who attains a score of seventy percent or greater on the examination is eligible to be certified by the director of revenue as a candidate for any assessor position. Any person who passes the examination and who possesses at least two years of appraisal related experience as determined by the director of revenue shall be granted regular certification and become eligible for appointment to a six-year term as assessor. Any person who passes the examination but who lacks such experience shall be granted temporary certification, and shall be eligible for a provisional appointment as assessor.

6. Any person possessing temporary certification who receives a provisional appointment as assessor shall, during the person's first eighteen months in office, be required to complete a course of study prescribed and administered by the director of revenue. Upon the successful

completion of this course of study, the assessor shall be granted regular certification and shall be eligible to remain in office for the balance of the assessor's six-year term. All expenses incurred in obtaining regular certification shall be defrayed by the assessment expense fund.

7. Following the administration of the examination, the director of revenue shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

8. Incumbent assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as assessor. In order to be appointed to the position of assessor, the assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as assessor in a jurisdiction other than where the assessor is currently serving shall be prorated according to the percentage of the assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of one hundred fifty multiplied by the quotient of the number of months served of an assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this subsection results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

[C46, §405.3; C50, 54, 58, §405.3, 441.2, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.5]

88 Acts, ch 1228, §1; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §95; 2013 Acts, ch 110, §5, 6; 2017 Acts, ch 151, §3, 4, 30

Referred to in §441.7, 441.8, 441.11, 441.56

2017 amendments apply beginning January 1, 2018, for the appointment of assessors and deputy assessors that are not reappointments occuring on or after that date; 2017 Acts, ch 151, §30

441.6 Appointment of assessor.

1. When a vacancy occurs in the office of city or county assessor, the examining board shall, within seven days of the occurrence of the vacancy, request the director of revenue to forward a register containing the names of all individuals eligible for appointment as assessor. The examining board may, at its own expense, conduct a further examination, either written or oral, of any person whose name appears on the register, and shall make written report of the examination and submit the report together with the names of those individuals certified by the director of revenue to the conference board within fifteen days after the receipt of the register from the director of revenue.

2. Upon receipt of the report of the examining board, the chairperson of the conference board shall by written notice call a meeting of the conference board to appoint an assessor. The meeting shall be held not later than seven days after the receipt of the report of the examining board by the conference board. At the meeting, the conference board shall appoint an assessor from the register of eligible candidates. However, if a special examination has not been conducted previously for the same vacancy, the conference board may request the director of revenue to hold a special examination pursuant to section 441.7. The chairperson of the conference board shall give written notice to the director of revenue of the appointment and its effective date within ten days of the decision of the board.

[C46, 50, 54, 58, §405.4; C62, 66, 71, 73, 75, 77, 79, 81, §441.6]

2003 Acts, ch 145, §286; 2005 Acts, ch 140, §54; 2019 Acts, ch 24, §104

Referred to in §441.7, 441.8, 441.56

Code editor directive applied

441.7 Special examination.

If the conference board fails to appoint an assessor from the list of individuals on the register, the conference board shall request permission from the director of revenue to hold a special examination in the particular city or county in which the vacancy has occurred. Permission may be granted by the director of revenue after consideration of factors such as the availability of candidates in that particular city or county. The director of revenue shall conduct no more than one special examination for each vacancy in an assessing jurisdiction.

The examination shall be conducted by the director of revenue as provided in section 441.5, except as otherwise provided in this section. The examining board shall give notice of holding the examination for assessor by posting a written notice in a conspicuous place in the county courthouse in the case of county assessors or in the city hall in the case of city assessors, stating that at a specified date, an examination for the position of assessor will be held at a specified place. Similar notice shall be given at the same time by one publication of the notice in three newspapers of general circulation in the case of a county assessor, or in case there are not three such newspapers in a county, then in newspapers which are available, or in one newspaper of general circulation in the city in the case of city assessor. The conference board of the city or county in which a special examination is held shall reimburse the department of revenue for all expenses incurred in the administration of the examination, to be paid for by the respective city or county assessment expense fund. Following the administration of this special examination, the director of revenue shall certify to the examining board a new list of candidates eligible to be appointed as assessor and the examining board and conference board shall proceed in accordance with the provisions of section 441.6.

[C46, 50, 54, 58, §405.5; C62, 66, 71, 73, 75, 77, 79, 81, §441.7]
2003 Acts, ch 145, §286
Referred to in §441.6, 441.56

441.8 Term — continuing education — filling vacancy.

1. The term of office of an assessor appointed under this chapter shall be for six years. Appointments for each succeeding term shall be made in the same manner as the original appointment except that not less than ninety days before the expiration of the term of the assessor the conference board shall hold a meeting to determine whether or not it desires to reappoint the incumbent assessor to a new term. The conference board shall have the power to reappoint the incumbent assessor only if the incumbent assessor has satisfactorily completed the continuing education program provided for in this section. If the decision is made not to reappoint the assessor, the assessor shall be notified, in writing, of such decision not less than ninety days prior to the expiration of the assessor's term of office. Failure of the conference board to provide timely notification of the decision not to reappoint the assessor shall result in the assessor being reappointed.

2. *a.* The director of revenue shall develop and administer a program of continuing education which shall emphasize assessment and appraisal procedures, and the assessment laws of this state, and which shall include the subject matter specified in section 441.5.

b. The director of revenue shall establish, designate, or approve courses, workshops, seminars, or symposiums to be offered as part of the continuing education program, the content of these courses, workshops, seminars, or symposiums and the number of hours of classroom instruction for each. The director of revenue may provide that no more than thirty hours of tested credit may be received for the submission of a narrative appraisal approved by a professional appraisal society designated by the director. At least once each year the director of revenue shall evaluate the continuing education program and make necessary changes in the program.

3. Upon the successful completion of courses, workshops, seminars, a narrative appraisal or symposiums contained in the program of continuing education, as demonstrated by attendance at sessions of the courses, workshops, seminars or symposiums and, in the case of a course designated by the director of revenue, attaining a grade of at least seventy percent on an examination administered at the conclusion of the course, or the submission of proof that a narrative appraisal has been approved by a professional appraisal society designated by the director of revenue the assessor or deputy assessor shall receive credit equal to the number of hours of classroom instruction contained in those courses, workshops, seminars, or symposiums or the number of hours of credit specified by the director of revenue for a narrative appraisal. An assessor or deputy assessor shall not be allowed to obtain credit for a course, workshop, seminar, or symposium for which the assessor or deputy assessor has previously received credit during the current term or appointment except for those courses, workshops, seminars, or symposiums designated by the director of revenue. Only one

narrative appraisal may be approved for credit during the assessor's or deputy assessor's current term or appointment and credit shall not be allowed for a narrative appraisal approved by a professional appraisal society prior to the beginning of the assessor's or deputy assessor's current term or appointment. The examinations shall be confidential, except that the director of revenue and persons designated by the director may have access to the examinations.

4. Upon receiving credit equal to one hundred fifty hours of classroom instruction during the assessor's current term of office of which at least ninety of the one hundred fifty hours are from courses requiring an examination upon conclusion of the course, the director of revenue shall certify to the assessor's conference board that the assessor is eligible to be reappointed to the position. For persons appointed to complete an unexpired term, the number of credits required to be certified as eligible for reappointment shall be prorated according to the amount of time remaining in the present term of the assessor. If the person was an assessor in another jurisdiction, the assessor may carry forward any credit hours received in the previous position in excess of the number that would be necessary to be considered current in that position. Upon written request by the person seeking a waiver of the continuing education requirements, the director may waive the continuing education requirements if the director determines good cause exists for the waiver.

5. Within each six-year period following the appointment of a deputy assessor, the deputy assessor shall comply with this section except that upon the successful completion of ninety hours of classroom instruction of which at least sixty of the ninety hours are from courses requiring an examination upon conclusion of the course, the deputy assessor shall be certified by the director of revenue as being eligible to remain in the position. If a deputy assessor fails to comply with this section, the deputy assessor shall be removed from the position until successful completion of the required hours of credit. If a deputy is appointed to the office of assessor, the hours of credit obtained as deputy pursuant to this section shall be credited to that individual as assessor and for the individual to be reappointed at the expiration of the term as assessor, that individual must obtain the credits which are necessary to total the number of hours for reappointment. Upon written request by the person seeking a waiver of the continuing education requirements, the director may waive the continuing education requirements if the director determines good cause exists for the waiver.

6. Each conference board shall include in the budget for the operation of the assessor's office funds sufficient to enable the assessor and any deputy assessor to obtain certification as provided in this section. The conference board shall also allow the assessor and any deputy assessor sufficient time off from their regular duties to obtain certification. The director of revenue shall adopt rules pursuant to chapter 17A to implement and administer this section.

7. If the incumbent assessor is not reappointed as provided in this section, then not less than sixty days before the expiration of the term of said assessor, a new assessor shall be selected as provided in section 441.6.

8. In the event of the removal, resignation, death, or removal from the county of the said assessor, the conference board shall proceed to fill the vacancy by appointing an assessor to serve the unexpired term in the manner provided in section 441.6. Until the vacancy is filled, the chief deputy shall act as assessor, and in the event there be no deputy, in the case of counties the auditor shall act as assessor and in the case of cities having an assessor the city clerk shall act as assessor.

[C46, §405.6; C50, 54, 58, §405.6, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.8; 81 Acts, ch 143, §1]

86 Acts, ch 1245, §449; 87 Acts, ch 198, §6; 97 Acts, ch 158, §37; 2003 Acts, ch 145, §286; 2005 Acts, ch 140, §55, 56; 2011 Acts, ch 34, §100

Referred to in §331.502, 441.5, 441.10, 441.56

441.9 Removal of assessor.

The assessor may be removed by a majority vote of the conference board, after charges of misconduct, nonfeasance, malfeasance, or misfeasance in office are substantiated at a public hearing, if a hearing is demanded by the assessor by written notice served upon the chairperson of the conference board. For purposes of this section, *"misconduct"* includes

but is not limited to knowingly engaging in assessment methods, practices, or conduct that contravene any applicable law, administrative rule, or order of any court or other government authority.

[C46, §405.7; C50, 54, 58, §405.7, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.9]

2017 Acts, ch 151, §5, 28, 29; 2019 Acts, ch 59, §132

Referred to in §441.37

2017 amendment takes effect May 11, 2017, and applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §28, 29

Section amended

441.10 Deputies — examination and appointment — suspension or discharge.

1. Immediately after the appointment of the assessor, and at other times as the conference board directs, one or more deputy assessors may be appointed by the assessor. Each appointment shall be made from either the list of eligible candidates provided by the director of revenue, which shall contain only the names of those persons who achieve a score of seventy percent or greater on the examination administered by the director of revenue, or the list of candidates eligible for appointment as city or county assessor. Examinations for the position of deputy assessor shall be conducted in the same manner as examinations for the position of city or county assessor.

2. The director of revenue shall prescribe by rule deputy assessor preliminary education requirements, including a preliminary course of study, that each individual must successfully complete in order to be eligible to take the deputy assessor examination. The course of study prescribed by the director of revenue may include those subjects covered by the examination and any other subjects or courses the director of revenue deems relevant, including those courses offered and standards established by the international association of assessing officers. Evidence of successful completion of the deputy assessor preliminary education requirements shall be included with the application to take the deputy assessor examination.

3. Following the administration of the examination, the director of revenue shall establish a register containing the names, in alphabetical order, of all individuals who are eligible for appointment as a deputy assessor. The test scores of individuals on the register shall be given to a city or county conference board upon request. All eligible individuals shall remain on the register for a period of two years following the date of certification granted by the director.

4. Incumbent deputy assessors who have served six consecutive years shall be placed on the register of individuals eligible for appointment as deputy assessor. In order to be appointed to the position of deputy assessor, the deputy assessor shall comply with the continuing education requirements. The number of credits required for certification as eligible for appointment as a deputy assessor in a jurisdiction other than where the deputy assessor is currently serving shall be prorated according to the percentage of the deputy assessor's term which is covered by the continuing education requirements of section 441.8. The credit necessary for certification for appointment is the product of ninety multiplied by the quotient of the number of months served of a deputy assessor's term covered by the continuing education requirements of section 441.8 divided by seventy-two. If the number of credits necessary for certification for appointment as determined under this subsection results in a partial credit hour, the credit hour shall be rounded to the nearest whole number.

5. The assessor may peremptorily suspend or discharge any deputy assessor under the assessor's direction upon written charges for neglect of duty, disobedience of orders, misconduct, or failure to properly perform the deputy assessor's duties. Within five days after delivery of written charges to the employee, the deputy assessor may appeal by written notice to the secretary or chairperson of the examining board. The board shall grant the deputy assessor a hearing within fifteen days, and a decision by a majority of the examining board is final. The assessor shall designate one of the deputies as chief deputy, and the

assessor shall assign to each deputy the duties, responsibilities, and authority as is proper for the efficient conduct of the assessor's office.

[C46, §405.8; C50, 54, 58, §405.8, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.10; 82 Acts, ch 1169, §1]

88 Acts, ch 1228, §2; 89 Acts, ch 296, §60; 90 Acts, ch 1233, §28; 2003 Acts, ch 145, §286; 2016 Acts, ch 1011, §69; 2017 Acts, ch 151, §6, 30

Referred to in §441.11

Subsection 2 applies beginning January 1, 2018, for the appointment of assessors and deputy assessors that are not reappointments occuring on or after that date; 2017 Acts, ch 151, §30

441.11 Incumbent deputy assessors.

A deputy assessor shall be considered eligible to remain in the deputy's present position provided continuing education requirements are met. To become eligible for another deputy assessor position, a deputy assessor presently holding office is required to obtain certification as provided for in sections 441.5 and 441.10. The number of credit hours required for certification as eligible for appointment as a deputy in a jurisdiction other than where the deputy is currently serving shall be prorated according to the completed portion of the deputy's six-year continuing education period.

[C46, §405.9; C50, 54, 58, §405.9, 441.3; C62, 66, 71, 73, 75, 77, 79, 81, §441.11]

90 Acts, ch 1233, §29; 97 Acts, ch 158, §38; 2003 Acts, ch 145, §286; 2006 Acts, ch 1030, §40

441.12 Reserved.

441.13 Office personnel.

Other office personnel shall be appointed by the assessor subject to the limitations of the annual budget as hereinafter provided. The assessor shall select field persons, so far as possible, from the eligible list of deputy assessors. Their compensation shall be fixed as provided in section 441.16. They shall serve at the pleasure of the assessor.

[C46, §405.10, 405.11; C50, 54, 58, §405.10, 405.11, 441.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.13]

441.14 Reserved.

441.15 Bond.

Assessors and deputy assessors shall be required to furnish bond for the performance of their duties in such amount as the conference board may require and the cost thereof shall be provided for in the budget of the assessor and paid out of the assessment expense fund.

[C50, 54, 58, §441.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.15]

441.16 Budget — assessment expense fund.

1. All expenditures under this chapter shall be paid as provided in this section.

2. *a.* Not later than January 1 of each year the assessor, the examining board, and the board of review shall each prepare a proposed budget of all expenses for the ensuing fiscal year. The assessor shall include in the proposed budget the probable expenses for defending assessment appeals. Said budgets shall be combined by the assessor and copies of the budgets forthwith filed by the assessor in triplicate with the chairperson of the conference board.

b. The combined budgets shall contain an itemized list of the proposed salaries of the assessor and each deputy; the amount required for field personnel and other personnel, their number, and their compensation; the estimated amount needed for expenses, printing, mileage, and other expenses necessary to operate the assessor's office; the estimated expenses of the examining board; and the salaries and expenses of the local board of review.

3. *a.* Each fiscal year the chairperson of the conference board shall, by written notice, call a meeting of the conference board to consider the proposed budget and to comply with section 24.9.

b. At such meeting the conference board shall authorize:

(1) The number of deputies, field personnel, and other personnel of the assessor's office.

(2) The salaries and compensation of members of the board of review, the assessor, chief deputy, other deputies, field personnel, and other personnel, and determine the time and manner of payment.

(3) The miscellaneous expenses of the assessor's office, the board of review, and the examining board, including office equipment, records, supplies, and other required items.

(4) The estimated expense of assessment appeals. All such expense items shall be included in the budget adopted for the ensuing year.

4. All tax levies and expenditures provided for herein shall be subject to the provisions of chapter 24 and the conference board is hereby declared to be the certifying board.

5. *a.* Any tax for the maintenance of the office of assessor and other assessment procedure shall be levied only upon the property in the area assessed by the assessor, and such tax levy shall not exceed sixty-seven and one-half cents per thousand dollars of assessed value in the assessing area. The county treasurer shall credit the sums received from such levy to a separate fund to be known as the assessment expense fund and from which fund all expenses incurred under this chapter shall be paid. In the case of a county where there is more than one assessor the treasurer shall maintain separate assessment expense funds for each assessor.

b. The county auditor shall keep a complete record of said funds and shall issue warrants thereon only on requisition of the assessor.

6. The assessor shall not issue requisitions so as to increase the total expenditures budgeted for the operation of the assessor's office. However, for purposes of promoting operational efficiency, the assessor shall have authority to transfer funds budgeted for specific items for the operation of the assessor's office from one unexpended balance to another; such transfer shall not be made so as to increase the total amount budgeted for the operation of the office of assessor, and no funds shall be used to increase the salary of the assessor or the salaries of permanent deputy assessors. The assessor shall issue requisitions for the examining board and for the board of review on order of the chairperson of each board and for costs and expenses incident to assessment appeals, only on order of the city legal department, in the case of cities and of the county attorney in the case of counties.

7. Unexpended funds remaining in the assessment expense fund at the end of a year shall be carried forward into the next year.

[R60, §730; C73, §390, 3810; C97, §592, 661, 674; S13, §592, 661, 674; SS15, §1056-b18; C24, 27, 31, 35, 39, §**5573, 5656, 5669, 6652, 6653;** C46, §359.48, 363.29, 363.43, 405.18, 419.38, 419.39, 441.5; C50, 54, 58, §405.18, 405A.4, 441.5, 442.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.16; 82 Acts, ch 1079, §8]

2011 Acts, ch 25, §96; 2012 Acts, ch 1081, §2; 2013 Acts, ch 30, §98

Referred to in §331.559, 421.30, 441.13, 441.37

DUTIES

441.17 Duties of assessor.

The assessor shall:

1. Devote full time to the duties of the assessor's office and shall not engage in any occupation or business interfering or inconsistent with such duties. This subsection does not preclude an assessor from being a candidate for elective office during the term of appointment as assessor. If an assessor is elected to a city or county office, to a statewide elective office, or to the general assembly, the assessor shall resign as assessor before the beginning of the term of the office to which the assessor was elected.

2. Cause to be assessed, in accordance with section 441.21, all the property in the assessor's county or city, except property exempt from taxation, or the assessment of which is otherwise provided for by law.

3. Have access to all public records of the county and, so far as practicable, make or cause to be made a careful examination of all such records and files in order to obtain all available information which may contribute to the accurate listing at its taxable value, and to the proper persons, of all property subject to assessment by the assessor.

4. Cooperate with the director of revenue as may be necessary or required, and obey and

execute all orders, directions, and instructions of the director of revenue, insofar as the same may be required by law.

5. *a.* Have power to apply to the district court of the county for an order to examine witnesses and requiring the production of books and records of any person, firm, association or corporation within the county, whenever the assessor has reason to believe that such person, firm, association or corporation has not listed property as provided by law. The proceeding for the examination of witnesses and examination of the books and records of any such taxpayer, to determine the existence of taxable property, shall be instituted and conducted in the manner provided for the discovery of property under the provisions of chapter 630. The court shall make an appropriate finding as to the existence of taxable property not listed. All taxable property discovered thereby shall thereupon be assessed by the assessor in the manner provided by law.

b. In all cases where the court finds that the taxpayer has not listed the taxpayer's property, as provided by law, and in all hearings where the court decides a matter against the taxpayer, the costs shall be paid by the taxpayer, otherwise they shall be paid out of the assessment expense fund. The fees and mileage to be paid witnesses shall be the same as prescribed by law in proceedings in the district courts of this state in civil cases. Where the costs are taxed to the taxpayer they shall be added to the taxes assessed against said taxpayer and the taxpayer's property and shall be collected in the same manner as are other taxes.

6. Make up all assessor's books and records as prescribed by the director of revenue, turn the completed assessor's books and records required for the preparation of the tax list over to the county auditor each year when the board of review has concluded its hearings and the county auditor shall proceed with the preparation of the current year tax list and the assessor shall cooperate with the auditor in the preparation of the tax lists.

7. Submit on or before May 1 of each year completed assessment rolls to the board of review.

8. Lay before the board of review such information as the assessor may possess which will aid said board in performing its duties in adjusting the assessments to the valuations required by law.

9. Furnish to the department of revenue any information which the assessor may have relative to the ownership of any property that may be assessable within this state, but not assessable or subject to being listed for taxation by the assessor.

10. Measure the exterior length and exterior width of all mobile homes and manufactured homes except those for which measurements are contained in the manufacturer's and importer's certificate of origin, and report the information to the county treasurer. Check all manufactured or mobile homes for inaccuracy of measurements as necessary or upon written request of the county treasurer and report the findings immediately to the county treasurer. The assessor shall make frequent inspections and checks within the assessor jurisdiction of all manufactured or mobile homes and manufactured home communities or mobile home parks and make all the required and needed reports to carry out the purposes of this section.

11. Cause to be assessed for taxation property which the assessor believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

[C51, §474, 475; R60, §735, 736; C73, §824, 825; C97, §1355, 1359, 1366; S13, §1355, 1366; C24, 27, 31, 35, 39, §**7108, 7114, 7122, 7123;** C46, §441.3, 441.9, 441.17, 441.18; C50, 54, 58, §405A.8, 441.4, 441.9, 441.12; C62, 66, 71, 73, 75, 77, 79, 81, §441.17]

83 Acts, ch 64, §2; 87 Acts, ch 84, §1; 89 Acts, ch 296, §61; 94 Acts, ch 1110, §20, 24; 2001 Acts, ch 153, §15, 16; 2001 Acts, ch 176, §80; 2002 Acts, ch 1088, §1, 2; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143; 2015 Acts, ch 109, §63, 75

Referred to in §331.512

441.18 Listing and valuation.

Each assessor shall, with the assistance of each person assessed, or who may be required by law to list property belonging to another, enter upon the assessment rolls the several items of property required to be entered for assessment. The assessor shall personally affix values to all property assessed by the assessor.

[C51, §473; R60, §733; C73, §822; C97, §1352; C24, 27, 31, 35, 39, §**7106;** C46, §405.19, 441.1; C50, 54, 58, §405.19, 405A.6, 405A.7, 441.10; C62, 66, 71, 73, 75, 77, 79, 81, §441.18]

441.19 Owner to assist — provisions for assessment.

1. The assessor shall list every person in the assessor's county or city as the case may be and assess all the property in the county or city, except property exempted or otherwise assessed. A person who refuses to assist in making out a list of the person's property, or of any property which the person is by law required to assist in listing, is guilty of a simple misdemeanor.

a. Supplemental and optional to the procedure for the assessment of property by the assessor as provided in this chapter, the assessor may require from all persons required to list their property for taxation as provided by sections 428.1 and 428.2, a supplemental return to be prescribed by the director of revenue upon which the person shall list the person's property. The supplemental return shall be in substantially the same form as now prescribed by law for the assessment rolls used in the listing of property by the assessors. However, for assessment years beginning on or after January 1, 2018, and unless otherwise required for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438, a supplemental return shall not request, and a person shall not be otherwise required to provide to the assessor for property assessment purposes, sales or receipts data, expense data, balance sheets, bank account information, or other data related to the financial condition of a business operating in whole or in part on the property if the property is both classified as commercial or industrial property and owned and used by the owner of the business. Every person required to list property for taxation shall make a complete listing of the property upon supplemental forms and return the listing to the assessor as promptly as possible. The return shall be verified over the signature of the person making the return and section 441.25 applies to any person making such a return. The assessor shall make supplemental return forms available as soon as practicable after the first day of January of each year. The assessor shall make supplemental return forms available to the taxpayer by mail, or at a designated place within the taxing district.

b. Upon receipt of such supplemental return from any person the assessor shall prepare a roll assessing such person as hereinafter provided. In the preparation of such assessment roll the assessor shall be guided not only by the information contained in such supplemental roll, but by any other information the assessor may have or which may be obtained by the assessor as prescribed by the law relating to the assessment of property. The assessor shall not be bound by any values as listed in such supplemental return, and may include in the assessment roll any property omitted from the supplemental return which in the knowledge and belief of the assessor should be listed as required by law by the person making the supplemental return. Upon completion of such roll the assessor shall deliver to the person submitting such supplemental return a copy of the assessment roll, either personally or by mail.

c. Any taxpayer aggrieved by the action of the assessor in the preparation of an assessment roll upon which a supplemental return has been made shall have the same rights and privileges of appeal as provided by law in connection with the assessment rolls prepared in entirety by the assessor, but no assessment rolls prepared by the assessor after receiving a supplemental return shall be deemed insufficient or invalid because of the fact that such assessment roll does not bear the signature of the person assessed, and the signature of the person listing property upon the supplemental return shall be deemed a signature on the roll as prepared by the assessor.

d. The supplemental returns provided for in this section shall be preserved in the same manner as assessment rolls, but shall be confidential to the assessor, board of review, property assessment appeal board, or director of revenue, and shall not be open to public inspection, but any final assessment roll as made out by the assessor shall be a public record, provided

that such supplemental return shall be available to counsel of either the person making the return or of the public, in case any appeal is taken to the board of review, to the property assessment appeal board, or to the court.

e. In the event of failure of any person required to list property to make a supplemental return, as required herein, on or before the fifteenth day of February of any year when such listing is required, the assessor shall proceed in the listing and assessment of the person's property as provided by this chapter, and no person subject to taxation shall be relieved of the person's obligation to list the person's property through failure to make a supplemental return as herein provided, and any roll prepared by the assessor after receiving a supplemental return or when prepared in accordance with other provisions of this chapter, shall be a valid assessment.

f. The provisions of this chapter relating to assessment rolls shall be applicable to the preparation of rolls upon which a supplemental return has been received, insofar as they are not in conflict with the provision of this section.

2. On or before February 15 of each year, each owner of industrial real estate shall submit to the local assessor a report listing by year of acquisition and by acquisition cost the owner's machinery as described in section 427A.1, subsection 1, paragraph "*e*", and specifying any machinery added or removed during the preceding assessment year. A report containing an itemized list of machinery by year of acquisition and by acquisition cost shall be required only when deemed necessary by the assessor. The reports shall be submitted on forms prescribed by the director of revenue or on forms submitted by the taxpayer and approved by the assessor which forms shall contain the same information as is required to be reported on forms prescribed by the director. If a person shall knowingly enter false information on the report, the person shall be guilty of a simple misdemeanor. Also, if a person refuses to file the report provided for in this subsection, the assessor shall proceed in accordance with the provisions of section 441.24.

[C51, §477; R60, §734; C73, §823; C97, §1354; S13, §1354; C24, 27, 31, 35, 39, §**7107;** C46, §441.2; C50, 54, 58, §441.11; C62, 66, 71, 73, 75, 77, 79, 81, §441.19]

89 Acts, ch 296, §62; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §123; 2009 Acts, ch 41, §263; 2017 Acts, ch 151, §7, 29

Referred to in §421.30, 441.37

For future amendment to subsection 1, paragraph a, effective July 1, 2024, see 2018 Acts, ch 1158, §18, 28

2017 amendment to subsection 1, paragraph a, applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.20 Reserved.

441.21 Actual, assessed, and taxable value.

1. *a.* All property subject to taxation shall be valued at its actual value which shall be entered opposite each item, and, except as otherwise provided in this section, shall be assessed at one hundred percent of its actual value, and the value so assessed shall be taken and considered as the assessed value and taxable value of the property upon which the levy shall be made.

b. (1) The actual value of all property subject to assessment and taxation shall be the fair and reasonable market value of such property except as otherwise provided in this section. "*Market value*" is defined as the fair and reasonable exchange in the year in which the property is listed and valued between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and each being familiar with all the facts relating to the particular property. Sale prices of the property or comparable property in normal transactions reflecting market value, and the probable availability or unavailability of persons interested in purchasing the property, shall be taken into consideration in arriving at its market value. In arriving at market value, sale prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including but not limited to sales to immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining land or other land to be operated as a unit.

(2) The actual value of special purpose tooling, which is subject to assessment and taxation as real property under section 427A.1, subsection 1, paragraph "*e*", but which can

be used only to manufacture property which is protected by one or more United States or foreign patents, shall not exceed the fair and reasonable exchange value between a willing buyer and a willing seller, assuming that the willing buyer is purchasing only the special purpose tooling and not the patent covering the property which the special purpose tooling is designed to manufacture nor the rights to manufacture the patented property. For purposes of this subparagraph, special purpose tooling includes dies, jigs, fixtures, molds, patterns, and similar property. The assessor shall not take into consideration the special value or use value to the present owner of the special purpose tooling which is designed and intended solely for the manufacture of property protected by a patent in arriving at the actual value of the special purpose tooling.

c. In assessing and determining the actual value of special purpose industrial property having an actual value of five million dollars or more, the assessor shall equalize the values of such property with the actual values of other comparable special purpose industrial property in other counties of the state. Such special purpose industrial property includes, but is not limited to chemical plants. If a variation of ten percent or more exists between the actual values of comparable industrial property having an actual value of five million dollars or more located in separate counties, the assessors of the counties shall consult with each other and with the department of revenue to determine if adequate reasons exist for the variation. If no adequate reasons exist, the assessors shall make adjustments in the actual values to provide for a variation of ten percent or less. For the purposes of this paragraph, special purpose industrial property includes structures which are designed and erected for operation of a unique and special use, are not rentable in existing condition, and are incapable of conversion to ordinary commercial or industrial use except at a substantial cost.

d. Actual value of property in one assessing jurisdiction shall be equalized as compared with actual value of property in an adjoining assessing jurisdiction. If a variation of five percent or more exists between the actual values of similar, closely adjacent property in adjoining assessing jurisdictions in Iowa, the assessors thereof shall determine whether adequate reasons exist for such variation. If no such reasons exist, the assessors shall make adjustments in such actual values to reduce the variation to five percent or less.

e. The actual value of agricultural property shall be determined on the basis of productivity and net earning capacity of the property determined on the basis of its use for agricultural purposes capitalized at a rate of seven percent and applied uniformly among counties and among classes of property. Any formula or method employed to determine productivity and net earning capacity of property shall be adopted in full by rule.

f. In counties or townships in which field work on a modern soil survey has been completed since January 1, 1949, the assessor shall place emphasis upon the results of the survey in spreading the valuation among individual parcels of such agricultural property.

g. Notwithstanding any other provision of this section, the actual value of any property shall not exceed its fair and reasonable market value, except agricultural property which shall be valued exclusively as provided in paragraph "*e*" of this subsection.

h. The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department as updated from time to time. Such rules, forms, and guidelines shall not be inconsistent with or change the means, as provided in this section, of determining the actual, market, taxable, and assessed values.

i. (1) If the department finds that a city or county assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for the appropriate assessing jurisdiction. The notice shall be mailed by restricted certified mail. The notice shall specify the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

(2) The conference board shall respond to the department within thirty days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting

that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be scheduled on the matter. Judicial review of the decision of the director of revenue may be sought by the conference board in accordance with chapter 17A.

(3) A plan of action shall be submitted within sixty days of receipt of the notice of noncompliance. The plan shall contain a time frame under which compliance shall be achieved which shall be no later than January 1 of the following assessment year. The plan of action shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within thirty days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

(4) By January 1 of the assessment year following the calendar year in which the plan was submitted to the department, the conference board shall submit a report to the department indicating that the plan of action was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to five percent of the reimbursement payment authorized in section 425.1 until the department of revenue determines that the assessor is in compliance.

(5) If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the director of revenue within thirty days from the date of the notice that the assessor remains in noncompliance. The director of revenue shall grant a hearing, and upon hearing shall determine the correctness of the department's determination of noncompliance. The director of revenue shall notify the conference board of the decision by mail. Judicial review of the decision of the director of revenue may be sought by the chairperson of the conference board in accordance with chapter 17A.

(6) The department shall adopt rules relating to the administration of this paragraph "*i*".

2. In the event market value of the property being assessed cannot be readily established in the foregoing manner, then the assessor may determine the value of the property using the other uniform and recognized appraisal methods including its productive and earning capacity, if any, industrial conditions, its cost, physical and functional depreciation and obsolescence and replacement cost, and all other factors which would assist in determining the fair and reasonable market value of the property but the actual value shall not be determined by use of only one such factor. The following shall not be taken into consideration: Special value or use value of the property to its present owner, and the goodwill or value of a business which uses the property as distinguished from the value of the property as property. In addition, for assessment years beginning on or after January 1, 2018, and unless otherwise required for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438, the assessor shall not take into consideration and shall not request from any person sales or receipts data, expense data, balance sheets, bank account information, or other data related to the financial condition of a business operating in whole or in part on the property if the property is both classified as commercial or industrial property and owned and used by the owner of the business. However, in assessing property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, as amended, and which section limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall, unless the owner elects to withdraw the property from the assessment procedures for section 42 property, use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property. The assessor shall not consider any tax credit

equity or other subsidized financing as income provided to the property in determining the assessed value. The property owner shall notify the assessor when property is withdrawn from section 42 eligibility under the Internal Revenue Code or if the owner elects to withdraw the property from the assessment procedures for section 42 property under this subsection. The property shall not be subject to section 42 assessment procedures for the assessment year for which section 42 eligibility is withdrawn or an election is made. This notification must be provided to the assessor no later than March 1 of the assessment year or the owner will be subject to a penalty of five hundred dollars for that assessment year. The penalty shall be collected at the same time and in the same manner as regular property taxes. An election to withdraw from the assessment procedures for section 42 property is irrevocable. Property that is withdrawn from the assessment procedures for section 42 property shall be classified and assessed as multiresidential property unless the property otherwise fails to meet the requirements of subsection 13. Upon adoption of uniform rules by the department of revenue or succeeding authority covering assessments and valuations of such properties, the valuation on such properties shall be determined in accordance with such rules and in accordance with forms and guidelines contained in the real property appraisal manual prepared by the department as updated from time to time for assessment purposes to assure uniformity, but such rules, forms, and guidelines shall not be inconsistent with or change the foregoing means of determining the actual, market, taxable and assessed values.

3. *a.* *"Actual value"*, *"taxable value"*, or *"assessed value"* as used in other sections of the Code in relation to assessment of property for taxation shall mean the valuations as determined by this section; however, other provisions of the Code providing special methods or formulas for assessing or valuing specified property shall remain in effect, but this section shall be applicable to the extent consistent with such provisions. The assessor and department of revenue shall disclose at the written request of the taxpayer all information in any formula or method used to determine the actual value of the taxpayer's property.

b. (1) For assessment years beginning before January 1, 2018, the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious. However, in protest or appeal proceedings when the complainant offers competent evidence by at least two disinterested witnesses that the market value of the property is less than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

(2) For assessment years beginning on or after January 1, 2018, the burden of proof shall be upon any complainant attacking such valuation as excessive, inadequate, inequitable, or capricious. However, in protest or appeal proceedings when the complainant offers competent evidence that the market value of the property is different than the market value determined by the assessor, the burden of proof thereafter shall be upon the officials or persons seeking to uphold such valuation to be assessed.

(3) If the classification of a property has been previously adjudicated by the property assessment appeal board or a court as part of an appeal under this chapter, there is a presumption that the classification of the property has not changed for each of the four subsequent assessment years, unless a subsequent such adjudication of the classification of the property has occurred, and the burden of demonstrating a change in use shall be upon the person asserting a change to the property's classification.

4. For valuations established as of January 1, 1979, the percentage of actual value at which agricultural and residential property shall be assessed shall be the quotient of the dividend and divisor as defined in this section. The dividend for each class of property shall be the dividend as determined for each class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus six percent of the amount so determined. However, if the difference between the dividend so determined for either class of property and the dividend for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the

amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is less than six percent, the 1979 dividend for the other class of property shall be the dividend as determined for that class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, plus a percentage of the amount so determined which is equal to the percentage by which the dividend as determined for the other class of property for valuations established as of January 1, 1978, adjusted by the product obtained by multiplying the percentage determined for that year by the amount of any additions or deletions to actual value, excluding those resulting from the revaluation of existing properties, as reported by the assessors on the abstracts of assessment for 1978, is increased in arriving at the 1979 dividend for the other class of property. The divisor for each class of property shall be the total actual value of all such property in the state in the preceding year, as reported by the assessors on the abstracts of assessment submitted for 1978, plus the amount of value added to said total actual value by the revaluation of existing properties in 1979 as equalized by the director of revenue pursuant to section 441.49. The director shall utilize information reported on abstracts of assessment submitted pursuant to section 441.45 in determining such percentage. For valuations established as of January 1, 1980, and each assessment year thereafter beginning before January 1, 2013, the percentage of actual value as equalized by the director of revenue as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided in this subsection, including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the director of revenue, except that any references to six percent in this subsection shall be four percent. For valuations established as of January 1, 2013, and each assessment year thereafter, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which agricultural and residential property shall be assessed shall be calculated in accordance with the methods provided in this subsection, including the limitation of increases in agricultural and residential assessed values to the percentage increase of the other class of property if the other class increases less than the allowable limit adjusted to include the applicable and current values as equalized by the department of revenue, except that any references to six percent in this subsection shall be three percent.

5. *a.* For valuations established as of January 1, 1979, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be considered as one class of property and shall be assessed as a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1979, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1978 by the department of revenue, plus ten percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1978, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue as of January 1, 1979. For valuations established as of January 1, 1980, property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed at a percentage of its actual value. The percentage shall be determined by the director of revenue in accordance with the provisions of this section. For valuations established as of January 1, 1980, the percentage shall be the quotient of the dividend and divisor as defined in this section. The dividend shall be the total actual valuation established for 1979 by the department of revenue, plus eight percent of the amount so determined. The divisor for property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be the valuation established for 1979, plus the amount of value added to the total actual value by the revaluation of the property by the department of revenue

as of January 1, 1980. For valuations established as of January 1, 1981, and each year thereafter, the percentage of actual value at which property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 shall be assessed shall be calculated in accordance with the methods provided herein, except that any references to ten percent in this subsection shall be eight percent. For valuations established on or after January 1, 2013, property valued by the department of revenue pursuant to chapter 434 shall be assessed at a percentage of its actual value equal to the percentage of actual value at which property assessed as commercial property is assessed under paragraph *"b"* for the same assessment year.

b. For valuations established on or after January 1, 2013, commercial property, excluding properties referred to in section 427A.1, subsection 9, shall be assessed at a percentage of its actual value, as determined in this paragraph *"b"*. For valuations established for the assessment year beginning January 1, 2013, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which commercial property shall be assessed shall be ninety-five percent. For valuations established for the assessment year beginning January 1, 2014, and each assessment year thereafter, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which commercial property shall be assessed shall be ninety percent.

c. For valuations established on or after January 1, 2013, industrial property, excluding properties referred to in section 427A.1, subsection 9, shall be assessed at a percentage of its actual value, as determined in this paragraph *"c"*. For valuations established for the assessment year beginning January 1, 2013, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which industrial property shall be assessed shall be ninety-five percent. For valuations established for the assessment year beginning January 1, 2014, and each assessment year thereafter, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which industrial property shall be assessed shall be ninety percent.

d. For valuations established for the assessment year beginning January 1, 2019, and each assessment year thereafter, the percentages of actual value at which property is assessed, as determined under this subsection, shall not be applied to the value of wind energy conversion property valued under section 427B.26 the construction of which is approved by the Iowa utilities board on or after July 1, 2018.

6. Beginning with valuations established as of January 1, 1978, the assessors shall report the aggregate taxable values and the number of dwellings located on agricultural land and the aggregate taxable value of all other structures on agricultural land. Beginning with valuations established as of January 1, 1981, the agricultural dwellings located on agricultural land shall be valued at their market value as defined in this section and agricultural dwellings shall be valued as rural residential property and shall be assessed at the same percentage of actual value as is all other residential property.

7. *a.* For the purpose of computing the debt limitations for municipalities, political subdivisions, and school districts, the term *"actual value"* means the *"actual value"* as determined by subsections 1 through 3 without application of any percentage reduction and entered opposite each item, and as listed on the tax list as provided in section 443.2 as "actual value".

b. Whenever any board of review or other tribunal changes the assessed value of property, all applicable records of assessment shall be adjusted to reflect such change in both assessed value and actual value of such property.

8. *a.* Any normal and necessary repairs to a building, not amounting to structural replacements or modification, shall not increase the taxable value of the building. This paragraph applies only to repairs of two thousand five hundred dollars or less per building per year.

b. Notwithstanding paragraph *"a"*, any construction or installation of a solar energy system on property classified as agricultural, residential, commercial, multiresidential, or industrial property shall not increase the actual, assessed, and taxable values of the property for five full assessment years.

c. As used in this subsection, *"solar energy system"* means either of the following:

(1) A system of equipment capable of collecting and converting incident solar radiation or wind energy into thermal, mechanical or electrical energy and transforming these forms of energy by a separate apparatus to storage or to a point of use which is constructed or installed after January 1, 1978.

(2) A system that uses the basic design of the building to maximize solar heat gain during the cold season and to minimize solar heat gain in the hot season and that uses natural means to collect, store, and distribute solar energy which is constructed or installed after January 1, 1981.

d. In assessing and valuing the property for tax purposes, the assessor shall disregard any market value added by a solar energy system to a building. The director of revenue shall adopt rules, after consultation with the economic development authority, specifying the types of equipment and structural components to be included under the guidelines provided in this subsection.

9. Not later than November 1, 1979, and November 1 of each subsequent year, the director shall certify to the county auditor of each county the percentages of actual value at which residential property, agricultural property, commercial property, industrial property, multiresidential property, property valued by the department of revenue pursuant to chapter 434, and property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 in each assessing jurisdiction in the county shall be assessed for taxation. The county auditor shall proceed to determine the assessed values of agricultural property, residential property, commercial property, industrial property, multiresidential property, property valued by the department of revenue pursuant to chapter 434, and property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 by applying such percentages to the current actual value of such property, as reported to the county auditor by the assessor, and the assessed values so determined shall be the taxable values of such properties upon which the levy shall be made.

10. The percentage of actual value computed by the department of revenue for agricultural property, residential property, commercial property, industrial property, multiresidential property, property valued by the department of revenue pursuant to chapter 434, and property valued by the department of revenue pursuant to chapters 428, 433, 437, and 438 and used to determine assessed values of those classes of property does not constitute a rule as defined in section 17A.2, subsection 11.

11. Beginning with valuations established on or after January 1, 1995, as used in this section, *"residential property"* includes all land and buildings of multiple housing cooperatives organized under chapter 499A and includes land and buildings used primarily for human habitation which land and buildings are owned and operated by organizations that have received tax-exempt status under section 501(c)(3) of the Internal Revenue Code and rental income from the property is not taxed as unrelated business income under section 422.33, subsection 1A.

12. As used in this section, unless the context otherwise requires, *"agricultural property"* includes all of the following:

a. Beginning with valuations established on or after January 1, 2002, the real estate of a vineyard and buildings used in connection with the vineyard, including any building used for processing wine if such building is located on the same parcel as the vineyard.

b. Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production. The real estate must be an enclosed pond or land containing a photobioreactor.

13. *a.* (1) For the assessment year beginning January 1, 2015, mobile home parks, manufactured home communities, land-leased communities, assisted living facilities, property primarily used or intended for human habitation containing three or more separate dwelling units, and that portion of a building that is used or intended for human habitation and a proportionate share of the land upon which the building is situated, regardless of the number of dwelling units located in the building, if the use for human habitation is not the primary use of the building and such building is not otherwise classified as residential property, shall be valued as a separate class of property known as multiresidential property

and, excluding properties referred to in section 427A.1, subsection 9, shall be assessed at a percentage of its actual value, as determined in this subsection.

(2) Beginning with valuations established on or after January 1, 2016, all of the following shall be valued as a separate class of property known as multiresidential property and, excluding properties referred to in section 427A.1, subsection 9, shall be assessed at a percentage of its actual value, as determined in this subsection:

(a) Mobile home parks.

(b) Manufactured home communities.

(c) Land-leased communities.

(d) Assisted living facilities.

(e) A parcel primarily used or intended for human habitation containing three or more separate dwelling units. If a portion of such a parcel is used or intended for a purpose that, if the primary use, would be classified as commercial property or industrial property, each such portion, including a proportionate share of the land included in the parcel, if applicable, shall be assigned the appropriate classification pursuant to paragraph "*c*".

(f) For a parcel that is primarily used or intended for use as commercial property or industrial property, that portion of the parcel that is used or intended for human habitation, regardless of the number of dwelling units contained on the parcel, including a proportionate share of the land included in the parcel, if applicable. The portion of such a parcel used or intended for use as commercial property or industrial property, including a proportionate share of the land included in the parcel, if applicable, shall be assigned the appropriate classification pursuant to paragraph "*c*".

b. For valuations established for the assessment year beginning January 1, 2015, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of eighty-six and twenty-five hundredths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2016, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of eighty-two and five-tenths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2017, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of seventy-eight and seventy-five hundredths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2018, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of seventy-five percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2019, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of seventy-one and twenty-five hundredths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2020, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of sixty-seven and five-tenths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2021, the percentage of actual value as equalized by the department of revenue as

provided in section 441.49 at which multiresidential property shall be assessed shall be the greater of sixty-three and seventy-five hundredths percent or the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed for the same assessment year under subsection 4. For valuations established for the assessment year beginning January 1, 2022, and each assessment year thereafter, the percentage of actual value as equalized by the department of revenue as provided in section 441.49 at which multiresidential property shall be assessed shall be equal to the percentage of actual value determined by the department of revenue at which property assessed as residential property is assessed under subsection 4 for the same assessment year.

c. (1) For the assessment year beginning January 1, 2015, for parcels that, in part, satisfy the requirements for classification as multiresidential property, the assessor shall assign to that portion of the parcel the classification of multiresidential property and to such other portions of the parcel the property classification for which such other portions qualify.

(2) Beginning with valuations established on or after January 1, 2016, for parcels for which a portion of the parcel satisfies the requirements for classification as multiresidential property pursuant to paragraph *"a"*, subparagraph (2), subparagraph division (e) or (f), the assessor shall assign to that portion of the parcel the classification of multiresidential property and to such other portions of the parcel the property classification for which such other portions qualify.

d. Property that is rented or leased to low-income individuals and families as authorized by section 42 of the Internal Revenue Code, and that has not been withdrawn from section 42 assessment procedures under subsection 2 of this section, or a hotel, motel, inn, or other building where rooms or dwelling units are usually rented for less than one month shall not be classified as multiresidential property under this subsection.

e. As used in this subsection:

(1) *"Assisted living facility"* means property for providing assisted living as defined in section 231C.2. *"Assisted living facility"* also includes a health care facility, as defined in section 135C.1, an elder group home, as defined in section 231B.1, a child foster care facility under chapter 237, or property used for a hospice program as defined in section 135J.1.

(2) *"Dwelling unit"* means an apartment, group of rooms, or single room which is occupied as separate living quarters or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building.

(3) *"Land-leased community"* means the same as defined in sections 335.30A and 414.28A.

(4) *"Manufactured home community"* means the same as a land-leased community.

(5) *"Mobile home park"* means the same as defined in section 435.1.

[C97, §1305; S13, §1305; C24, 27, 31, 35, 39, §**7109;** C46, §441.4; C50, 54, 58, §441.13; C62, 66, 71, 73, 75, 77, 79, 81, §441.21; 81 Acts, ch 144, §1; 82 Acts, ch 1100, §22, ch 1159, §1 – 3, ch 1186, §4, 5]

83 Acts, ch 202, §22, 23; 84 Acts, ch 1223, §1; 88 Acts, ch 1116, §1; 89 Acts, ch 176, §1; 89 Acts, ch 296, §63; 95 Acts, ch 83, §28; 95 Acts, ch 157, §1; 96 Acts, ch 1034, §40; 97 Acts, ch 23, §51; 99 Acts, ch 114, §28; 2001 Acts, ch 119, §1; 2002 Acts, ch 1150, §13; 2002 Acts, ch 1153, §1, 2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §29; 2005 Acts, ch 150, §124, 125; 2009 Acts, ch 108, §16, 41; 2011 Acts, ch 25, §97, 143; 2011 Acts, ch 118, §50, 89; 2013 Acts, ch 118, §2 – 4; 2013 Acts, ch 123, §17 – 19, 22, 23, 26 – 28, 30, 50, 64, 65; 2014 Acts, ch 1131, §2 – 4; 2015 Acts, ch 109, §64 – 68, 75; 2015 Acts, ch 116, §3, 13; 2016 Acts, ch 1073, §121; 2017 Acts, ch 151, §8, 9, 28, 29, 31; 2018 Acts, ch 1172, §94

Referred to in §331.512, 357H.9, 403.20, 420.207, 425.11, 426C.1, 426C.4, 427.1(8)(b), 427.1(9), 427.1(19)(a), 427B.26, 428.29, 432.7, 433.9, 434.15, 437.7, 438.13, 441.17, 441.37, 441.37A, 441.49, 443.2, 443.22

For future amendment to subsection 2, effective July 1, 2024, see 2018 Acts, ch 1158, §19, 28

For future amendment to subsection 5, paragraph a, effective July 1, 2024, see 2018 Acts, ch 1158, §20, 28

For future amendments to subsections 9 and 10, effective July 1, 2024, see 2018 Acts, ch 1158, §21, 28

2015 amendment to subsection 13, paragraphs a and c, applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

2017 amendment to subsection 2 applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

2017 amendment to subsection 3, paragraph b, subparagraphs (1) and (2), takes effect May 11, 2017, and applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §28, 29

2017 amendment adding subsection 3, paragraph b, subparagraph (3), takes effect May 11, 2017, and applies retroactively to January 1, 2017, for assessment years beginning on or after that date; 2017 Acts, ch 151, §28, 31

441.21A Commercial and industrial property tax replacement — replacement claims.

1. *a.* For each fiscal year beginning on or after July 1, 2014, there is appropriated from the general fund of the state to the department of revenue an amount necessary for the payment of all commercial and industrial property tax replacement claims under this section for the fiscal year. However, for a fiscal year beginning on or after July 1, 2017, the total amount of moneys appropriated from the general fund of the state to the department of revenue for the payment of commercial and industrial property tax replacement claims in that fiscal year shall not exceed the total amount of money necessary to pay all commercial and industrial property tax replacement claims for the fiscal year beginning July 1, 2016.

b. Moneys appropriated by the general assembly to the department under this subsection for the payment of commercial and industrial property tax replacement claims are not subject to a uniform reduction in appropriations in accordance with section 8.31.

2. Beginning with the fiscal year beginning July 1, 2014, each county treasurer shall be paid by the department of revenue an amount equal to the amount of the commercial and industrial property tax replacement claims in the county, as calculated in subsection 4. If an amount appropriated for a fiscal year is insufficient to pay all replacement claims, the director of revenue shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

3. On or before July 1 of each fiscal year beginning on or after July 1, 2014, the assessor shall report to the county auditor the total actual value of all commercial property and industrial property in the county that is subject to assessment and taxation for the assessment year used to calculate the taxes due and payable in that fiscal year.

4. On or before a date established by rule of the department of revenue of each fiscal year beginning on or after July 1, 2014, the county auditor shall prepare a statement, based upon the report received pursuant to subsection 3, listing for each taxing district in the county:

a. The difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year. If the difference between the assessed value of all commercial property and industrial property and the actual valuation of all commercial property and industrial property is zero, there is no tax replacement for that taxing district for the fiscal year.

b. The tax levy rate per one thousand dollars of assessed value for each taxing district for that fiscal year.

c. The commercial and industrial property tax replacement claim for each taxing district. The replacement claim is equal to the amount determined pursuant to paragraph "*a*", multiplied by the tax rate specified in paragraph "*b*", and then divided by one thousand dollars.

5. For purposes of computing replacement amounts under this section, that portion of an urban renewal area defined as the sum of the assessed valuations defined in section 403.19, subsections 1 and 2, shall be considered a taxing district.

6. *a.* The county auditor shall certify and forward one copy of the statement to the department of revenue not later than a date of each year established by the department of revenue by rule.

b. The replacement claims shall be paid to each county treasurer in equal installments in September and March of each year. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

c. If the taxing district is an urban renewal area, the amount of the replacement claim shall be apportioned and credited to those portions of the assessed value defined in section 403.19, subsections 1 and 2, as follows:

(1) To that portion defined in section 403.19, subsection 1, an amount of the replacement claim that is proportionate to the amount of actual value of the commercial and industrial property in the urban renewal area as determined in section 403.19, subsection 1, that was subtracted pursuant to section 403.20, as it bears to the total amount of actual value of the commercial and industrial property in the urban renewal area that was subtracted pursuant

to section 403.20 for the assessment year for property taxes due and payable in the fiscal year for which the replacement claim is computed.

(2) To that portion defined in section 403.19, subsection 2, the remaining amount, if any.

d. Notwithstanding the allocation provisions of paragraph "*c*", the amount of the tax replacement amount that shall be allocated to that portion of the assessed value defined in section 403.19, subsection 2, shall not exceed the amount equal to the amount certified to the county auditor under section 403.19 for the fiscal year in which the claim is paid, after deduction of the amount of other revenues committed for payment on that amount for the fiscal year. The amount not allocated to that portion of the assessed value defined in section 403.19, subsection 2, as a result of the operation of this paragraph, shall be allocated to that portion of assessed value defined in section 403.19, subsection 1.

e. The amount of the replacement claim amount credited to the portion of the assessed value defined in section 403.19, subsection 1, shall be allocated to and when received be paid into the fund for the respective taxing district as taxes by or for the taxing district into which all other property taxes are paid. The amount of the replacement claim amount credited to the portion of the assessed value defined in section 403.19, subsection 2, shall be allocated to and when collected be paid into the special fund of the municipality under section 403.19, subsection 2.

2013 Acts, ch 123, §20, 22, 23
Referred to in §2.48, 257.3, 331.512, 331.559

441.22 Forest and fruit-tree reservations.

Forest and fruit-tree reservations fulfilling the conditions of sections 427C.1 to 427C.13 shall be exempt from taxation. In all other cases where trees are planted upon any tract of land, without regard to area, for forest, fruit, shade, or ornamental purposes, or for windbreaks, the assessor shall not increase the valuation of the property because of such improvements.

[S13, §1400-l; C24, 27, 31, 35, 39, §**7110;** C46, §441.5; C50, 54, 58, §441.14; C62, 66, 71, 73, 75, 77, 79, 81, §441.22; 82 Acts, ch 1247, §3]

84 Acts, ch 1222, §8
Referred to in §427A.1

441.23 Notice of valuation.

If there has been an increase or decrease in the valuation of the property, or upon the written request of the person assessed, the assessor shall, at the time of making the assessment, inform the person assessed, in writing, of the valuation put upon the taxpayer's property, and notify the person, that if the person feels aggrieved, to contact the assessor pursuant to section 441.30 or to appear before the board of review and show why the assessment should be changed. However, if the valuation of a class of property is uniformly decreased, the assessor may notify the affected property owners by publication in the official newspapers of the county. The owners of real property shall be notified not later than April 1 of any adjustment of the real property assessment.

[C97, §1356; C24, 27, 31, §7111; C35, §7111, 7129-e1; C39, §**7111, 7129.1;** C46, §441.6, 442.2; C50, 54, 58, §441.15, 442.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.23]

92 Acts, ch 1073, §13; 2004 Acts, ch 1086, §72; 2013 Acts, ch 123, §51, 64, 65
Referred to in §428.4

441.24 Refusal to furnish statement.

1. If a person refuses to furnish the verified statements required in connection with the assessment of property by the assessor, or to list the corporation's or person's property, the department of revenue, or assessor, as the case may be, shall proceed to list and assess the property according to the best information obtainable, and shall add to the taxable valuation one hundred percent thereof, which valuation and penalty shall be separately shown, and shall constitute the assessment; and if the valuation of the property is changed by a board of review, or on appeal from a board of review, a like penalty shall be added to the valuation thus fixed.

2. However, all or part of the penalty imposed under this section may be waived by the board of review upon application to the board by the assessor or the property owner. The

waiver or reduction in the penalty shall be allowed only on the valuation of real property against which the penalty has been imposed.

[C51, §475; R60, §734; C73, §823, 1318; C97, §1357; C24, 27, 31, 35, 39, §**7112;** C46, §441.7; C50, 54, 58, §441.16; C62, 66, 71, 73, 75, 77, 79, 81, §441.24]

89 Acts, ch 296, §64; 2003 Acts, ch 145, §286; 2015 Acts, ch 109, §69, 75

Referred to in §428.35, 441.19

441.25 False statement.

Any person making any verified statement or return, or taking any oath required by this title, who knowingly makes a false statement therein, shall be guilty of perjury.

[C97, §1358; C24, 27, 31, 35, 39, §**7113;** C46, §441.8; C50, 54, 58, §441.17; C62, 66, 71, 73, 75, 77, 79, 81, §441.25]

Referred to in §441.19

Perjury, punishment, §720.2

441.26 Assessment rolls and books.

1. The director of revenue shall each year prescribe the form of assessment roll to be used by all assessors in assessing property, in this state, also the form of pages of the assessor's assessment book. The assessment rolls shall be in a form that will permit entering, separately, the names of all persons assessed, and shall also contain a notice in substantially the following form:

> If you are not satisfied that the foregoing assessment is correct, you may contact the assessor on or after April 2, to and including April 25, of the year of the assessment to request an informal review of the assessment pursuant to section 441.30.
>
> If you are not satisfied that the foregoing assessment is correct, you may file a protest against such assessment with the board of review on or after April 2, to and including April 30, of the year of the assessment, such protest to be confined to the grounds specified in section 441.37.
>
> Dated: ..... day of ..... (month), ... (year)
>
> .....
>
> County/City Assessor.

2. The notice in each odd-numbered year shall contain a statement that the assessments are subject to equalization pursuant to an order issued by the department of revenue, that the county auditor shall give notice on or before October 8 by publication in an official newspaper of general circulation to any class of property affected by the equalization order, that the county auditor shall give notice by mail postmarked on or before October 8 to each property owner or taxpayer whose valuation has been increased by the equalization order, and that the board of review shall be in session from October 10 to November 15 to hear protests of affected property owners or taxpayers whose valuations have been adjusted by the equalization order.

3. The assessment rolls shall be used in listing the property and showing the values affixed to the property of all persons assessed. The rolls shall be made in duplicate. The duplicate roll shall be signed by the assessor, detached from the original and delivered to the person assessed if there has been an increase or decrease in the valuation of the property. If there has been no change in the valuation, the information on the roll may be printed on computer stock paper and preserved as required by this chapter. If the person assessed requests in writing a copy of the roll, the copy shall be provided to the person. The pages of the assessor's assessment book shall contain columns ruled and headed for the information required by this chapter and that which the department of revenue deems essential in the equalization work of the department. The assessor shall return all assessment rolls and schedules to the county auditor, along with the completed assessment book, as provided in this chapter, and the county auditor shall carefully keep and preserve the rolls, schedules, and book for a period of five years from the time of its filing in the county auditor's office.

4. Beginning with valuations for January 1, 1977, and each succeeding year, for each

parcel of property entered in the assessment book, the assessor shall list the classification of the property.

[C51, §471, 473; R60, §732, 733; C73, §821; C97, §1360, 1361; S13, §1360, 1361; C24, 27, 31, 35, 39, §**7115, 7116, 7117, 7118;** C46, §405.20, 441.10, 441.11, 441.13; C50, 54, 58, §405.20, 441.18, 441.19, 441.20, 441.21; C62, 66, 71, 73, 75, 77, 79, 81, §441.26]

86 Acts, ch 1107, §1; 89 Acts, ch 296, §65; 2000 Acts, ch 1058, §56; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §58; 2011 Acts, ch 25, §143; 2013 Acts, ch 123, §52, 64, 65; 2015 Acts, ch 109, §70, 75; 2015 Acts, ch 116, §4, 5, 13

Referred to in §331.508

2015 amendments to subsections 1 and 2 by 2015 Acts, ch 116, §4, 5, apply to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

441.27 Uniform assessment rolls.

The director of revenue shall from time to time prepare and certify to each assessor such instructions as to a uniform method of making up the assessment rolls as the director of revenue thinks necessary to secure a compliance with the law and uniform returns, which shall be printed upon each assessment roll, and also prepare instructions for the same purpose as to making up the assessment book, which shall be printed therein.

[C97, §1362; C24, 27, 31, 35, 39, §**7119;** C46, §441.14; C50, 54, 58, §441.22; C62, 66, 71, 73, 75, 77, 79, 81, §441.27]

2003 Acts, ch 145, §286

441.28 Assessment rolls — change — notice to taxpayer.

The assessment shall be completed not later than April 1 each year. If the assessor makes any change in an assessment after it has been entered on the assessor's rolls, the assessor shall note on the roll, together with the original assessment, the new assessment and the reason for the change, together with the assessor's signature and the date of the change. Provided, however, in the event the assessor increases any assessment the assessor shall give notice of the increase in writing to the taxpayer by mail postmarked no later than April 1. No changes shall be made on the assessment rolls after April 1 except by written agreement of the taxpayer and assessor under section 441.30, by order of the board of review or of the property assessment appeal board, or by decree of court.

[C51, §471, 473; R60, §732, 733, 736; C73, §821, 825; C97, §1360, 1366; S13, §1360, 1366; C24, 27, 31, 35, 39, §**7115, 7122, 7123;** C46, §405.20, 441.10, 441.17, 441.18; C50, 54, 58, §405.20, 441.18, 441.25; C62, 66, 71, 73, 75, 77, 79, 81, §441.28]

2005 Acts, ch 150, §126; 2013 Acts, ch 123, §53, 64, 65; 2015 Acts, ch 116, §6, 13

Referred to in §428.4

2015 amendment applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

441.28A Electronic delivery authorized.

1. If the assessor is required or authorized by this title to send any assessment, notice, or any other information to persons by regular mail, the assessor may instead provide the assessment, notice, or other information by electronic means if the person entitled to receive the assessment, notice, or information has by electronic or other means, authorized the assessor to provide the assessment, notice, or other information in that manner. An authorization to receive assessments, notices, or other information by electronic means does not require the assessor to provide such items by electronic means and does not prohibit an assessor from providing such items by regular mail.

2. An authorization to receive assessments, notices, or other information by electronic means pursuant to this section shall continue until revoked in writing by the person. Such revocation may be provided to the assessor electronically in a manner approved by the assessor.

3. Electronic means includes delivery to an electronic mail address or by other electronic means reasonably calculated to apprise the person of the information that is being provided, as designated by the authorizing person.

4. Any assessment, notice, or other information provided by the assessor to a person pursuant to this section is deemed to have been mailed by the assessor and received by the person on the date that the assessor electronically sends the information to the person

or electronically notifies the person that the information is available to be accessed by the person.

5. An authorization under this section also applies to information that is not expressly required by law to be sent by regular mail, but that is customarily sent by the assessor using regular mail, to persons entitled to receive the information.

6. Information compiled or possessed by the assessor for the purposes of complying with authorizations for delivery by electronic means under this title, including but not limited to taxpayer electronic mail addresses, waivers, waiver requests, waiver revocations, and passwords or other methods of protecting taxpayer information are not public records and are not subject to disclosure under chapter 22.

2018 Acts, ch 1008, §1, 2

Section applies to assessments, notices, or other information provided by assessors on or after July 1, 2018; 2018 Acts, ch 1008, §2

441.29 Plat book — index system.

1. The county auditor shall furnish to each assessor a plat book on which shall be platted the lands and lots in the assessor's assessment district, showing on each subdivision or part thereof, written in ink or pencil, the name of the owner, the number of acres, or the boundary lines and distances in each, and showing as to each tract the number of acres to be deducted for railway right-of-way and for roads and for rights-of-way for public levees and open public drainage improvements.

2. The auditor, or the auditor's designee, of any county shall establish a permanent real estate index number system with related tax maps for all real estate tax administration purposes, including the assessment, levy, and collection of such taxes. Wherever in real property tax administration the legal description of tax parcels is required, such permanent number system shall be adopted in addition thereto. The permanent real estate index numbers shall begin with the two-digit county number and be a unique identifying number for each parcel within the county. These numbers shall follow the property, not the owner, and can be an alphanumeric system. In the event of a division of an existing parcel, the original permanent parcel index number shall be retired and new numbers assigned. The auditor shall prepare and maintain permanent real estate index number tax maps, which shall carry such numbers. The auditor shall prepare and maintain cross indexes of the numbers assigned under this system, with legal descriptions of the real estate to which such numbers relate. Indexes and tax maps established as provided in this section shall be open to public inspection.

[C51, §181; R60, §733; C73, §821; C97, §1364; C24, 27, 31, 35, 39, §**7120;** C46, §441.15; C50, 54, 58, §441.23; C62, 66, 71, 73, 75, 77, 79, 81, §441.29]

2004 Acts, ch 1144, §2; 2018 Acts, ch 1041, §94

Referred to in §331.512, 354.2, 354.4, 354.5, 354.27

441.30 Informal assessment review period — recommendation.

1. Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may contact the assessor by telephone or in writing by paper or electronic medium on or after April 2, to and including April 25, of the year of the assessment to inquire about the specifics and accuracy of the assessment. Such an inquiry may also include a request for an informal review of the assessment by the assessor under one or more of the grounds for protest authorized under section 441.37.

2. In response to an inquiry under subsection 1, if the assessor, following an informal review, determines that the assessment was incorrect under one or more of the grounds for protest authorized under section 441.37, the assessor may, on or before April 25, recommend that the property owner or aggrieved taxpayer file a protest with the local board of review and may file a recommendation with the local board of review related to the informal review, or may enter into a signed written agreement with the property owner or aggrieved taxpayer authorizing the assessor to correct or modify the assessment according to the agreement of the parties.

3. A recommendation filed with the local board of review by the assessor pursuant to

subsection 2 shall be utilized by the local board of review in the evaluation of all evidence properly before the local board of review.

4. This section, including any action taken by the assessor under this section, shall not be construed to limit a property owner or taxpayer's ability to file a protest with the local board of review under section 441.37.

2013 Acts, ch 123, §54, 64, 65; 2015 Acts, ch 116, §7, 13; 2017 Acts, ch 151, §10, 29
Referred to in §441.23, 441.26, 441.28
2015 amendment applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13
2017 amendment to subsections 1 and 2 applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.31 Board of review.

1. The chairperson of the conference board shall call a meeting by written notice to all of the members of the board for the purpose of appointing a board of review for all assessments made by the assessor. The board of review may consist of either three members or five members. As nearly as possible this board shall include one licensed real estate broker and one licensed architect or person experienced in the building and construction field. In the case of a county, at least one member of the board shall be a farmer. Not more than two members of the board of review shall be of the same profession or occupation and members of the board of review shall be residents of the assessor jurisdiction. The terms of the members of the board of review shall be for six years, beginning with January 1 of the year following their selection. In boards of review having three members the term of one member of the first board to be appointed shall be for two years, one member for four years, and one member for six years. In the case of boards of review having five members, the term of one member of the first board to be appointed shall be for one year, one member for two years, one member for three years, one member for four years, and one member for six years.

2. *a.* However, notwithstanding the board of review appointed by the county conference board pursuant to subsection 1, a city council of a city having a population of seventy-five thousand or more which is a member of a county conference board may provide, by ordinance, for a city board of review to hear appeals of property assessments by residents of that city. The members of the city board of review shall be appointed by the city council. The city shall pay the expenses incurred by the city board of review. However, if the city has a population of more than one hundred twenty-five thousand, the expenses incurred by the city board of review shall be paid by the county. All of the provisions of this chapter relating to the boards of review shall apply to a city board of review appointed pursuant to this subsection.

b. If a city having a population of more than one hundred twenty-five thousand abolishes its office of city assessor, the city may provide, by ordinance, for a city board of review or request the county conference board to appoint a ten-member county board of review. The initial ten-member county board of review established pursuant to this paragraph shall consist of the members of the city board of review and the county board of review who are serving unexpired terms of office. The members of the initial ten-member county board of review may continue to serve their unexpired terms of office and are eligible for reappointment for a six-year term. The ten-member county board of review created pursuant to this paragraph is in lieu of the boards of review provided for in subsection 1, but the professional and occupational qualifications of members shall apply.

3. Notwithstanding the requirements of subsection 1, the conference board or a city council which has appointed a board of review may increase the membership of the board of review by an additional two members if it determines that as a result of the large number of protests filed or estimated to be filed the board of review will be unable to timely resolve the protests with the existing number of members. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The additional emergency members shall be appointed for a term set by the conference board or the city council but not for longer than two years. The conference board or the city council

may extend the terms of the emergency members if it makes a similar determination as required for the initial appointment.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.13, 405A.3, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.31]

86 Acts, ch 1230, §1; 88 Acts, ch 1043, §2; 95 Acts, ch 74, §1; 97 Acts, ch 22, §2, 3; 2017 Acts, ch 131, §7

441.32 Terms — vacancies.

The terms of the members of the board of review are for six years each except for the emergency members whose terms shall be set by the conference board for a period not to exceed two years. Members of this board may be removed by the conference board but only after a public hearing upon specified charges, if a hearing is requested by the member. A subsequent appointment, and an appointment to fill a vacancy, shall be made in the same way as the original selection. The board may subpoena witnesses and administer oaths.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §405.14, 441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.14, 441.3, 442.1; C62, 66, 71, 73, 75, 77, 79, 81, §441.32]

86 Acts, ch 1230, §2

441.33 Sessions of board of review.

1. The board of review shall be in session from May 1 through the period of time necessary to act on all protests filed under section 441.37 but not later than May 31 each year and for an additional period as required under section 441.37 and shall hold as many meetings as are necessary to discharge its duties. On or before May 31 in those years in which a session has not been extended as required under section 441.37, the board shall return all books, records, and papers to the assessor except undisposed of protests and records pertaining to those protests. If it has not completed its work by May 31, in those years in which the session has not been extended under section 441.37, the director of revenue may authorize the board of review to continue in session for a period necessary to complete its work, but the director of revenue shall not approve a continuance extending beyond July 15. On or before May 31 or on the final day of any extended session required under section 441.37 or authorized by the director of revenue, the board of review shall adjourn until May 1 of the following year. It shall adopt its own rules of procedure, elect its own chairperson from its membership, and keep minutes of its meetings. The board shall appoint a clerk who may be a member of the board or any other qualified person, except the assessor or any member of the assessor's staff. It may be reconvened by the director of revenue. All undisposed protests in its hands on July 15 shall be automatically overruled and returned to the assessor together with its other records.

2. Within fifteen days following the adjournment of any regular or special session, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of any actions taken during that session.

[R60, §739; C73, §829, 830, 832; C97, §1368, 1370, 1375, 1376; C24, 27, 31, 35, 39, §**7127, 7129, 7137, 7138;** C46, §405.15, 441.21, 442.1, 442.12, 442.13; C50, 54, 58, §405.15, 442.1, 442.12; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.33; 81 Acts, ch 145, §1]

87 Acts, ch 198, §7; 2003 Acts, ch 145, §286; 2019 Acts, ch 24, §104

Referred to in §441.35, 441.45

Code editor directive applied

441.34 Quarters — hours — expenses.

The board of review of assessments shall hold meetings in quarters provided by the board of supervisors. Said board shall be in session such hours each day and shall devote such time to its duties as may be necessary to the discharge of its duties and to accomplish substantial justice. The expenses of the board shall be included in the assessor's annual budget as provided hereafter.

[C39, §**7134.1;** C46, 50, 54, 58, §405.16, 405.17, 442.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.34]

441.35 Powers of review board.

1. The board of review shall have the power:

a. To equalize assessments by raising or lowering the individual assessments of real property, including new buildings, made by the assessor.

b. To add to the assessment rolls any taxable property which has been omitted by the assessor.

c. To add to the assessment rolls for taxation property which the board believes has been erroneously exempted from taxation. Revocation of a property tax exemption shall commence with the assessment for the current assessment year, and shall not be applied to prior assessment years.

2. In any year after the year in which an assessment has been made of all of the real estate in any taxing district, the board of review shall meet as provided in section 441.33, and where the board finds the same has changed in value, the board shall revalue and reassess any part or all of the real estate contained in such taxing district, and in such case, the board shall determine the actual value as of January 1 of the year of the revaluation and reassessment and compute the taxable value thereof. If the assessment of any such property is raised, or any property is added to the tax list by the board, the clerk shall give notice in the manner provided in section 441.36. If all property in any taxing district is revalued and reassessed, the board shall, in addition to notices required to be provided in the manner specified in section 441.36, instruct the clerk to give immediate notice by one publication in one of the official newspapers located in the taxing district. The decision of the board as to the foregoing matters shall be subject to appeal to the property assessment appeal board within the same time and in the same manner as provided in section 441.37A and to the district court within the same time and in the same manner as provided in section 441.38.

[C35, §7129-e1; C39, §**7129.1;** C46, 50, 54, 58, §405.21, 442.2; C62, 66, 71, 73, 75, 77, 79, 81, §441.35]

87 Acts, ch 84, §2; 89 Acts, ch 296, §66; 2005 Acts, ch 150, §127; 2011 Acts, ch 25, §143; 2013 Acts, ch 123, §55, 64, 65; 2015 Acts, ch 116, §8, 13

2015 amendment applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

441.36 Change of assessment — notice.

All changes in assessments authorized by the board of review, and reasons therefor, shall be entered in the minute book kept by said board and on the assessment roll. Said minute book shall be filed with the assessor after the adjournment of the board of review and shall at all times be open to public inspection. In case the value of any specific property or the entire assessment of any person, partnership, or association is increased, or new property is added by the board, the clerk shall give immediate notice thereof by mail to each at the post office address shown on the assessment rolls, and at the conclusion of the action of the board therein the clerk shall post an alphabetical list of those whose assessments are thus raised and added, in a conspicuous place in the office or place of meeting of the board, and enter upon the records a statement that such posting has been made, which entry shall be conclusive evidence of the giving of the notice required. The board shall hold an adjourned meeting, with at least five days intervening after the posting of said notices, before final action with reference to the raising of assessments or the adding of property to the rolls is taken, and the posted notices shall state the time and place of holding such adjourned meeting, which time and place shall also be stated in the proceedings of the board.

[R60, §740; C73, §831; C97, §1371, 1372; S13, §1371, 1372; C24, 27, 31, 35, 39, §**7130, 7131;** C46, 50, 54, 58, §405.23, 442.3, 442.4; C62, 66, 71, 73, 75, 77, 79, 81, §441.36]

Referred to in §441.35

441.37 Protest of assessment — grounds.

1. *a.* (1) Any property owner or aggrieved taxpayer who is dissatisfied with the owner's or taxpayer's assessment may file a protest against such assessment with the board of review on or after April 2, to and including April 30, of the year of the assessment. In any county which has been declared to be a disaster area by proper federal authorities after March 1 and prior to May 20 of said year of assessment, the board of review shall be authorized to

remain in session until June 15 and the time for filing a protest shall be extended to and include the period from May 25 to June 5 of such year. The protest shall be in writing on forms prescribed by the director of revenue and, except as provided in subsection 3, signed by the one protesting or by the protester's duly authorized agent. The taxpayer may have an oral hearing on the protest if the request for the oral hearing is made in writing at the time of filing the protest. The protest must be confined to one or more of the following grounds:

(a) That said assessment is not equitable as compared with assessments of other like property in the taxing district.

(b) That the property is assessed for more than the value authorized by law.

(c) That the property is not assessable, is exempt from taxes, or is misclassified.

(d) That there is an error in the assessment.

(e) That there is fraud or misconduct in the assessment which shall be specifically stated.

(2) If the local board of review, property assessment appeal board, or district court decides in favor of the property owner or aggrieved taxpayer and finds that there was fraud or misconduct in the assessment, the property owner's or aggrieved taxpayer's reasonable costs incurred in bringing the protest or appeal shall be paid from the assessment expense fund under section 441.16.

(3) For purposes of this section, *"costs"* include but are not limited to legal fees, appraisal fees, and witness fees.

(4) For purposes of this section, *"misconduct"* means the same as defined in section 441.9.

b. The burden of proof for all protests filed under this section shall be as stated in section 441.21, subsection 3.

c. The property owner or aggrieved taxpayer may combine on one form protests of assessment on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of such protests, the person making the combined protests may request that the oral hearings be held consecutively.

2. *a.* A property owner or aggrieved taxpayer who finds that a clerical or mathematical error has been made in the assessment of the owner's or taxpayer's property may file a protest against that assessment in the same manner as provided in this section, except that the protest may be filed for previous years. The board may correct clerical or mathematical errors for any assessment year in which the taxes have not been fully paid or otherwise legally discharged.

b. Upon the determination of the board that a clerical or mathematical error has been made the board shall take appropriate action to correct the error and notify the county auditor of the change in the assessment as a result of the error and the county auditor shall make the correction in the assessment and the tax list in the same manner as provided in section 443.6.

c. The board shall not correct an error resulting from a property owner's or taxpayer's inaccuracy in reporting or failure to comply with section 441.19.

3. For assessment years beginning on or after January 1, 2014, the board of review may allow property owners or aggrieved taxpayers who are dissatisfied with the owner's or taxpayer's assessment to file a protest against such assessment by electronic means. Electronic filing of assessment protests may be authorized for the protest period that begins April 2, the protest period that begins October 9, or both. Except for the requirement that a protest be signed, all other requirements of this section for an assessment protest to the board of review shall apply to a protest filed electronically. If electronic filing is authorized by the local board of review, the availability of electronic filing shall be clearly indicated on the assessment roll notice provided to the property owner or taxpayer and included in both the published equalization order notice and the equalization order notice mailed to the property owner or taxpayer if applicable.

4. After the board of review has considered any protest filed by a property owner or aggrieved taxpayer and made final disposition of the protest, the board shall give written notice to the property owner or aggrieved taxpayer who filed the protest of the action taken by the board of review on the protest. The written notice to the property owner or aggrieved taxpayer shall also specify the reasons for the action taken by the board of review on the protest. If protests of assessment on multiple parcels separately assessed were combined,

the written notice shall state the action taken, and the reasons for the action, for each assessment protested.

[R60, §740; C73, §831; C97, §1373; S13, §1373; C24, 27, 31, 35, 39, §**7132;** C46, 50, 54, 58, §405.22, 442.5; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.37; 81 Acts, ch 145, §2]

86 Acts, ch 1028, §1; 88 Acts, ch 1251, §2; 2005 Acts, ch 140, §57, 58, 73; 2011 Acts, ch 25, §143; 2013 Acts, ch 123, §56, 57, 64, 65; 2015 Acts, ch 116, §9, 10, 13; 2017 Acts, ch 151, §11 – 13, 29; 2019 Acts, ch 59, §133

Referred to in §404.5, 404B.6, 428.4, 441.26, 441.30, 441.33, 441.37A, 441.38, 441.45

2015 amendments apply to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

2017 amendments to subsection 1, paragraph a, apply to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

Subsection 1, paragraph a amended

441.37A Appeal of protest to property assessment appeal board.

1. *a.* Appeals may be taken from the action of the board of review with reference to protests of assessment, valuation, or application of an equalization order to the property assessment appeal board created in section 421.1A. However, a property owner or aggrieved taxpayer or an appellant described in section 441.42 may bypass the property assessment appeal board and appeal the decision of the local board of review to the district court pursuant to section 441.38.

b. For an appeal to the property assessment appeal board to be valid, a party must file an appeal with the board within twenty days after the date of adjournment of the local board of review or May 31, whichever is later. The appeal shall include the basis of the appeal and the relief sought. New grounds in addition to those set out in the protest to the local board of review, as provided in section 441.37, may be pleaded, and additional evidence to sustain those grounds set out in the protest to the local board of review may be introduced. The assessor shall have the same right to appeal to the assessment appeal board as an individual taxpayer, public body, or other public officer as provided in section 441.42. An appeal to the board is a contested case under chapter 17A.

c. Filing of the appeal with the property assessment appeal board shall preserve all rights of appeal of the appellant, except as otherwise provided in subsection 2.

d. A copy of the appellant's appeal shall be sent by the property assessment appeal board to the local board of review whose decision is being appealed.

e. The property assessment appeal board may, by rule, provide for the filing of an appeal by electronic means. All requirements of this section for an appeal to the board shall apply to an appeal filed electronically.

2. *a.* A party to the appeal may request a hearing or the appeal may proceed without a hearing. If a hearing is requested, the appellant and the local board of review from which the appeal is taken shall be given at least thirty days' written notice by the property assessment appeal board of the date the appeal shall be heard and the local board of review may be present and participate at such hearing. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review. The requirement of thirty days' written notice may be waived by mutual agreement of all parties to the appeal. Failure by the appellant to appear at the property assessment appeal board hearing shall result in dismissal of the appeal unless a continuance is granted to the appellant by the board following a showing of good cause for the appellant's failure to appear. If an appeal is dismissed for failure to appear, the property assessment appeal board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

b. Each appeal may be considered by one or more members of the board, and the chairperson of the board may assign members to consider appeals. If a hearing is requested, it shall be open to the public and shall be conducted in accordance with the rules of practice and procedure adopted by the board. The board may provide by rule for participation in such hearings by telephone or other means of electronic communication. However, any deliberation of the board or of board members considering the appeal in reaching a decision on any appeal shall be confidential. Any deliberation of the board or of board members to rule on procedural motions in a pending appeal or to deliberate on the decision to be reached in an appeal is exempt from the provisions of chapter 21. The property assessment appeal board or any member of the board considering the appeal may require the production of

any books, records, papers, or documents as evidence in any matter pending before the board that may be material, relevant, or necessary for the making of a just decision. Any books, records, papers, or documents produced as evidence shall become part of the record of the appeal. Any testimony given relating to the appeal shall be electronically recorded and made a part of the record of the appeal.

3. *a.* The burden of proof for all appeals before the board shall be as stated in section 441.21, subsection 3. The board members considering the appeal shall determine anew all questions arising before the local board of review that relate to the liability of the property to assessment or the amount of the assessment. All of the evidence shall be considered and there shall be no presumption as to the correctness of the valuation of assessment appealed from. If the appeal is considered by less than the full membership of the board, the determination made by such members shall be forwarded to the full board for approval, rejection, or modification. If the initial determination is rejected by the board, it shall be returned for reconsideration to the board members making the initial determination.

b. The decision of the board shall be considered the final agency action and is subject to judicial review as provided in section 441.37B, except as otherwise provided in section 441.49. A decision of the board modifying an assessment shall be sent to the county auditor and the assessor, who shall correct the assessment books accordingly. An appeal of the board's decision under section 441.37B shall not itself stay execution or enforcement of the board's decision.

c. The levy of taxes on any assessment appealed to the board shall not be delayed by any proceeding before the board, and if the assessment appealed from is reduced by the decision of the board, any taxes levied upon that portion of the assessment reduced shall be abated or, if already paid, shall, by order of the board, be refunded or credited against future property taxes levied against the property at the option of the property owner or aggrieved taxpayer.

d. If the subject of an appeal is the application of an equalization order, the property assessment appeal board shall not order a reduction in assessment greater than the amount that the assessment was increased due to application of the equalization order.

e. Each party to the appeal shall be responsible for the costs of the appeal incurred by that party.

2005 Acts, ch 150, §128; 2008 Acts, ch 1191, §74, 75; 2013 Acts, ch 123, §58 – 61, 64, 65, 69; 2014 Acts, ch 1093, §2; 2015 Acts, ch 138, §19, 161, 162; 2017 Acts, ch 151, §14 – 16, 29

Referred to in §428.4, 441.35

2017 amendments apply to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.37B Appeal to district court from property assessment appeal board.

1. A party who is aggrieved or adversely affected by a final action of the property assessment appeal board may seek judicial review of the action as provided in chapter 17A. Notwithstanding section 17A.19, subsection 2, a petition for judicial review of the action of the property assessment appeal board shall be filed in the district court of the county where the property that is subject to the appeal is located.

2. Notwithstanding any provision of chapter 17A to the contrary, for appeals taken from the property assessment appeal board to district court, new grounds in addition to those set out in the appeal to the property assessment appeal board shall not be pleaded.

3. Notwithstanding any provision of chapter 17A to the contrary, additional evidence to sustain those grounds set out in the appeal to the property assessment appeal board may not be introduced in an appeal to the district court.

4. A decision of the district court modifying an assessment shall be sent to the county auditor and the assessor, who shall correct the assessment books accordingly.

2017 Acts, ch 151, §17, 29

Referred to in §428.4, 441.37A, 602.8102(61)

Section applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.38 Appeal to district court from local board of review.

1. Appeals may be taken from the action of the local board of review with reference to protests of assessment, to the district court of the county in which the board holds its sessions within twenty days after the board's adjournment or May 31, whichever date is later. For

appeals taken from the local board of review directly to district court, new grounds in addition to those set out in the protest to the local board of review, as provided in section 441.37, may be pleaded. For appeals taken from the local board of review directly to district court, additional evidence to sustain those grounds set out in the protest to the local board of review may be introduced. The assessor shall have the same right to appeal and in the same manner as an individual taxpayer, public body, or other public officer as provided in section 441.42. Appeals shall be taken by filing a written notice of appeal with the clerk of district court. Filing of the written notice of appeal shall preserve all rights of appeal of the appellant.

2. Notice of appeal shall be served as an original notice on the chairperson, presiding officer, or clerk of the board of review after the filing of notice under subsection 1 with the clerk of district court.

3. The court shall hear the appeal in equity and determine anew all questions arising before the board of review that relate to the liability of the property to assessment or the amount of the assessment. The court shall consider all of the evidence and there shall be no presumption as to the correctness of the valuation or assessment appealed from. The court's decision shall be certified by the clerk of the court to the county auditor and the assessor, who shall correct the assessment books accordingly.

[R60, §738; C73, §827, 831; C97, §1367, 1373; S13, §1373; C24, 27, 31, 35, 39, §**7126, 7133;** C46, §441.20; C50, 54, 58, §405.24, 441.27, 442.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.38]

87 Acts, ch 198, §8; 90 Acts, ch 1192, §1; 2005 Acts, ch 140, §59; 2005 Acts, ch 150, §129; 2006 Acts, ch 1158, §63; 2008 Acts, ch 1191, §76; 2017 Acts, ch 151, §18, 29

Referred to in §428.4, 441.35, 441.37A, 443.11, 602.8102(61)

Manner of service, R.C.P. 1.302 – 1.315

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.38A Notice to school district. Repealed by 2017 Acts, ch 151, §26, 29. See §441.39(2).

441.38B Appeal to district court from property assessment appeal board. Repealed by 2017 Acts, ch 151, §26, 29. See §441.37B.

441.39 Notice of assessment protests and appeals to taxing districts.

1. If a property owner or aggrieved taxpayer appeals a decision of the board of review to the property assessment appeal board or to district court and requests an adjustment in valuation of one hundred thousand dollars or more, the assessor shall notify all affected taxing districts as shown on the last available tax list.

2. In addition to any other requirement for providing of notice, if a property owner or aggrieved taxpayer files a protest against the assessment of property valued by the assessor at five million dollars or more or files an appeal to the property assessment appeal board or the district court with regard to such property, the assessor shall provide notice to the school district in which such property is located within ten days of the filing of the protest or the appeal, as applicable.

[C97, §1373; S13, §1373; C24, 27, 31, 35, 39, §**7134;** C46, 50, 54, 58, §442.7; C62, 66, 71, 73, 75, 77, 79, 81, §441.39]

2005 Acts, ch 19, §56; 2005 Acts, ch 150, §130; 2017 Acts, ch 151, §19, 29

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.40 Costs, fees, and expenses apportioned.

The clerk of the court shall likewise certify to the county treasurer the costs assessed by the court on any appeal from a board of review to the district court, in all cases where the costs are taxed against the board of review or any taxing district. Thereupon the county treasurer shall compute and apportion the costs between the various taxing districts participating in the proceeds of the collection of the taxes involved in any such appeal, and the treasurer shall so compute and apportion the various amounts which the taxing districts are required to pay in proportion to the amount of taxes each of the taxing districts is entitled to receive from the whole amount of taxes involved in each of such appeals. The county treasurer shall deduct from the proceeds of all general taxes collected the amount of costs so computed and apportioned by the treasurer from the moneys due to each taxing district from general taxes

collected. The amount deducted shall be certified to each taxing district in lieu of moneys collected. The county treasurer shall pay to the clerk of the district court the amount of the costs so computed, apportioned, and collected by the treasurer in all cases in which the costs have not been paid.

[R60, §730; C73, §390, 3810; C97, §592, 661, 674; S13, §592, 661, 674; SS15, §1056-b18; C24, 27, 31, 35, §5573, 5656, 5669, 6652, 6653; C39, §**5573, 5656, 5669, 6652, 6653, 7134.1;** C46, §359.48, 363.29, 363.43, 419.38, 419.39, 442.8; C50, 54, 58, §405A.4, 442.8; C62, 66, 71, 73, 75, 77, 79, 81, §441.40]

2017 Acts, ch 151, §20, 29; 2019 Acts, ch 59, §134

Referred to in §331.559, 602.8102(61)

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

Section amended

441.41 Legal counsel.

In the case of cities having an assessor, the city legal department shall represent the assessor and board of review in all litigation dealing with assessments. In the case of counties, the county attorney shall represent the assessor and board of review in all litigation dealing with assessments. Any taxing district interested in the taxes received from such assessments may be represented by an attorney and shall be required to appear by attorney upon written request of the assessor to the presiding officer of any such taxing district. The conference board may employ special counsel to assist the city legal department or county attorney as the case may be.

[C39, §**7134.2;** C46, 50, 54, 58, §405.26, 442.9; C62, 66, 71, 73, 75, 77, 79, 81, §441.41]

2017 Acts, ch 151, §21, 29

Referred to in §331.756(56)

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.42 Appeal on behalf of public.

1. Any officer of a county, city, township, drainage district, levee district, or school district interested or a taxpayer thereof may in like manner make complaint before said board of review in respect to the assessment of any property in the township, drainage district, levee district or city and an appeal from the action of the board of review in fixing the amount of assessment on any property concerning which such complaint is made, may be taken by any of such aforementioned officers.

2. Such appeal is in addition to the appeal allowed to the person whose property is assessed and shall be taken in the name of the county, city, township, drainage district, levee district, or school district interested, and tried in the same manner, except that the notice of appeal shall also be served upon the owner of the property concerning which the complaint is made and affected thereby or person required to return said property for assessment.

[S13, §1373; C24, 27, 31, 35, 39, §**7135;** C46, 50, 54, 58, §405.25, 442.10; C62, 66, 71, 73, 75, 77, 79, 81, §441.42]

2018 Acts, ch 1041, §127

Referred to in §421.1A, 441.37A, 441.38

441.43 Power of court.

Upon trial of any appeal from the action of the board of review or of the property assessment appeal board fixing the amount of assessment upon any property concerning which complaint is made, the court may increase, decrease, or affirm the amount of the assessment appealed from.

[S13, §1373; C24, 27, 31, 35, 39, §**7136;** C46, 50, 54, 58, §405.24, 442.11; C62, 66, 71, 73, 75, 77, 79, 81, §441.43]

2005 Acts, ch 150, §131

Referred to in §443.11

441.44 Notice of voluntary settlement.

1. The property assessment appeal board may adopt rules establishing requirements for notices of voluntary settlements in appeals before the board to be served upon affected taxing districts.

2. A voluntary court settlement of an assessment appeal shall not be valid unless written notice of the settlement shall first be served upon each of the affected taxing districts.

[C46, 50, 54, 58, §405.27; C62, 66, 71, 73, 75, 77, 79, 81, §441.44]

2017 Acts, ch 151, §22, 29

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

441.45 Abstract to state department of revenue.

1. The county assessor of each county and each city assessor shall, on or before July 1 of each year, make out and transmit to the department of revenue an abstract of the real property in the assessor's county or city, as the case may be, and file a copy of the abstract with the county auditor, in which the assessor shall set forth:

a. The number of acres of land and the aggregate taxable values of the land, exclusive of city lots, returned by the assessors, as corrected by the board of review.

b. The aggregate taxable values of real estate by class in each township and city in the county, returned as corrected by the board of review.

c. Other facts required by the director of revenue.

2. If a board of review continues in session beyond June 1, under sections 441.33 and 441.37, the abstract of the real property shall be made out and transmitted to the department of revenue within fifteen days after the date of final adjournment by the board.

[R60, §741; C73, §833; C97, §1377; S13, §1361; C24, 27, 31, 35, 39, §**7117, 7139;** C46, 50, 54, 58, §441.20, 442.14; C62, 66, 71, 73, 75, 77, 79, 81, §441.45]

83 Acts, ch 140, §1; 89 Acts, ch 296, §67; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Referred to in §441.21, 443.22

441.46 Assessment date.

1. The assessment date of January 1 is the first date of an assessment year period which constitutes a calendar year commencing January 1 and ending December 31. All property tax statutes providing for tax exemptions or credits and requiring that a claim be filed, shall be construed to require the claims to be filed by July 1 of the assessment year. If no claim is required to be filed to procure an exemption or credit, the status of the property as exempt or taxable on July 1 of the fiscal year which commences during the assessment year determines its eligibility for exemption or credit. Any statute requiring proration of property taxes for any purpose shall be for the fiscal year, and the proration shall be based on the status of the property during the fiscal year.

2. The assessment date is January 1 for taxes for the fiscal year which commences six months after the assessment date and which become delinquent during the fiscal year commencing eighteen months after the assessment date.

[C77, 79, 81, §441.46]

97 Acts, ch 23, §52; 2018 Acts, ch 1041, §127

441.47 Adjusted valuations.

The department of revenue on or about August 15, 1977, and every two years thereafter shall order the equalization of the levels of assessment of each class of property in the several assessing jurisdictions by adding to or deducting from the valuation of each class of property such percentage in each case as may be necessary to bring the same to its taxable value as fixed in this chapter and chapters 427 to 443. The department shall adjust to actual value the valuation of any class of property as set out in the abstract of assessment when the valuation is at least five percent above or below actual value as determined by the department. For purposes of such value adjustments and before such equalization the director shall adopt, in the manner prescribed by chapter 17A, such rules as may be necessary to determine the level of assessment for each class of property in each county. The rules shall cover:

1. The proposed use of the assessment-sales ratio study set out in section 421.17, subsection 6.

2. The proposed use of any statewide income capitalization studies.

3. The proposed use of other methods that would assist the department in arriving at the accurate level of assessment of each class of property in each assessing jurisdiction.

[C51, §481, 482; R60, §742; C73, §834; C97, §1379; C24, 27, 31, 35, 39, §**7141;** C46, 50, 54, 58, §442.16; C62, 66, 71, 73, 75, 77, 79, 81, §441.47]

2003 Acts, ch 145, §286; 2009 Acts, ch 41, §130; 2015 Acts, ch 109, §71, 72, 75

441.48 Notice of adjustment.

Before the department of revenue shall adjust the valuation of any class of property any such percentage, the department shall serve ten days' notice by mail, on the county auditor of the county whose valuation is proposed to be adjusted. The department shall hold an adjourned meeting after such ten days' notice, at which time the county or assessing jurisdiction may appear by its city council or board of supervisors, city or county attorney, and other assessing jurisdiction, city or county officials, and make written or oral protest against such proposed adjustment. The protest shall consist simply of a statement of the error, or errors, complained of with such facts as may lead to their correction. At the adjourned meeting final action may be taken in reference to the proposed adjustment.

[C24, 27, 31, 35, 39, §**7142;** C46, 50, 54, 58, §405.23, 442.17; C62, 66, 71, 73, 75, 77, 79, 81, §441.48]

2003 Acts, ch 145, §286; 2015 Acts, ch 109, §73, 75; 2017 Acts, ch 29, §125

441.49 Adjustment by auditor.

1. *a.* The department shall keep a record of the review and adjustment proceedings and finish the proceedings on or before October 1 unless for good cause the proceedings cannot be completed by that date. The department shall notify each county auditor by mail of the final action taken at the proceedings and specify any adjustments in the valuations of any class of property to be made effective for the jurisdiction.

b. However, an assessing jurisdiction may request the department to permit the use of an alternative method of applying the equalization order to the property values in the assessing jurisdiction, provided that the final valuation shall be equivalent to the department's equalization order. The assessing jurisdiction shall notify the county auditor of the request for the use of an alternative method of applying the equalization order and the department's disposition of the request. The request to use an alternative method of applying the equalization order, including procedures for notifying affected property owners and appealing valuation adjustments, shall be made within ten days from the date the county auditor receives the equalization order and the valuation adjustments, and appeal procedures shall be completed by November 30 of the year of the equalization order. Compliance with the provisions of section 441.21 is sufficient grounds for the department to permit the use of an alternative method of applying the equalization order.

2. *a.* On or before October 8 the county auditor shall cause to be published in official newspapers of general circulation the final equalization order. The county auditor shall also notify each property owner or taxpayer whose valuation has been increased by the final equalization order by mail postmarked on or before October 8. The publication and the individual notice mailed to each property owner or taxpayer whose valuation has been increased shall include, in type larger than the remainder of the publication or notice, the following statements:

> Assessed values are equalized by the department of revenue every two years. Local taxing authorities determine the final tax levies and may reduce property tax rates to compensate for any increase in valuation due to equalization. If you are not satisfied that your assessment as adjusted by the equalization order is correct, you may file a protest against such assessment with the board of review on or after October 9, to and including October 31.

b. Failure to publish the equalization order or to notify property owners or taxpayers of the equalization order has no effect upon the validity of the orders.

3. The county auditor shall add to or deduct from the valuation of each class of property

in the county the required percentage, rejecting all fractions of fifty cents or less in the result, and counting all fractions over fifty cents as one dollar. For any special charter city that levies and collects its own tax based on current year assessed values, the equalization percentage shall be applied to the following year's values, and shall be considered the equalized values for that year for purposes of this chapter.

4. The local board of review shall reconvene in special session from October 10 to November 15 for the purpose of hearing the protests of affected property owners or taxpayers within the jurisdiction of the board whose valuation of property if adjusted pursuant to the equalization order issued by the department of revenue will result in a greater value than permitted under section 441.21. The board of review shall accept protests only during the period of time from October 9, to and including October 31. The board of review shall limit its review to only the timely filed protests. The board of review may adjust all or a part of the percentage increase ordered by the department of revenue by adjusting the actual value of the property under protest to one hundred percent of actual value. Any adjustment so determined by the board of review shall not exceed the percentage increase provided for in the department's equalization order. The determination of the board of review on filed protests is final, subject to appeal to the property assessment appeal board. A final decision by the local board of review, or the property assessment appeal board, if the local board's decision is appealed, is subject to review by the director of revenue for the purpose of determining whether the board's actions substantially altered the equalization order. In making the review, the director has all the powers provided in chapter 421, and in exercising the powers the director is not subject to chapter 17A. Not later than fifteen days following the adjournment of the board, the board of review shall submit to the director of revenue, on forms prescribed by the director, a report of all actions taken by the board of review during this session.

5. Not later than ten days after the date the final equalization order is issued, the city or county officials of the affected county or assessing jurisdiction may appeal the final equalization order to the director of revenue. The appeal shall not delay the implementation of the equalization orders. The director shall grant a hearing, and upon hearing the director shall determine the correctness of the final equalization order, and notify city or county officials of the affected county or assessing jurisdiction of the decision by mail. Judicial review of the decision of the director of revenue may be sought by the city or county officials in accordance with chapter 17A.

6. Tentative and final equalization orders issued by the department of revenue are not rules as defined in section 17A.2, subsection 7.

[C51, §483; R60, §743; C73, §836; C97, §1382; S13, §1382; C24, 27, 31, 35, 39, §**7143;** C46, 50, 54, 58, §442.18; C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.49; 81 Acts, ch 145, §3]

99 Acts, ch 167, §1; 2003 Acts, ch 145, §286; 2005 Acts, ch 150, §132; 2011 Acts, ch 25, §47; 2015 Acts, ch 109, §74, 75; 2015 Acts, ch 116, §11, 13

Referred to in §421.17, 441.21, 441.37A

2015 amendment to subsections 2 and 4 by 2015 Acts, ch 116, §11, applies to assessment years beginning on or after January 1, 2016; 2015 Acts, ch 116, §13

441.50 Appraisers employed.

The conference board shall have power to employ appraisers or other technical or expert help to assist in the valuation of property, the cost thereof to be paid in the same manner as other expenses of the assessor's office.

[C50, 54, 58, §405.19, 405A.6; C62, 66, 71, 73, 75, 77, 79, 81, §441.50]

2012 Acts, ch 1081, §3

441.51 Reserved.

441.52 Failure to perform duty.

If any assessor or member of any board of review shall knowingly fail or neglect to make or require the assessment of property for taxation to be of and for its taxable value as provided by law or to perform any of the duties required of the assessor or member by law, at the time and in the manner specified, the assessor or member shall forfeit and pay the sum of five

hundred dollars to be recovered in an action in the district court in the name of the county or in the name of the city as the case may be, and for its use, and the action against the assessor shall be against the assessor and the assessor's sureties.

[R60, §738; C73, §827; C97, §1367; C24, 27, 31, 35, 39, §**7126;** C46, 50, 54, 58, §405.29, 441.27; C62, 66, 71, 73, 75, 77, 79, 81, §441.52]

441.53 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

441.54 Construction.

Whenever in the laws of this state, the words *"assessor"* or *"assessors"* appear, singly or in combination with other words, they shall be deemed to mean and refer to the county or city assessor, as the case may be.

[C50, 54, 58, §441.29, 442.13; C62, 66, 71, 73, 75, 77, 79, 81, §441.54]

441.55 Conflicting laws.

If any of the provisions of this chapter shall be in conflict with any of the laws of this state, then the provisions of this chapter shall prevail.

[C62, 66, 71, 73, 75, 77, 79, 81, §441.55]

441.56 Assessor's duties — combined appointment.

When the duties of the county assessor are combined with the duties of another officer or employee as provided in section 331.323, subsection 1, the person named to perform the combined duties shall be appointed as provided in sections 441.5 to 441.8.

[C62, 66, 71, 73, 75, 77, 79, 81, S81, §441.56; 81 Acts, ch 117, §1083]

441.57 through 441.71 Reserved.

441.72 Assessment of platted lots.

1. Except as provided in subsection 2, when a subdivision plat is recorded pursuant to chapter 354, the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for five years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in chapter 428 and this chapter.

2. For subdivision plats recorded pursuant to chapter 354 on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed in excess of the total assessment of the land as acreage or unimproved property for eight years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in chapter 428 and this chapter.

3. This section does not apply to special assessment levies.

90 Acts, ch 1236, §50; 2011 Acts, ch 131, §155, 157

441.73 Litigation expense fund.

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue pursuant to section 428.24 and chapters 433, 434, 437, 437A, 437B, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapters 437A and 437B.

2. If the director of revenue determines that foreseeable litigation expenses will exceed the amount available from appropriations made to the department of revenue, the director of revenue may apply to the executive council for use of funds on deposit in the litigation expense fund. The initial application for approval shall include an estimate of potential litigation expenses, allocated to each of the next four succeeding calendar quarters and substantiated by a breakdown of all anticipated costs for legal counsel, expert witnesses, and other applicable litigation expenses.

3. The executive council may approve expenditures from the litigation expense fund on a quarterly basis. Prior to each quarter, the director of revenue shall report to the executive council and give a full accounting of actual litigation expenses to date as well as estimated litigation expenses for the remaining calendar quarters of the fiscal year. The executive council may adjust quarterly expenditures from the litigation expense fund based on this information.

4. The executive council shall transfer for the fiscal year beginning July 1, 1992, and each fiscal year thereafter, from funds established in sections 425.1 and 426.1, an amount necessary to pay litigation expenses. The amount of the fund for each fiscal year shall not exceed seven hundred thousand dollars. The executive council shall determine annually the proportionate amounts to be transferred from the two separate funds. At any time when no litigation is pending or in progress the balance in the litigation expense fund shall not exceed one hundred thousand dollars. Any excess moneys shall be transferred in a proportionate amount back to the funds from which they were originally transferred.

92 Acts, ch 1238, §37; 97 Acts, ch 23, §53; 98 Acts, ch 1194, §36, 40; 2002 Acts, ch 1150, §14; 2003 Acts, ch 145, §286; 2003 Acts, ch 178, §9; 2007 Acts, ch 185, §4; 2013 Acts, ch 94, §31, 35, 36

For future amendment to subsection 1, effective July 1, 2024, see 2018 Acts, ch 1158, §22, 28

CHAPTERS 442 and 442A

RESERVED

CHAPTER 443

TAX LIST

Referred to in §306.22, 331.559, 441.47, 445.2, 445.5, 445.10, 445.37, 445.39, 461A.25

443.1 Consolidated tax.
443.2 Tax list.
443.3 Correction — tax apportioned.
443.4 Tax list delivered — informality and delay.
443.5 Reserved.
443.6 Corrections by auditor.
443.7 Notice.
443.8 Right of appeal.
443.9 Adjustment of accounts.
443.10 Expense — report to supervisors.
443.11 Procedure on appeal.
443.12 Corrections by treasurer.
443.13 Action by treasurer — apportionment.
443.14 Duty of treasurer.
443.15 Time limit.
443.16 Entry by treasurer — details required.
443.17 Presumption of two-year ownership.
443.18 Real estate — duty of owner.
443.19 Irregularities, errors, and omissions — effect.
443.20 Reserved.
443.21 Assessments certified to county auditor.
443.22 Uniform assessments mandatory.
443.23 Definition. Repealed by 2003 Acts, ch 44, §112.
443.23A Definitions.

443.1 Consolidated tax.

All taxes which are uniform throughout any township or school district shall be formed into a single tax and entered upon the tax list in a single column, to be known as a consolidated tax, and each receipt shall show the percentage levied for each separate fund.

[C73, §838; C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7144;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.1]

Referred to in §420.207

443.2 Tax list.

Before the first day of July in each year, the county auditor shall transcribe the assessments of the townships and cities into a book or record, to be known as the tax list, properly ruled and headed, with separate columns, in which shall be entered the names of the taxpayers, descriptions of lands, number of acres and value, numbers of city lots and value, and each description of tax, with a column for polls and one for payments, and shall complete it by entering the amount due on each installment, separately, and carrying out the total of both installments. The total of all columns of each page of each book or other record shall balance with the tax totals. After computing the amount of tax due and payable on each property, the county auditor shall round the total amount of tax due and payable on the property to the nearest even whole dollar.

The county auditor shall list the aggregate actual value and the aggregate taxable value of all taxable property within the county and each political subdivision including property subject to the statewide property tax imposed under section 437A.18 or 437B.14 on the tax list in order that the actual value of the taxable property within the county or a political subdivision may be ascertained and shown by the tax list for the purpose of computing the debt-incurring capacity of the county or political subdivision. As used in this section, *"actual value"* is the value determined under section 441.21, subsections 1 to 3, prior to the reduction to a percentage of actual value as otherwise provided in section 441.21. *"Actual value"* of property subject to statewide property tax is the assessed value under section 437A.18 or 437B.14.

[C51, §486; R60, §745; C73, §837; C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7145;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.2; 82 Acts, ch 1151, §1]

84 Acts, ch 1195, §1; 89 Acts, ch 296, §68; 2000 Acts, ch 1114, §14, 18; 2013 Acts, ch 94, §32, 35, 36

Referred to in §331.512, 420.207, 441.21, 443.21, 445.15

Limitation on section, §445.15

443.3 Correction — tax apportioned.

At the time of transcribing said assessments into the tax list, the county auditor shall correct all transfers up-to-date and place the legal descriptions of all real estate in the name of the owner at said date as shown by the transfer book in the auditor's office. At the end of the list for each township or city the auditor shall make an abstract thereof, and apportion the consolidated tax among the respective funds to which it belongs, according to the amounts levied for each.

[C97, §1383; S13, §1383; C24, 27, 31, 35, 39, §**7146;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.3]

Referred to in §331.512, 420.207

443.4 Tax list delivered — informality and delay.

The county auditor shall make an entry upon the tax list showing what it is, for what county and year, and deliver it to the county treasurer on or before June 30, taking the treasurer's receipt therefor; and such list shall be a sufficient authority for the treasurer to collect the taxes therein levied. No informality therein, and no delay in delivering the same after the time above specified, shall affect the validity of any taxes, sales, or other proceedings for the collection of such taxes.

[C51, §487; R60, §748; C73, §843; C97, §1387; C24, 27, 31, 35, 39, §**7147;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.4]

Referred to in §331.512

443.5 Reserved.

443.6 Corrections by auditor.

The auditor may correct any error in the assessment or tax list, and the assessor or auditor may assess and list for taxation any omitted property.

[R60, §747; C73, §841; C97, §1385; S13, §1385-b; C24, 27, 31, 35, 39, §**7149;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.6]

Referred to in §331.512, 441.37

443.7 Notice.

Before assessing and listing for taxation any omitted property, the assessor or auditor shall notify by mail the person in whose name the property is taxed, to appear before the assessor or auditor at the assessor's or auditor's office within ten days from the date of the notice and show cause, if any, why the correction or assessment should not be made.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7150;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.7]

86 Acts, ch 1241, §42

Referred to in §331.512

443.8 Right of appeal.

Should such party feel aggrieved at the action of said assessor or auditor the party shall have the right of appeal therefrom to the district court.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7151;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.8]

Referred to in §331.512, 443.11

443.9 Adjustment of accounts.

If such correction or assessment is made after the books or other records approved by the state auditor have passed into the hands of the treasurer, the treasurer shall be charged or credited therefor as the case may be. In the event such assessment of omitted property is made by the assessor after the tax records have passed into the hands of the auditor or treasurer, such correction or assessment shall be entered on the records by the auditor or treasurer.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7152;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.9]

Referred to in §331.512

443.10 Expense — report to supervisors.

All expense incurred in the making of said correction or assessment shall be borne pro rata by the funds which are affected by said correction and the proceedings shall be reported to the board of supervisors.

[S13, §1385-b; C24, 27, 31, 35, 39, §**7153;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.10]

443.11 Procedure on appeal.

The appeal provided for in section 443.8 shall be taken within ten days from the time of the final action of the assessor or auditor, by a written notice to that effect to the assessor or auditor, and served as an original notice. The court on appeal shall hear and determine the rights of the parties in the same manner as appeals from the board of review, as prescribed in sections 441.38 and 441.43.

[S13, §1385-c; C24, 27, 31, 35, 39, §**7154;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.11]

2017 Acts, ch 151, §23, 29

Service of original notice, R.C.P. 1.302 – 1.315

2017 amendment applies to assessment years beginning on or after January 1, 2018; 2017 Acts, ch 151, §29

443.12 Corrections by treasurer.

When property subject to taxation is withheld, overlooked, or from any other cause is not listed and assessed, the county treasurer shall, when apprised thereof, at any time within two years from the date at which such assessment should have been made, demand of the person, firm, corporation, or other party by whom the same should have been listed, or to whom it should have been assessed, or of the administrator thereof, the amount the property should have been taxed in each year the same was so withheld or overlooked and not listed and assessed, together with six percent interest thereon from the time the taxes would have become due and payable had such property been listed and assessed.

[C97, §1374; C24, 27, 31, 35, 39, §**7155;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.12]

99 Acts, ch 174, §3, 7

443.13 Action by treasurer — apportionment.

Upon failure to pay such sum within thirty days, with all accrued interest, the treasurer shall cause an action to be brought in the name of the treasurer for the use of the proper county, to be prosecuted by the county attorney, or such other person as the board of supervisors may appoint, and when such property has been fraudulently withheld from assessment, there shall be added to the sum found to be due a penalty of fifty percent upon the amount, which shall be included in the judgment. The amount thus recovered shall be by the treasurer apportioned ratably as the taxes would have been if they had been paid according to law.

[C97, §1374; C24, 27, 31, 35, 39, §**7156;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.13]

443.14 Duty of treasurer.

The treasurer shall assess any real property subject to taxation which may have been omitted by the assessor, board of review, or county auditor, and collect taxes thereon, and in such cases shall note, opposite the tract or lot assessed, the words "by treasurer".

[C51, §491; R60, §752; C73, §851; C97, §1398; C24, 27, 31, 35, 39, §**7157;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.14]

443.15 Time limit.

The assessment shall be made within two years after the tax list shall have been delivered to the treasurer for collection, and not afterwards, if the property is then owned by the person who should have paid the tax.

[C73, §851; C97, §1398; C24, 27, 31, 35, 39, §**7158;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.15]

99 Acts, ch 174, §4, 7

443.16 Entry by treasurer — details required.

When the county treasurer makes an entry of taxes on the tax list, or an entry of the correction of a tax, the treasurer shall, immediately in connection with the entry, enter the year, month, day, hour, and minute when the entry was made.

[C31, 35, §7158-d1; C39, §**7158.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.16]

443.17 Presumption of two-year ownership.

In any action or proceeding, now pending or hereafter brought, to recover taxes upon property not listed or assessed for taxation during the lifetime of any decedent, it shall be presumed that any property, any evidence of ownership of property, and any evidence of a promise to pay, owned by a decedent at the date of the decedent's death, had been acquired and owned by such decedent more than two years before the date of the decedent's death; and the burden of proving that any such property had been acquired by such decedent less than two years before the date of the decedent's death shall be upon the heirs, legatees, and legal representatives of any such decedent.

[C35, §7158-f1; C39, §**7158.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.17]

99 Acts, ch 174, §5, 7

443.18 Real estate — duty of owner.

In all cases where real estate subject to taxation has not been assessed, the owner, or an agent of the owner, shall have the same done by the treasurer, and pay the taxes thereon; and if the owner fails to do so the treasurer shall assess the same and collect the tax assessed as the treasurer does other taxes.

[R60, §753; C73, §852; C97, §1399; C24, 27, 31, 35, 39, §**7159;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.18]

443.19 Irregularities, errors, and omissions — effect.

No failure of the owner to have such property assessed or to have the errors in the assessment corrected, and no irregularity, error, or omission in the assessment of such property, shall affect in any manner the legality of the taxes levied thereon, or affect any right or title to such real estate which would have accrued to any party claiming or holding under and by virtue of a deed executed by the treasurer as provided by this Title,* had the assessment of such property been in all respects regular and valid.

[R60, §753; C73, §852; C97, §1399; C24, 27, 31, 35, 39, §**7160;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §443.19]

94 Acts, ch 1023, §54

*Chapters 421B, 427C, 435, 452A, and 453A were not enacted as part of this Title and were moved into this Title by the Code editor in Code 1993; chapters 421B, 427C, 435, 452A, and 453A contain applicable provisions pertaining to those chapters

443.20 Reserved.

443.21 Assessments certified to county auditor.

All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes shall certify to the county auditor of each county the assessed values of all the taxable property in such county as finally equalized and determined, and the same shall be transcribed onto the tax lists as required by section 443.2.

[C71, 73, 75, 77, 79, 81, §443.21]

2003 Acts, ch 145, §286

Referred to in §331.512

443.22 Uniform assessments mandatory.

All assessors and assessing bodies, including the department of revenue having authority over the assessment of property for tax purposes, shall comply with sections 428.4, 428.29, 434.15, 438.13, 441.21, and 441.45. The department of revenue having authority over the

assessments, shall exercise its powers and perform its duties under section 421.17 and other applicable laws so as to require the uniform and consistent application of said section.

[C71, 73, 75, 77, 79, 81, §443.22]

84 Acts, ch 1195, §2; 2003 Acts, ch 145, §286

443.23 Definition. Repealed by 2003 Acts, ch 44, §112. See §443.23A.

443.23A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

CHAPTER 443A

RESERVED

CHAPTER 444

TAX LEVIES

Referred to in §306.22, 331.512, 461A.25

CERTIFICATION OF TAXES

444.1 Basis for amount of tax.
444.2 Amounts certified in dollars.
444.3 Computation of rate.
444.4 Fractional rates disregarded.
444.5 Repealed by 83 Acts, ch 101, §129.
444.6 Record of rates.
444.7 Excessive tax prohibited.
444.8 Mandatory provisions.
444.8A Definitions.

COMPUTATION OF TAX

444.9 Reserved.
444.10 through 444.12 Repealed by 81 Acts, ch 117, §1097.
444.13 Repealed by 82 Acts, ch 1104, §61.
444.14 through 444.19 Reserved.

LEVIES BY DEPARTMENT OF REVENUE

444.20 Repealed by 79 Acts, ch 68, §19.
444.21 General fund of the state.
444.22 Annual levy.
444.23 Rate certified to county auditor.
444.24 Reserved.

PROPERTY TAX LIMITATIONS

444.25 Repealed by 97 Acts, ch 158, §48.
444.25A through 444.27 Repealed by 2002 Acts, ch 1119, §199.
444.28 Repealed by 97 Acts, ch 121, §33; 97 Acts, ch 158, §48.

CERTIFICATION OF TAXES

444.1 Basis for amount of tax.

In all taxing districts in the state, including townships, school districts, cities and counties, when by law then existing the people are authorized to determine by vote, or officers are authorized to estimate or determine, a rate of taxation required for any public purpose, such rate shall in all cases be estimated and based upon the adjusted taxable valuation of such taxing district for the preceding calendar year.

[C24, 27, 31, 35, 39, §**7162;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.1]

Referred to in §331.401, 444.8

444.2 Amounts certified in dollars.

When an authorized tax rate within a taxing district, including townships, school districts, cities and counties, has been thus determined as provided by law, the officer or officers charged with the duty of certifying the authorized rate to the county auditor or board of supervisors shall, before certifying the rate, compute upon the adjusted taxable valuation of the taxing district for the preceding fiscal year, the amount of tax the rate will raise, stated in dollars, and shall certify the computed amount in dollars and not by rate, to the county auditor and board of supervisors.

[C24, 27, 31, 35, 39, §**7163;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.2]

83 Acts, ch 101, §90

Referred to in §331.401, 420.207, 444.8

444.3 Computation of rate.

When the valuations for the several taxing districts shall have been adjusted by the several boards for the current year, the county auditor shall thereupon apply such a rate, not exceeding the rate authorized by law, as will raise the amount required for such taxing district, and no larger amount. For purposes of computing the rate under this section, the adjusted taxable valuation of the property of a taxing district does not include the valuation of property of a railway corporation or its trustee which corporation has been declared bankrupt or is in bankruptcy proceedings. Nothing in the preceding sentence exempts the property of such railway corporation or its trustee from taxation and the rate computed under this section shall be levied on the taxable property of such railway corporation or its trustee.

[C24, 27, 31, 35, 39, §**7164;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.3; 82 Acts, ch 1207, §5, 6]

88 Acts, ch 1250, §19

Referred to in §331.401, 420.207, 425A.5, 426.6, 444.8

444.4 Fractional rates disregarded.

If in adjusting the rate to be levied in any taxing district to conform to law, such rates shall make necessary the levying of a fraction of a cent, said fractional excess may be computed as one cent, which latter shall be the smallest required to be spread upon the tax lists for any purpose except rates applicable to a state purpose.

[C24, 27, 31, 35, 39, §**7166;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.4]

Referred to in §331.401, 420.207, 444.8

444.5 Repealed by 83 Acts, ch 101, §129.

444.6 Record of rates.

On the determination by the auditor of the necessary rates as herein directed, it is made the auditor's duty to enter a record of such rates for each taxing district upon the permanent records of the auditor's office in a book to be kept for that purpose.

[C24, 27, 31, 35, 39, §**7168;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.6]

Referred to in §331.401, 331.508, 444.8

444.7 Excessive tax prohibited.

It is a simple misdemeanor for the board of supervisors to authorize, or the county auditor to carry upon the tax lists for any year, an amount of tax for a public purpose in excess of the amount certified or authorized as provided by law. The department of management shall prescribe and furnish the county auditors forms and instructions to aid them in determining the legality and authorized amount of tax levies. The county auditor shall reduce an excessive levy to the maximum amount authorized by law, and not in excess of the amount certified; and the county auditor shall not enter or carry a tax on the tax lists for an illegal levy.

[C24, 27, 31, 35, 39, §**7169;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.7]

88 Acts, ch 1158, §75

Referred to in §331.401, 444.8

444.8 Mandatory provisions.
The provisions of sections 444.1 to 444.7, and the methods of computation, certification, and levy therein provided shall be obligatory on all officers within the several counties of the state upon whom devolves the duty of determining, certifying, and levying taxes.
[C24, 27, 31, 35, 39, §**7170;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.8]
Referred to in §331.401

444.8A Definitions.
As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.
2000 Acts, ch 1148, §1

COMPUTATION OF TAX

444.9 Reserved.

444.10 through 444.12 Repealed by 81 Acts, ch 117, §1097.

444.13 Repealed by 82 Acts, ch 1104, §61.

444.14 through 444.19 Reserved.

LEVIES BY
DEPARTMENT OF REVENUE

444.20 Repealed by 79 Acts, ch 68, §19.

444.21 General fund of the state.
The amount derived from taxes levied for state general revenue purposes, and all other sources which are available for appropriations for general state purposes, and all other money in the state treasury which is not by law otherwise segregated, shall be established as a general fund of this state.
[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.21]

444.22 Annual levy.
In each year the director of revenue shall fix the rate in percentage to be levied upon the assessed valuation of the taxable property of the state necessary to raise the amount for general state purposes as shall be designated by the department of management.
[S13, §1380-c; C24, 27, 31, 35, 39, §**7182;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.22]
91 Acts, ch 258, §52; 2003 Acts, ch 145, §286

444.23 Rate certified to county auditor.
The director of revenue shall certify the rate so fixed to the auditor of each county.
[S13, §1380-d; C24, 27, 31, 35, 39, §**7183;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §444.23]
2003 Acts, ch 145, §286

444.24 Reserved.

PROPERTY TAX LIMITATIONS

444.25 Repealed by 97 Acts, ch 158, §48.

444.25A through 444.27 Repealed by 2002 Acts, ch 1119, §199.

444.28 Repealed by 97 Acts, ch 121, §33; 97 Acts, ch 158, §48.

CHAPTER 445

TAX COLLECTION

Referred to in §306.22, 331.559, 419.11, 455G.9, 461A.25, 558.41

445.1 Definition of terms.
445.2 Duty of county treasurer.
445.3 Actions authorized.
445.4 Statutes applicable — attachment — damages.
445.5 Statement and receipt.
445.6 Application to waive tax statement requirements. Repealed by 2016 Acts, ch 1073, §186.
445.7 through 445.9 Repealed by 91 Acts, ch 191, §123, 124.
445.10 Former delinquent taxes.
445.11 Special assessment levy submitted.
445.12 Additional data for special assessments.
445.13 Reserved.
445.14 Entries on the county system.
445.15 Limitations.
445.16 Abatement or compromise of tax.
445.17 Repealed by 91 Acts, ch 191, §123, 124.
445.18 Effect of compromise payment or abatement.
445.19 and 445.20 Repealed by 91 Acts, ch 191, §123, 124.
445.21 Reserved.
445.22 Subsequent collection.
445.23 Statement of taxes due.
445.24 Effect of statement and receipt.
445.25 through 445.27 Reserved.
445.28 Tax lien.
445.29 Repealed by 91 Acts, ch 191, §123, 124.
445.30 Lien between vendor and purchaser.
445.31 Repealed by 91 Acts, ch 191, §123, 124.
445.32 Liens on buildings or improvements.
445.33 through 445.35 Reserved.
445.36 Payment — installments.
445.36A Partial payments.
445.37 When delinquent.
445.38 Apportionment.
445.39 Interest on delinquent taxes.
445.40 Repealed by 91 Acts, ch 191, §123, 124.
445.41 When interest omitted.
445.42 through 445.52 Repealed by 91 Acts, ch 191, §123, 124.
445.53 Taxes certified to another county.
445.54 Collection in such case.
445.55 Fees collectible.
445.56 Return.
445.57 Monthly apportionment.
445.58 and 445.59 Repealed by 91 Acts, ch 191, §123, 124.
445.60 Refunding erroneous tax.
445.61 Sale for erroneous tax.
445.62 Abatement or refund in case of loss.
445.63 Abatement of taxes.

445.1 Definition of terms.

For the purpose of this chapter and chapters 446, 447, and 448, section 331.553, subsection 3, and sections 427.8 through 427.12 and 569.8:

1. *"Abate"* means to cancel in their entirety all applicable amounts.

2. *"Compromise"* means to enter into a contractual agreement for the payment of taxes, interest, fees, and costs in amounts different from those specified by law.

3. *"County system"* means a method of data storage and retrieval as approved by the auditor of state including, but not limited to, tax lists, books, records, indexes, registers, or schedules.

4. *"Legal representative"* means a parent, guardian, or conservator of a person with a legal disability, a person appointed by a court to act on behalf of a person with a legal disability, or a person acting on behalf of a person with a legal disability pursuant to a power of attorney.

5. *"Parcel"* means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate or charge.

6. *"Person with a legal disability"* means a minor or a person of unsound mind.

7. *"Rate or charge"* means an item, including rentals, legally certified to the county treasurer for collection as provided in sections 169C.6, 331.465, 331.489, 358.20, 359A.6, 364.11, 364.12, and 468.589 and section 384.84, subsection 4.

8. *"Taxes"* means an annual ad valorem tax, a special assessment, a drainage tax, a rate or charge, and taxes on homes pursuant to chapter 435 which are collectible by the county treasurer.

9. *"Total amount due"* means the aggregate total of all taxes, penalties, interest, costs, and fees due on a parcel.

[R60, §751; C73, §846; C97, §1390; C24, 27, 31, 35, 39, §**7184;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.1]

86 Acts, ch 1139, §2; 91 Acts, ch 191, §26; 92 Acts, ch 1163, §85; 93 Acts, ch 73, §5; 95 Acts, ch 57, §11; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2010 Acts, ch 1118, §9; 2018 Acts, ch 1039, §1

Referred to in §6B.1, 11.1, 12B.1, 24.2, 35B.1, 43.2, 50.1, 62.1, 64.1, 65.1, 66.1, 69.1, 96.1A, 99.1, 144.1, 161A.3, 169C.1, 177A.2, 230.1, 257B.1, 306.2, 309.1, 311.1, 317.1, 321A.1, 331.552, 331.559, 347B.1, 353.1, 354.2, 357.1, 357C.1, 357D.1, 357E.1, 357F.1, 357G.1, 357I.1, 358.1, 358C.1, 359.1, 359A.1, 364.22, 380.1, 384.120, 386.1, 420.43, 422.3, 425.11, 426A.1, 426C.1, 427.8, 427.12, 428.20, 433.12, 434.1, 435.1, 437.1, 437A.3, 438.2, 440.1, 441.53, 443.23A, 444.8A, 445.37, 446.7, 447.9, 448.17A, 449.1, 460.101, 468.3, 556F.1, 557C.2, 558.1B, 558.5, 561.26, 595.1, 614.13A, 657.2A, 657A.12, 658.1, 717B.1

445.2 Duty of county treasurer.

The county treasurer, after making the entry provided in section 445.10, shall proceed to collect the ad valorem taxes, and the list referred to in chapter 443 is the treasurer's authority and justification against any illegality in the proceedings prior to receiving the list. The treasurer shall also collect, as far as practicable, the taxes remaining unpaid on the county system. If the taxes are not paid, the treasurer shall send a statement of delinquent taxes as part of the notice of tax sale as provided in section 446.9.

91 Acts, ch 191, §27

445.3 Actions authorized.

1. In addition to all other remedies and proceedings now provided by law for the collection of taxes, the county treasurer may bring or cause an ordinary suit at law to be commenced and prosecuted in the treasurer's name for the use and benefit of the county for the collection of taxes from any person, as shown by the county system in the treasurer's office, and the suit shall be in all respects commenced, tried, and prosecuted to final judgment the same as provided for ordinary actions.

2. The commencement of actions for ad valorem taxes authorized under this section shall not begin until the issuance of a tax sale certificate under the requirements of section 446.19. The commencement of actions for all other taxes authorized under this section shall not begin until ten days after the publication of tax sale under the requirements of section 446.9, subsection 2. This subsection does not apply to the collection of ad valorem taxes under section 445.32, and grain handling taxes under section 428.35.

3. Notwithstanding the provisions in section 535.3, interest on the judgment shall be at the rate provided in section 447.1 and shall commence from the month of the commencement of the action. This interest shall be in lieu of the interest assessed under section 445.39 from and after the month of the commencement of the action.

4. An appeal may be taken to the Iowa supreme court as in other civil cases regardless of the amount involved.

5. Notwithstanding any other provisions in this section, if the treasurer is unable or has reason to believe that the treasurer will be unable to offer land at the annual tax sale to collect the total amount due, the treasurer may immediately collect the total amount due by the commencement of an action under this section.

6. Notwithstanding any other provision of law, if a statute authorizes the collection of a delinquent tax, assessment, rate, or charge by tax sale, the tax, assessment, rate, or charge, including interest, fees, and costs, may also be collected under this section and section 445.4.

7. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

[S13, §1452-a; C24, 27, 31, 35, 39, §**7186;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.3]

91 Acts, ch 191, §28; 92 Acts, ch 1016, §18, 19; 95 Acts, ch 57, §12; 2007 Acts, ch 185, §5; 2016 Acts, ch 1011, §70

Referred to in §435.24, 437A.11, 437B.7, 445.4, 445.32, 445.36A, 446.20, 614.1, 631.1

Limitations of actions, see §614.1

445.4 Statutes applicable — attachment — damages.

1. Chapter 639 is applicable to proceedings instituted by a county treasurer under section 445.3, and a writ of attachment shall be issued upon the treasurer complying with the provisions of chapter 639, for taxes, whether due or not due, except that a bond shall not be required from the treasurer or county in such cases, but the county shall be liable for damages only, as provided by section 639.14. The county attorney, upon request of the treasurer, shall assist in prosecution of actions authorized in this section.

2. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

[S13, §1452-b; C24, 27, 31, 35, 39, §**7187;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.4]

91 Acts, ch 191, §29; 95 Acts, ch 57, §13; 2019 Acts, ch 24, §104

Referred to in §435.24, 445.3, 445.32, 445.36A, 446.20, 631.1

Code editor directive applied

445.5 Statement and receipt.

1. As soon as practicable after receiving the tax list prescribed in chapter 443, the treasurer shall deliver to the titleholder, by regular mail, or if requested by the titleholder, by electronic transmission, a statement of taxes due and payable which shall include the following information:

a. The year of tax.

b. A description of the parcel.

c. The assessed value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year as valued by the assessor after application of any equalization orders.

d. The taxable value of the parcel, itemized by the value for land, dwellings, and buildings, for the current year and the previous year after application of any equalization orders, assessment limitations, and itemized valuation exemptions.

e. The complete name of all taxing authorities receiving a tax distribution, the amount of the distribution, and the percentage distribution for each named authority, listed from the highest to the lowest distribution percentage.

f. The consolidated levy rate for one thousand dollars of taxable valuation multiplied by the taxable valuation to produce the gross taxes levied before application of credits against levied taxes for the previous and current fiscal years.

g. The itemized credits against levied taxes deducted from the gross taxes levied in order to produce the net taxes owed for the previous and current fiscal years.

h. The total amount of taxes levied by each taxing authority in the previous fiscal year and the current fiscal year and the difference between the two amounts, expressed as a percentage increase or decrease.

2. *a.* The county treasurer shall each year, upon request, deliver to the following persons or entities, or their duly authorized agents, a copy of the tax statement or tax statement information:

(1) Contract purchaser.

(2) Lessee.

(3) Mortgagee.

(4) Financial institution organized or chartered or holding an authorization certificate pursuant to chapter 524 or 533.

(5) Federally chartered financial institution.

b. The treasurer may negotiate and charge a reasonable fee not to exceed the cost of producing the information for a requester described in paragraph "*a*", subparagraphs (3) through (5), for a tax statement or tax statement information provided by the treasurer.

3. A person other than those listed in subsection 2, who requests a tax statement or tax statement information, shall pay a fee to the treasurer at a rate not to exceed two dollars per parcel.

4. The titleholder may make written request to the treasurer to have the tax statement delivered to a person or entity in lieu of to the titleholder. A fee shall not be charged by the treasurer for delivering the tax statement to such person or entity in lieu of to the titleholder.

5. Failure to receive a tax statement is not a defense to the payment of the total amount due.

6. The county treasurer shall deliver to the taxpayer a receipt stating the year of tax, date of payment, a description of the parcel, and the amount of taxes, interest, fees, and costs paid when payment is made by cash tender. A receipt for other payment tender types shall only be delivered upon request. The receipt shall be in full for the first half, second half, or full year amounts unless a payment is made under section 445.36A or 435.24, subsection 6.

[R60, §760; C73, §867; C97, §1405; C24, 27, 31, 35, 39, §**7188;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.5]

83 Acts, ch 156, §1, 2; 91 Acts, ch 191, §30; 97 Acts, ch 206, §22, 24; 98 Acts, ch 1186, §2, 3, 5; 99 Acts, ch 167, §2; 2003 Acts, ch 24, §8; 2005 Acts, ch 34, §12, 13, 26; 2006 Acts, ch 1010, §114; 2006 Acts, ch 1070, §20; 2011 Acts, ch 25, §98; 2011 Acts, ch 109, §2; 2012 Acts, ch 1017, §85; 2012 Acts, ch 1021, §78; 2012 Acts, ch 1133, §61, 70

445.6 Application to waive tax statement requirements. Repealed by 2016 Acts, ch 1073, §186.

445.7 through 445.9 Repealed by 91 Acts, ch 191, §123, 124.

445.10 Former delinquent taxes.

The county treasurer shall each year, after receiving the tax list referred to in chapter 443, enter into the county system a notation of delinquency for each parcel on which the tax remains unpaid for any previous year. Unless the delinquent tax is so entered it shall cease to be a lien upon that parcel. To preserve the tax lien it is only necessary to enter the notation for any parcel upon which it is a lien. If the county system is such that all delinquent taxes of any preceding year are automatically brought forward against each parcel on which the tax remains unpaid for any year, the treasurer is not required to make any further entry. Any sale for a delinquent tax not noted on the county system is invalid. However, this section does not require that in order to preserve the lien of tax and make the tax sale valid, delinquent taxes must be brought forward upon the county system if the tax list is received by the treasurer less than six months preceding the date of conducting the tax sale as provided in section 446.25 or 446.28.

[R60, §750; C73, §845; C97, §1389; S13, §1389-d; C24, 27, 31, 35, 39, §**7193;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.10]

91 Acts, ch 191, §31

Referred to in §427.12, 445.2, 445.14, 445.15

Limitation on section, §445.15

445.11 Special assessment levy submitted.

When the levy of a special assessment is submitted to the county treasurer, in a format acceptable by the treasurer, the treasurer shall enter in the county system a description of each parcel affected, the date of the assessment, the total amount assessed, the installments

to be paid, and the amounts of the respective installments if the assessment is payable in installments.

[C31, 35, §7193-d1; C39, §**7193.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §445.11; 81 Acts, ch 117, §1221]

91 Acts, ch 191, §32

Referred to in §331.552

445.12 Additional data for special assessments.

The county system may contain space for showing interest, if any, that may be incurred, a column showing payments and their amounts, a column showing the number of the receipt to be issued by the county treasurer, and a column that may be used to show the date of payment of the assessment, or any installment of it.

[C31, 35, §7193-d2; C39, §**7193.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.12]

91 Acts, ch 191, §33

445.13 Reserved.

445.14 Entries on the county system.

The county treasurer shall each year, after receiving the tax list referred to in section 445.10, indicate on the county system that a special assessment is unpaid. This indication is not required if the county system automatically brings forward a notation of the unpaid special assessment.

[C31, 35, §7193-d4; C39, §**7193.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.14]

91 Acts, ch 191, §34

445.15 Limitations.

Nothing contained in sections 443.2 and 445.10 shall apply to special assessment levies.

[C31, 35, §7193-d5; C39, §**7193.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.15]

445.16 Abatement or compromise of tax.

1. If the county holds the tax sale certificate of purchase, the county, through the board of supervisors, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs. In the event of a compromise, the board of supervisors may enter into a written agreement with the owner of the legal title or with any lienholder for the payment of a stipulated sum in full satisfaction of all amounts included in that agreement. In addition, if a parcel is offered at regular tax sale and is not sold, the county, prior to public bidder sale to the county under section 446.19, may compromise by written agreement, or abate by resolution, the tax, interest, fees, or costs, as provided in this section.

2. A copy of the agreement or resolution shall be filed with the county treasurer.

3. If the treasurer determines that it is impractical to pursue collection of the total amount due through the tax sale and the personal judgment remedies, the treasurer shall make a written recommendation to the board of supervisors to abate the amount due. The board of supervisors shall abate, by resolution, the amount due and direct the treasurer to strike the amount due from the county system.

[C27, 31, 35, §7193-a1; C39, §**7193.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.16]

91 Acts, ch 191, §35; 92 Acts, ch 1016, §20; 93 Acts, ch 73, §6; 95 Acts, ch 57, §14; 2018 Acts, ch 1041, §127

Referred to in §331.401

445.17 Repealed by 91 Acts, ch 191, §123, 124.

445.18 Effect of compromise payment or abatement.

When payment is made, as provided by the compromise agreement or when there is an abatement, all taxes included in the compromise agreement or abatement shall be deemed

to be fully satisfied and canceled and the county treasurer shall show the satisfaction on the county system.

[C27, 31, 35, §7193-a3; C39, §**7193.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §445.18; 81 Acts, ch 117, §1223]

91 Acts, ch 191, §36

445.19 and 445.20 Repealed by 91 Acts, ch 191, §123, 124.

445.21 Reserved.

445.22 Subsequent collection.

Any tax subsequently collected shall be apportioned according to the tax apportionment at the time of collection. However, this section does not apply to the payment of special assessments, or rates or charges.

[SS15, §1391; C24, 27, 31, 35, 39, §**7196;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.22]

91 Acts, ch 191, §37

445.23 Statement of taxes due.

Upon request, the county treasurer shall state in writing the full amount of taxes against a parcel, all sales for unpaid taxes, and the amount needed to redeem the parcel, if redeemable. If the person requesting the statement is not the titleholder of record or contract holder of record of the parcel, that person shall pay a fee at the rate of two dollars per parcel for each year for which information is requested, and the money shall be deposited in the county general fund.

[C73, §848; C97, §1393; C24, 27, 31, 35, 39, §**7197;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.23]

91 Acts, ch 191, §38; 92 Acts, ch 1016, §21

Referred to in §445.24

445.24 Effect of statement and receipt.

The statement received under section 445.23, with the county treasurer's receipt showing the payment of all the taxes specified in the statement, and the treasurer's certificate of redemption from the tax sales mentioned in the statement, is conclusive evidence for all purposes, and against all persons, that the parcel was, at the date of the receipt, free and clear of all taxes, and sales for taxes, except sales where the time of redemption had already expired and the tax purchaser had received the deed.

[C73, §849; C97, §1394; C24, 27, 31, 35, 39, §**7198;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.24]

84 Acts, ch 1221, §4; 91 Acts, ch 191, §39

445.25 through 445.27 Reserved.

445.28 Tax lien.

Taxes upon a parcel are a lien on the parcel against all persons except the state. However, taxes upon the parcel are a lien on the parcel against the state and a political subdivision of the state which is liable for payment of taxes as a purchaser under section 427.18.

[C51, §495; R60, §759; C73, §853, 865; C97, §1400; S13, §1400; C24, 27, 31, 35, 39, §**7202;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.28]

91 Acts, ch 191, §40

445.29 Repealed by 91 Acts, ch 191, §123, 124.

445.30 Lien between vendor and purchaser.

As against a purchaser, tax liens attach to a parcel on and after June 30 in each year.

[C97, §1400; S13, §1400; C24, 27, 31, 35, 39, §**7204;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.30]

91 Acts, ch 191, §41

445.31 Repealed by 91 Acts, ch 191, §123, 124.

445.32 Liens on buildings or improvements.

If a building or improvement is erected or made by a person other than the owner of the land on which the building or improvement is located, as provided for in section 428.4, the taxes on the building or improvement are and remain a lien on the building or improvement from the date of levy until paid. If the taxes on the building or improvement become delinquent, as provided in section 445.37, the county treasurer shall collect the tax as provided in sections 445.3 and 445.4. This section does not apply to special assessments, or rates or charges.

[S13, §1400; C24, 27, 31, 35, 39, §**7206;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.32]

91 Acts, ch 191, §42; 97 Acts, ch 158, §41

Referred to in §445.3

445.33 through 445.35 Reserved.

445.36 Payment — installments.

1. The taxes which become delinquent during the fiscal year are for the previous fiscal year.

2. A demand of taxes is not necessary, but every person subject to taxation shall attend at the office of the county treasurer and pay the taxes either in full, or one-half of the taxes before September 1 succeeding the levy, and the remaining half before March 1 following. This subsection does not apply to special assessments, or rates or charges.

3. If an installment of taxes, or an annual payment in the case of special assessments, or payment in full in the case of rates or charges, is delinquent and not paid as of November 1 of the fiscal year in which the amounts are due, the treasurer shall notify the taxpayer of the delinquency and the due date for the second installment. Failure to receive notice is not a defense to the payment of the total amount due.

[C51, §492; R60, §756; C73, §857; C97, §1403; C24, 27, 31, 35, 39, §**7210;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.36]

89 Acts, ch 214, §3; 91 Acts, ch 191, §43; 98 Acts, ch 1107, §26; 2002 Acts, ch 1043, §5; 2006 Acts, ch 1070, §21; 2011 Acts, ch 109, §3

Referred to in §435.24

445.36A Partial payments.

1. As an alternative to the semiannual or annual payment of taxes, the county treasurer may accept partial payments of taxes. The treasurer shall transfer amounts from each taxpayer's account to be applied to each semiannual tax installment prior to the delinquency dates specified in section 445.37 and the amounts collected shall be apportioned by the tenth of the month following transfer. If, prior to the due date of each semiannual installment, the account balance is insufficient to fully satisfy the installment, the treasurer shall transfer and apply the entire account balance, leaving an unpaid balance of the installment. Interest shall attach on the unpaid balance in accordance with section 445.39. Unless funds sufficient to fully satisfy the delinquency are received, the treasurer shall collect the unpaid balance as provided in sections 445.3 and 445.4 and chapter 446. Any remaining balance in a taxpayer's account in excess of the amount needed to fully satisfy an installment shall remain in the account to be applied toward the next semiannual installment. Any interest income derived from the account shall be deposited in the county's general fund to cover administrative costs. The treasurer shall send a notice with the tax statement or by separate mail to each taxpayer stating that, upon request to the treasurer, the taxpayer may make partial payments of taxes.

2. Partial payment of taxes which are delinquent may be made to the county treasurer.

For the installment being paid, payment shall first be applied to any interest, fees, and costs accrued and the remainder applied to the taxes due. A partial payment must equal or exceed the amount of interest, fees, and costs of the installment being paid. A partial payment made under this subsection shall be apportioned in accordance with section 445.57, however, such partial payment may, at the discretion of the county treasurer, be apportioned either on or before the tenth day of the month following the receipt of the partial payment or on or before the tenth day of the month following the due date of the next semiannual tax installment. If the payment does not include the whole of any installment of the delinquent tax, the unpaid tax shall continue to accrue interest pursuant to section 445.39. Partial payment shall not be permitted in lieu of redemption if the property has been sold for taxes under chapter 446 and under any circumstances shall not constitute an extension of the time period for a sale under chapter 446.

3. Current year taxes may be paid at any time regardless of any outstanding prior year delinquent tax.

4. This section does not apply to the payment of manufactured or mobile home taxes, special assessments, or rates or charges.

90 Acts, ch 1080, §1; 91 Acts, ch 191, §44; 92 Acts, ch 1016, §22; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2005 Acts, ch 34, §14, 26; 2009 Acts, ch 41, §256; 2012 Acts, ch 1138, §104

Referred to in §445.5, 445.57

445.37 When delinquent.

1. *a.* If the semiannual installment of any tax has not been paid before October 1 succeeding the levy, that amount becomes delinquent from October 1 after due. However, in those instances when the last day of September is a Saturday or Sunday, that amount becomes delinquent on the second business day of October. If the second installment is not paid before April 1 succeeding its maturity, it becomes delinquent from April 1 after due. However, in those instances when the last day of March is a Saturday or Sunday, that amount becomes delinquent on the second business day of April. This paragraph applies to all taxes as defined in section 445.1, subsection 8.

b. Notwithstanding paragraph "*a*", if there is a delay in the delivery of the tax list referred to in chapter 443 to the county treasurer, the amount of ad valorem taxes and manufactured or mobile home taxes due shall become delinquent thirty days after the date of delivery or on the delinquent date of the first installment, whichever date occurs later. The delay shall not affect the due dates for special assessments and rates or charges. The delinquent date for special assessments and rates or charges is the same as the first installment delinquent date for ad valorem taxes, including any extension, in absence of a statute to the contrary.

2. *a.* To avoid interest on delinquent taxes, a payment must be received by the treasurer on or before the last business day of the month preceding the delinquent date, or mailed with appropriate postage and applicable fees paid, and a United States postal service postmark affixed to the payment envelope, with the postmark bearing a date preceding the delinquent date. Items returned to the sender by the United States postal service for insufficient postage or applicable fees shall be assessed interest, unless the appropriate postage and fees are paid and the items are postmarked again before the delinquent date. However, if the last calendar day of a month falls on a Saturday, Sunday, or a holiday, that amount becomes delinquent on the second business day of the following month.

b. To avoid interest on current or delinquent taxes, for payments made through a county treasurer's authorized internet site only, if the last day of the month falls on a Saturday, Sunday, or a holiday, the electronic payment must be entered by midnight on the first business day of the next month. All other electronic payments must be entered by midnight on the last day of the month preceding the delinquent date.

[C97, §1403; C24, 27, 31, 35, 39, §**7211;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.37]

91 Acts, ch 191, §45; 92 Acts, ch 1016, §23; 95 Acts, ch 57, §15; 97 Acts, ch 121, §17; 2001 Acts, ch 45, §7; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80; 2002 Acts, ch 1043, §6; 2004

Acts, ch 1092, §7; 2013 Acts, ch 90, §257; 2014 Acts, ch 1026, §94; 2015 Acts, ch 30, §123; 2017 Acts, ch 92, §3
Referred to in §435.24, 445.32, 445.36A, 445.39, 446.32

445.38 Apportionment.
If ad valorem or manufactured or mobile home taxes are paid by installment, each of those payments shall be apportioned among the several funds for which taxes have been assessed in their proper proportions.
[C97, §1403; C24, 27, 31, 35, 39, §**7212;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.38]
91 Acts, ch 191, §46; 2001 Acts, ch 153, §15; 2001 Acts, ch 176, §80

445.39 Interest on delinquent taxes.
If the first installment of taxes is not paid by the delinquent date specified in section 445.37, the installment becomes due and draws interest of one and one-half percent per month until paid, from the delinquent date following the levy. If the last half is not paid by the delinquent date specified for it in section 445.37, the same interest shall be charged from the date the last half became delinquent. However, after April 1 in a fiscal year when late delivery of the tax list referred to in chapter 443 results in a delinquency date later than October 1 for the first installment, interest on delinquent first installments shall accrue as if delivery were made on the previous June 30. The interest imposed under this section shall be computed to the nearest whole dollar and the amount of interest shall not be less than one dollar. In calculating interest each fraction of a month shall be counted as an entire month. The interest percentage on delinquent special assessments and rates or charges is the same as that for the first installment of delinquent ad valorem taxes.
[C51, §495, 497; R60, §759, 760; C73, §865; C97, §1413; C24, 27, 31, 35, 39, §**7214;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.39]
85 Acts, ch 112, §1; 89 Acts, ch 214, §4; 91 Acts, ch 191, §47
Referred to in §435.24, 445.3, 445.36A

445.40 Repealed by 91 Acts, ch 191, §123, 124.

445.41 When interest omitted.
Interest shall not be added to taxes levied by a court to pay a judgment on county, city, or school district indebtedness, other than the interest which that judgment may draw, nor upon taxes levied in aid of the construction of a railroad.
[C73, §866; C97, §1413; C24, 27, 31, 35, 39, §**7216;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.41]
91 Acts, ch 191, §48

445.42 through 445.52 Repealed by 91 Acts, ch 191, §123, 124.

445.53 Taxes certified to another county.
In all cases of delinquent taxes, if the person upon whose property the taxes were levied has disposed of or removed the property and the treasurer of the county where the taxes were levied can find no property within that county against which those taxes can be collected, the treasurer of the county where those taxes are delinquent shall make out a certified abstract of the taxes and forward it to the treasurer of the county in which the person resides or has property, if the treasurer transmitting the abstract has reason to believe that the delinquent taxes can be collected by that county.
[C73, §861; C97, §1409; SS15, §1409; C24, 27, 31, 35, 39, §**7228;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.53]
91 Acts, ch 191, §49

445.54 Collection in such case.
The county treasurer forwarding and the one receiving said abstract shall each keep a record of it, and, upon receipt and filing in the office of the treasurer to whom sent, it shall

have the effect of a levy of taxes in that county, and the collection shall proceed in the same manner as in the collection of other taxes.

[C73, §862; C97, §1410; C24, 27, 31, 35, 39, §**7229;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.54]

91 Acts, ch 191, §50

445.55 Fees collectible.

The county treasurer collecting taxes so certified into another county shall, in addition to the interest, fees, and costs on delinquent taxes, assess a collection fee of twenty percent on the whole amount of the taxes, inclusive of the interest, fees, and costs on the taxes.

[C73, §863; C97, §1411; C24, 27, 31, 35, 39, §**7230;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.55]

91 Acts, ch 191, §51

Referred to in §445.56

445.56 Return.

1. The county treasurer receiving the abstract shall, upon collection, forward the amount to the treasurer of the county where the taxes were levied, less the collection fee provided in section 445.55.

2. The treasurer receiving the abstract shall, when in the treasurer's opinion the taxes are uncollectible, return the abstract with the endorsement "uncollectible" on it. In such case, when it is administratively impractical to collect the tax, the board of supervisors shall compromise or abate the tax, interest, and costs.

[C73, §864; C97, §1412; C24, 27, 31, 35, 39, §**7231;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.56]

91 Acts, ch 191, §52; 2018 Acts, ch 1041, §127

445.57 Monthly apportionment.

1. On or before the tenth day of each month, the county treasurer shall apportion all taxes collected during the preceding month, except partial payment amounts collected pursuant to section 445.36A, subsection 1, partial payments collected and not yet designated by the county treasurer for apportionment pursuant to section 445.36A, subsection 2, partial payments collected pursuant to section 435.24, subsection 6, paragraph *"a"*, and partial payments collected and not yet designated by the county treasurer for apportionment pursuant to section 435.24, subsection 6, paragraph *"b"*, among the several funds to which they belong according to the amount levied for each fund, and shall apportion the interest, fees, and costs on the taxes to the general fund, and shall enter those amounts upon the treasurer's cash account, and report the amounts to the county auditor.

2. The county treasurer shall apportion all interest and penalties on the replacement taxes and special utility property tax levies collected by the county treasurer to the general fund. Replacement taxes collected by the county treasurer shall be apportioned as set forth in this section.

3. Fees and charges including service delivery fees, credit card fees, and electronic funds transfer charges payable to a third party, not to the county, that are imposed for completing an electronic financial transaction with the county are not considered taxes collected for the purposes of this section.

[C73, §868; C97, §1415; S13, §1415; C24, 27, 31, 35, 39, §**7232;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.57]

91 Acts, ch 191, §53; 2000 Acts, ch 1114, §15, 18; 2003 Acts, ch 18, §5; 2012 Acts, ch 1138, §105

Referred to in §331.427, 435.24, 445.36A

445.58 and 445.59 Repealed by 91 Acts, ch 191, §123, 124.

445.60 Refunding erroneous tax.

The board of supervisors shall direct the county treasurer to refund to the taxpayer any tax or portion of a tax found to have been erroneously or illegally paid, with all interest, fees,

and costs actually paid. A refund shall not be ordered or made unless a claim for refund is presented to the board within two years of the date the tax was due, or if appealed to the board of review, the property assessment appeal board, or district court, within two years of the final decision.

[R60, §762; C73, §870; C97, §1417; C24, 27, 31, 35, 39, §**7235;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.60]

88 Acts, ch 1140, §1; 91 Acts, ch 191, §54; 99 Acts, ch 174, §6, 7; 2005 Acts, ch 150, §133; 2016 Acts, ch 1073, §122, 189

Referred to in §331.401

445.61 Sale for erroneous tax.

If a parcel subject to taxation is sold for the payment of such erroneous tax, interest, fees, or costs, the error or irregularity in the tax may be corrected at any time provided in this chapter, but this correction does not affect the validity of the sale or the right or title conveyed by a county treasurer's deed, if the parcel was subject to taxation for any of the purposes for which any portion of the taxes for which the parcel was sold was levied, and the taxes were not paid before the sale, or the parcel redeemed from sale.

[R60, §762; C73, §870; C97, §1417; C24, 27, 31, 35, 39, §**7236;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.61]

91 Acts, ch 191, §55

445.62 Abatement or refund in case of loss.

The board of supervisors has the authority to abate or refund in whole or in part the taxes of any person whose buildings, crops, stock, or other property has been destroyed by fire, tornado, or other unavoidable casualty, if that property has not been sold for taxes, or if the taxes have not been delinquent for thirty days at the time of the destruction. The loss for which abatement or refund is allowed shall be only that amount which is not covered by insurance. The loss of capital stock in a bank operated within the state and the making and paying of a stock assessment for the year that stock was assessed for taxation is a destruction within the meaning of this section.

[R60, §818; C73, §800; C97, §1307; C24, 27, 31, 35, 39, §**7237;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §445.62]

91 Acts, ch 191, §56

Referred to in §331.401

445.63 Abatement of taxes.

When taxes are owing against a parcel owned or claimed by the state or a political subdivision of this state and the taxes were owing before the parcel was acquired by the state or a political subdivision of this state, the county treasurer shall give notice to the appropriate governing body which shall pay the amount of the taxes due. If the governing body fails to immediately pay the taxes due, the board of supervisors shall abate all of the taxes.

87 Acts, ch 126, §1; 91 Acts, ch 191, §57

CHAPTER 446

TAX SALES

Referred to in §306.22, 331.559, 384.2, 419.11, 427.2, 435.24, 435.25, 437A.11, 437B.7, 445.1, 445.36A, 447.1, 455G.9, 461A.25

For definitions applicable to chapter, see §445.1

446.1 Sale shown.
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446.7 Annual tax sale.
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446.9 Notice of sale — service — publication — costs.
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446.26 Responsibility of treasurer to attend tax sale.
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446.28 Subsequent sale.
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446.31 Assignment — presumption from deed recitals.
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446.35 Assessment to wrong person.
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446.37 Cancellation of sale.
446.38 Suspended taxes of supplementary assistance recipients. Repealed by 2007 Acts, ch 126, §115.
446.39 Iowa finance authority statement. Repealed by 2007 Acts, ch 54, §45.
446.40 through 446.44 Reserved.
446.45 Applicable law.

446.1 Sale shown.

The county treasurer shall designate on the county system each parcel sold for taxes and not redeemed, by noting on the county system the year in which it was sold.

[C73, §842; C97, §1386; C24, 27, 31, 35, 39, §**7238;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.1; 81 Acts, ch 117, §1224]

91 Acts, ch 191, §58

446.2 Notice of sale.

For each parcel sold, the county treasurer shall notify the party in whose name the parcel was taxed, according to the treasurer's records at the time of sale, that the parcel was sold at tax sale. The notice of sale shall be sent by regular mail within fifteen days from the date of the annual tax sale or any adjourned tax sale. Failure to receive a mailed notice is not a defense to payment of the total amount due.

[C73, §847; C97, §1392; C24, 27, 31, 35, 39, §**7239;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.2]

91 Acts, ch 191, §59; 93 Acts, ch 73, §7; 98 Acts, ch 1107, §27

446.3 through 446.6 Repealed by 91 Acts, ch 191, §123, 124.

446.7 Annual tax sale.

1. Annually, on the third Monday in June the county treasurer shall offer at public sale all parcels on which taxes are delinquent. The treasurer shall not, however, offer for sale any parcel that is subject to a pending action as the result of a municipal infraction citation under section 364.22, a petition filed under chapter 657, or a petition filed under chapter 657A, if such municipal infraction citation or petition is indexed under section 617.10 and noted in the county system as defined in section 445.1. The sale shall be made for the total amount of taxes, interest, fees, and costs due. If for good cause the treasurer cannot hold the annual tax sale on the third Monday of June, the treasurer may designate a different date in June for the sale.

2. Parcels against which the county holds a tax sale certificate or a municipality holds a tax sale certificate acquired under section 446.19, parcels of municipal and political subdivisions of the state of Iowa, or parcels of the state or its agencies, shall not be offered or sold at tax sale and a tax sale of those parcels is void from its inception. When taxes are owing against parcels owned or claimed by a municipal or political subdivision of the state of Iowa, or parcels of the state or its agencies, the treasurer shall give notice to the appropriate governing body which

shall then pay the total amount due. If the governing body fails to pay the total amount due, the board of supervisors shall abate the total amount due.

[C51, §496; R60, §763; C73, §871; C97, §1418; C24, 27, 31, 35, 39, §**7244;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.7]

83 Acts, ch 101, §91; 83 Acts, ch 123, §182, 209; 84 Acts, ch 1221, §5; 91 Acts, ch 191, §60; 93 Acts, ch 73, §8; 99 Acts, ch 4, §1, 4; 2007 Acts, ch 54, §37; 2010 Acts, ch 1050, §3

Referred to in §364.22, 447.1, 657.2A, 657A.12

446.8 Reserved.

446.9 Notice of sale — service — publication — costs.

1. A notice of the date, time, and place of the annual tax sale shall be served upon the person in whose name the parcel subject to sale is taxed. The county treasurer shall serve the notice by sending it by regular first class mail to the person's last known address not later than May 1 of each fiscal year. However, in those instances when May 1 is a Saturday or Sunday, the notice shall be served not later than the first business day of May. The notice shall contain a description of the parcel to be sold which is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. It shall also contain the amount of delinquent taxes for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The notice shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

2. Publication of the date, time, and place of the annual tax sale shall be made once by the treasurer in at least one official newspaper in the county as selected by the board of supervisors and designated by the treasurer at least one week, but not more than three weeks, before the day of sale. The publication shall contain a description of the parcel to be sold that is clear, concise, and sufficient to distinguish the parcel to be sold from all other parcels. All items offered for sale pursuant to section 446.18 may be indicated by an "s" or by an asterisk. The publication shall also contain the name of the person in whose name the parcel to be sold is taxed and the amount delinquent for which the parcel is liable each year, the amount of the interest and fees, and the amount of the service fee as provided in section 446.10, subsection 2, all to be incorporated as a single sum. The publication shall contain a statement that, after the sale, if the parcel is not redeemed within the period provided in chapter 447, the right to redeem expires and a deed may be issued.

3. *a.* In addition to the notice required by subsection 1 and the publication required by subsection 2, the treasurer shall send, at least one week but not more than three weeks before the day of sale, a notice of sale in the form prescribed by subsection 1, by regular first class mail to any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor of the parcel who has a recorded lease or memorandum of a recorded lease, and to any other person who has an interest of record in the parcel, if the mortgagee, vendor, lessor, or other person having an interest of record has done both of the following:

(1) Requested on a form prescribed by the treasurer that notice of sale be sent to the person.

(2) Filed the request form with the treasurer at least one month prior to the date of sale, together with a fee of twenty-five dollars per parcel.

b. The request for notice is valid for a period of five years from the date of filing with the treasurer. The request for notice may be renewed for additional periods of five years by the procedure specified in this subsection.

4. Notice required by subsections 1 and 3 shall be deemed completed when the notice is enclosed in a sealed envelope with the proper postage on the envelope, is addressed to the person entitled to receive it at the person's last known mailing address, and is deposited in a mail receptacle provided by the United States postal service. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

5. If, for good cause, a parcel is not included in the publication specified in subsection 2, notice shall be given by publication or by posting a description of the parcel and the date,

time, and place of the tax sale in the treasurer's office for two weeks before the regular or any adjourned tax sale and, at the time of the publication or posting, by mailing the notice required in subsection 1.

[C51, §498; R60, §764; C73, §872 – 874, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7246;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.9]

84 Acts, ch 1221, §6; 86 Acts, ch 1139, §4; 89 Acts, ch 214, §5; 91 Acts, ch 191, §61; 92 Acts, ch 1016, §24; 97 Acts, ch 121, §18; 98 Acts, ch 1107, §28; 99 Acts, ch 4, §2, 4; 2002 Acts, ch 1043, §7, 8; 2003 Acts, ch 44, §64; 2006 Acts, ch 1070, §22; 2011 Acts, ch 25, §143

Referred to in §435.24, 445.2, 445.3, 446.19B, 446.20

446.10 Publication costs and service fees.

1. The compensation for publication shall not exceed four dollars for each separately described parcel and shall be paid by the county.

2. A service fee not to exceed four dollars shall be collected as a fee for sale notice preparation and deposited into the county general fund. If the taxes are paid before the date of sale, the service fee shall be included as a part of the costs of collecting the taxes.

[C51, §498; R60, §764; C73, §873, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7247;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.10]

86 Acts, ch 1139, §5; 91 Acts, ch 191, §62; 2002 Acts, ch 1043, §9

Referred to in §446.9, 446.11

446.11 Substituted service.

If the county treasurer cannot procure the publication of the notice for the sum specified in section 446.10, the notice may be given by posting it in the treasurer's office for two weeks.

[C51, §498; R60, §764; C73, §873, 3833; C97, §1419; S13, §1419; C24, 27, 31, 35, 39, §**7248;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.11]

91 Acts, ch 191, §63

446.12 Certificate of publication.

The county treasurer shall obtain a copy of the notice of sale with a certificate of its publication from the printer or publisher, and file it in the office of the treasurer. The certificate shall be substantially in the following form:

> I, ..., publisher (or printer) of the ....., a newspaper printed and published in the county of ..... and state of Iowa, certify that the foregoing notice and list were published in that newspaper on the ..... day of ....., ..., and that copies of each issue of the paper in which the notice and list were published were delivered by carrier or transmitted by mail to each of the subscribers to the paper.
>
> .....
>
> Signature of publisher (or printer)
>
> State of Iowa,)
>
> ..... County.) ss.
>
> The above certificate of publication was subscribed and sworn to before me by the above named ....., who is personally known to me to be the identical person described in the certificate, on the ..... day of ....., ...
>
> .....
>
> Notary
>
> ..... County, Iowa.

[C51, §500; R60, §771; C73, §881; C97, §1420; C24, 27, 31, 35, 39, §**7249;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.12]

86 Acts, ch 1139, §6; 91 Acts, ch 191, §64

446.13 Method of describing parcels, etc.

In entries required to be made by the county auditor, county treasurer, or other officer, letters and figures may be used to denote townships, ranges, sections, parts of sections, lots, blocks, dates, and the amount of taxes, interest, fees, and costs.

[R60, §770; C73, §880; C97, §1421; C24, 27, 31, 35, 39, §**7250;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.13]

91 Acts, ch 191, §65

446.14 Irregularities in advertisement.

An irregularity or informality in the advertisement does not affect the legality of the sale or the title to a parcel conveyed by the county treasurer's deed under this chapter and chapters 447 and 448, and in all cases its provisions shall be sufficient notice to the owners of the sale of the parcel.

[R60, §770; C73, §880; C97, §1421; C24, 27, 31, 35, 39, §**7251;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.14]

91 Acts, ch 191, §66

446.15 Offer for sale.

The county treasurer shall offer for sale, on the day of the sale, each parcel separately for the total amount due against each parcel advertised for sale.

[C51, §499; R60, §765; C73, §875; C97, §1422; C24, 27, 31, 35, 39, §**7252;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.15]

91 Acts, ch 191, §67; 95 Acts, ch 57, §16

446.16 Bid — purchaser — bidder registration fee.

1. The person who offers to pay the total amount due, which is a lien on any parcel, for the smallest percentage of the parcel is the purchaser, and when the purchaser designates the percentage of any parcel for which the purchaser will pay the total amount due, the percentage thus designated shall give the person an undivided interest upon the issuance of a treasurer's deed, as provided in chapter 448. If two or more persons have placed an equal bid and the bids are the smallest percentage offered, the county treasurer shall use a random selection process to select the bidder to whom a certificate of purchase will be issued. The percentage that may be designated by any purchaser under this subsection shall not be less than one percent.

2. The treasurer may establish and collect a reasonable registration fee from each registered bidder at the tax sale. The fee shall not be assessed against a county or municipality. The total of the fees collected shall not exceed the total costs of the tax sale. Registration fees collected shall be deposited in the general fund of the county.

3. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual, through assignment or direct purchase at the tax sale. The delinquent tax sale lien expires when the tax sale certificate expires.

4. Only those persons as defined in section 4.1 are authorized to register to bid or to bid at the tax sale or to own a tax sale certificate by purchase, assignment, or otherwise. To be authorized to register to bid or to bid at a tax sale or to own a tax sale certificate, a person, other than an individual, must have a federal tax identification number and either a designation of agent for service of process on file with the secretary of state or a verified statement meeting the requirements of chapter 547 on file with the county recorder of the county in which the person wishes to register to bid or to bid at tax sale or of the county where the property that is the subject of the tax sale certificate is located.

[C51, §501; R60, §766; C73, §876; C97, §1423; C24, 27, 31, 35, 39, §**7253;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.16]

90 Acts, ch 1203, §1; 91 Acts, ch 191, §68; 92 Acts, ch 1016, §25; 95 Acts, ch 57, §17; 97 Acts, ch 121, §19; 2004 Acts, ch 1092, §8; 2005 Acts, ch 34, §15, 26; 2009 Acts, ch 11, §1, 2

Referred to in §420.246

446.17 Sale continued.

1. The county treasurer shall continue the sale from day to day as long as there are bidders or until all delinquent parcels have been offered for sale.

2. If notice of annual tax sale has been published under section 446.9, Code 1991, the notice is valid and further notice is not required for an adjourned sale held under this section, unless it is a public bidder sale.

[C51, §499; R60, §767; C73, §877; C97, §1424; C24, 27, 31, 35, 39, §**7254;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.17]

91 Acts, ch 191, §69; 92 Acts, ch 1016, §26; 2007 Acts, ch 22, §77

446.18 "Public bidder sale" — notice.

Each county treasurer shall, on the day of the regular tax sale each year or any continuance or adjournment of the tax sale, offer and sell at public sale all parcels which remain liable to sale for delinquent taxes, which have previously been advertised, offered for one year or more, and remain unsold for want of bidders. Notice of the sale shall be given at the same time and in the same manner as that given of the regular sale.

[C97, §1425; C24, 27, 31, 35, 39, §**7255;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.18]

91 Acts, ch 191, §70

Referred to in §321.46, 446.9, 446.19, 446.19A, 447.9

446.19 County or city as purchaser.

1. When a parcel is offered at a tax sale under section 446.18, and no bid is received, or if the bid received is less than the total amount due, the county in which the parcel is located, through its county treasurer, shall bid for the parcel a sum equal to the total amount due. Money shall not be paid by the county or other tax-levying or tax-certifying body for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

2. This section does not prohibit a governmental agency or political subdivision from bidding at the sale for a parcel to protect its interests. When a bid is received from a city in which the parcel is located, money shall not be paid by the city, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

[C27, 31, 35, §7255-b1; C39, §**7255.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.19]

91 Acts, ch 191, §71; 92 Acts, ch 1163, §86; 95 Acts, ch 57, §18

Referred to in §331.361, 445.3, 445.16, 446.7, 446.20, 446.21, 447.1, 459.505, 459.506

Acquisition of title by municipal corporations, chapter 569

446.19A Purchase by county or city for use as housing.

1. The board of supervisors of a county may adopt an ordinance authorizing the county and each city in the county to bid on and purchase delinquent taxes and to assign tax sale certificates of abandoned property or vacant lots. This section may only be used by a county or by a city in the county if such an ordinance is in effect.

2. On the day of the regular tax sale or any continuance or adjournment of the tax sale, the county or a city may bid for abandoned property assessed as residential property or as commercial multifamily housing property or for a vacant lot a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price. Prior to the purchase, the county or city shall file with the county treasurer a verified statement that a parcel to be purchased is abandoned property and that the parcel is suitable for use as housing following rehabilitation or that a parcel to be purchased is a vacant lot.

3. If after the date that a parcel is sold pursuant to this chapter, or after the date that a parcel is sold under section 446.18, the parcel assessed as residential property or as commercial multifamily housing property is identified as abandoned or as a vacant lot pursuant to a verified statement filed with the county treasurer by a city or county in the form set forth in subsection 2, a city or county may require the assignment of the tax sale

certificate that had been issued for such parcel by paying to the holder of such certificate the total amount due on the date the assignment of the certificate is made to the county or city and recorded with the county treasurer. If a certificate holder fails to assign the certificate of purchase to the city or county, the county treasurer is authorized to issue a duplicate certificate of purchase, which shall take the place of the original certificate, and assign the duplicate certificate to the city or county. If the certificate is not assigned by the county or city pursuant to subsection 4, the county or city, whichever is applicable, is liable for the tax sale interest that was due the certificate holder pursuant to section 447.1, as of the date of assignment.

4. *a.* The city or county may assign the tax sale certificate obtained pursuant to this section. Persons who purchase certificates from the city or county under this subsection are liable for the total amount due the certificate holder pursuant to section 447.1.

b. All persons who purchase certificates from the city or county under this subsection shall demonstrate the intent to rehabilitate the abandoned property for habitation or build a residential structure on the vacant lot if the property is not redeemed. In the alternative, the county or city may, if title to the property has vested in the county or city under section 448.1, dispose of the property in accordance with section 331.361 or 364.7, as applicable.

5. For purposes of this section:

a. *"Abandoned property"* means a lot or parcel containing a building which is used or intended to be used for residential purposes and which has remained vacant and has been in violation of the housing code of the city in which the property is located or of the housing code applicable in the county in which the property is located if outside the limits of a city, for a period of six consecutive months.

b. *"Vacant lot"* means a lot or parcel located in a city or outside the limits of a city in a county that contains no buildings or structures and that is zoned to allow for residential structures.

96 Acts, ch 1204, §31; 99 Acts, ch 29, §1, 3; 2004 Acts, ch 1165, §5 – 7, 11, 12; 2005 Acts, ch 34, §16, 17, 26; 2007 Acts, ch 54, §38; 2007 Acts, ch 126, §72

Referred to in §446.19B, 447.9

446.19B Public nuisance tax sale — rehabilitation for use as housing.

1. The board of supervisors of a county may adopt an ordinance authorizing the county treasurer to separately offer and sell at the annual tax sale delinquent taxes on parcels that are abandoned property and are assessed as residential property or as commercial multifamily housing property and that are, or are likely to become, a public nuisance. This section may only be used by a county or by a city in the county if such an ordinance is in effect.

2. On or before May 15, the county or city may file with the county treasurer a verified statement containing a listing of parcels and a declaration that each parcel is abandoned property, each parcel is assessed as residential property or as commercial multifamily housing property, each parcel is, or is likely to become, a public nuisance, and that each parcel is suitable for use as housing following rehabilitation.

3. The verified statement shall be published at the same time and in the same manner as the notice of the annual tax sale and the requirements in section 446.9, subsection 2, for publication of notice of the annual tax sale also apply to publication of the verified statement.

4. On the day of the regular tax sale, or any continuance or adjournment of the tax sale, the treasurer shall separately offer and sell those parcels listed in a verified statement timely received and properly published and which remain liable to sale for delinquent taxes. This sale shall be known as the "public nuisance tax sale". Notwithstanding any provision to the contrary, the percentage interest that may be purchased in a parcel offered for sale under this section shall not be less than one hundred percent.

5. To be eligible to bid on parcels under this section, a prospective bidder shall enter into a rehabilitation agreement with the county, or with the city if the property is located within a city, to demonstrate the intent to rehabilitate the property for use as housing if the property is not redeemed.

6. If after issuance of a tax sale deed to the holder of a certificate of purchase at the public nuisance tax sale, the tax sale deed holder determines that a building, structure, or other

improvement located on the parcel cannot be rehabilitated for habitation, the tax sale deed holder may request approval from the board of supervisors, or the city council if the property is located within a city, to remove, dismantle, or demolish the building, structure, or other improvement.

7. When a parcel is offered at public nuisance tax sale and no bid is received, or if the bid received is less than the total amount due, the county in which the parcel is located, through its county treasurer, shall bid for the parcel a sum equal to the total amount due. Money shall not be paid by the county or city for the purchase, but each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price.

8. The tax sale certificate holder may assign the tax sale certificate obtained pursuant to this section.

9. For purposes of this section, *"abandoned property"* means the same as defined in section 446.19A, and *"public nuisance"* means the same as defined in section 657A.1.

2006 Acts, ch 1070, §23

Referred to in §446.31, 446.37, 447.9

446.20 Remedies.

1. *a.* Without limiting the county's rights under section 445.3, once a certificate is issued to a county, a county may collect the total amount due by the alternative remedy provided in section 445.3 by converting the total amount due to a personal judgment. Entrance of the judgment shall be shown on the county system. Collection of the judgment may then be initiated as provided in section 445.4. The county attorney shall, upon request of the county treasurer, assist in prosecution of action authorized under this section and sections 445.3 and 445.4.

b. The remedies associated with tax sale and personal judgment may be simultaneously pursued until such time as the total amount due has been collected or otherwise discharged. If the total amount due is collected pursuant to a personal judgment, the tax sale shall be canceled by the treasurer. If a tax deed is issued, any personal judgment shall be released and a satisfaction of judgment shall be filed with the clerk of the appropriate district court.

2. *a.* If the board or council determines that any property located on a parcel purchased by the county or city pursuant to section 446.19 requires removal, dismantling, or demolition, the board or council shall, at the same time and in the same manner that the notice of expiration of right of redemption is served, cause to be served on the person in possession of the parcel and also upon the person in whose name the parcel is taxed a separate notice stating that if the parcel is not redeemed within the time period specified in the notice of expiration of right of redemption, the property described in the notice shall be removed, dismantled, or demolished. The notice shall further state that the costs of removal, dismantling, or demolition shall be assessed against the person in whose name the parcel is taxed and a lien for the costs shall be placed against any other parcel taxed in that person's name within the county.

b. Service of the notice shall also be made by mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or memorandum of a recorded lease, and any other person who has an interest of record, at the person's last known address, if the mortgagee, vendor, lessor, or other person has filed a request for notice, as prescribed in section 446.9, subsection 3. The notice shall also be served on any city where the parcel is situated. Failure to receive a mailed notice is not a defense to the payment of the total amount due.

3. This section is remedial and shall apply to all delinquent taxes included in a tax sale certificate of purchase issued to a county. Upon assignment of a county-held tax sale certificate, this section shall not apply to the assignee.

91 Acts, ch 191, §72; 92 Acts, ch 1016, §27; 95 Acts, ch 57, §19; 98 Acts, ch 1107, §29; 2006 Acts, ch 1010, §115; 2007 Acts, ch 126, §73; 2011 Acts, ch 25, §143

446.21 Assignment of certificate to bondholder.

In tax sales made under section 446.19, a holder of a special assessment certificate against a parcel, a holder of a bond payable in whole or in part out of a special assessment against a parcel, or a city within which a parcel is situated, which parcel has been sold, is entitled to an assignment of any certificate of tax sale of the parcel, upon tender to the holder or to the county treasurer of the amount to which the holder of the tax sale certificate would be entitled in case of redemption.

[C97, §816; S13, §792-f, 816; C24, 27, 31, §6041; C35, §6041, 7255-g2; C39, §**6041, 7255.3;** C46, 50, 54, 58, 62, 66, 71, 73, §391.68, 446.21; C75, 77, 79, 81, S81, §446.21; 81 Acts, ch 117, §1225]

91 Acts, ch 191, §73

Referred to in §446.45

446.22 Reserved.

446.23 Resale.

The person purchasing a tax sale certificate against any parcel shall immediately pay to the county treasurer the total amount bid. Upon failure to do so the parcel is again offered as if no such sale had been made. These payments may be made in the funds receivable in payment of taxes.

[C51, §502; R60, §768; C73, §878; C97, §1426; C24, 27, 31, 35, 39, §**7257;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.23]

91 Acts, ch 191, §74

446.24 Record of sales.

The county treasurer or a designee shall attend all tax sales and keep a record in the county system of the sales, describing each parcel on which the total amount due was paid by the purchaser, as they are described in the copy of the notice on file in the treasurer's office. The county system shall include a statement of the amount, kind of tax, interest, fees, and costs for each parcel, to whom sold, and the date of sale.

[R60, §772; C73, §882; C97, §1427; C24, 27, 31, 35, 39, §**7258;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.24; 81 Acts, ch 117, §1226]

91 Acts, ch 191, §75

446.25 Sale adjourned.

When all the parcels advertised for sale have been offered and parcels remain unsold for want of bidders, the county treasurer shall adjourn the sale to some day not exceeding two months from adjournment, due notice of which day shall be given at the time of adjournment, and by keeping the notice posted in a conspicuous place in the treasurer's office. Further notice is not necessary. On the day fixed by the adjournment, the same proceedings shall occur as in the first instance. Further adjournments shall be made, not exceeding intervals of two months, and the sales continue until the next regular annual sale or until all the parcels are sold.

[R60, §773; C73, §883; C97, §1428; C24, 27, 31, 35, 39, §**7259;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.25]

91 Acts, ch 191, §76

Referred to in §420.219, 445.10

446.26 Responsibility of treasurer to attend tax sale.

A county treasurer failing to attend a tax sale in person, by a deputy treasurer, or by another designated employee is guilty of a simple misdemeanor.

[R60, §774; C73, §884; C97, §1429; C24, 27, 31, 35, 39, §**7260;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.26; 81 Acts, ch 117, §1227]

91 Acts, ch 191, §77

446.27 Liability of treasurer.

1. If the county treasurer, deputy treasurer, or other designated employee sells or assists

in selling any parcel, knowing it is not subject to taxation or that the amount for which it is sold has been paid, or knowingly and willfully sells or assists in selling a parcel to defraud the owner, or knowingly and willfully executes a deed for such a parcel sold, the treasurer, deputy treasurer, or designated employee is guilty of a serious misdemeanor and liable to pay the injured party all damages sustained as a result of the illegal sale.

2. If the treasurer, deputy treasurer, or designated person is directly or indirectly concerned in the purchase of a parcel sold at tax sale, the treasurer and the treasurer's sureties are liable on the treasurer's official bond for all damages sustained by the owner of the parcel. In addition, the treasurer, deputy treasurer, or designated person, as the case may be, is guilty of a fraudulent practice.

3. Sales made in violation of this section are void.

[R60, §775; C73, §885; C97, §1430; C24, 27, 31, 35, 39, §**7261;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.27; 81 Acts, ch 117, §1228]

91 Acts, ch 191, §78; 92 Acts, ch 1016, §28

Fraudulent practices, see §714.8 – 714.14

446.28 Subsequent sale.

If for good cause, a parcel cannot be advertised and offered for sale on the third Monday of June or on another date in June designated by the treasurer, the county treasurer shall make the sale on the third Monday of the next succeeding month in which the required notice can be given.

[R60, §776; C73, §886; C97, §1431; C24, 27, 31, 35, 39, §**7262;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.28]

91 Acts, ch 191, §79; 99 Acts, ch 4, §3, 4

Referred to in §445.10, 447.1

446.29 Certificate of purchase.

The county treasurer shall prepare, sign, and deliver to the purchaser of any parcel or part of a parcel sold a certificate of purchase, describing the parcel or part of the parcel as shown in the county system identifying the parcel or part of the parcel sold, the total amount due for each parcel as described, and that payment has been made. Not more than one parcel shall be entered upon each certificate of purchase. The certificate fee is the amount specified in section 331.552, subsection 23. The delinquent tax lien transfers with the tax sale certificate, whether held by the county or purchased by an individual through assignment or direct purchase at the tax sale. The delinquent tax lien expires when the tax sale certificate expires.

[C51, §503; R60, §777; C73, §887; C97, §1432; S13, §1432; C24, 27, 31, 35, 39, §**7263;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.29; 82 Acts, ch 1104, §25]

90 Acts, ch 1203, §2; 91 Acts, ch 191, §80

446.30 Loss of certificate.

If a certificate of purchase is lost or destroyed, the owner of record, may, by filing an affidavit of the loss or destruction with the county treasurer, receive a duplicate of the certificate, which shall take the place of the original certificate and have the same force and effect in law and be subject to the same laws. The cost of a duplicate certificate of purchase is the same as the cost of the original certificate as provided in section 331.552, subsection 23.

[S13, §1432; C24, 27, 31, 35, 39, §**7264;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.30]

91 Acts, ch 191, §81

446.31 Assignment — presumption from deed recitals.

1. The certificate of purchase is assignable by endorsement and entry in the county system in the office of county treasurer of the county from which the certificate was issued, and when the assignment is so entered and the assignment transaction fee paid, it shall vest in the assignee or legal representatives of the assignee all the right and title of the assignor. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact. For each assignment transaction, the treasurer shall charge the assignee an assignment transaction fee of one hundred dollars, or ten dollars in the case of an assignment by an

estate, to be deposited in the county general fund. The assignment transaction fee shall not be added to the amount necessary to redeem.

2. When the county acquires a certificate of purchase, the county may assign the certificate for the total amount due as of the date of assignment or compromise the total amount due and assign the certificate. An assignment or a compromise and assignment shall be by written agreement. A copy of the agreement shall be filed with the treasurer. For each assignment transaction, the treasurer shall collect from the assignee an assignment transaction fee of ten dollars to be deposited in the county general fund. The assignment transaction fee shall not be added to the amount necessary to redeem. All money received from the assignment of county-held certificates of purchase shall be apportioned to the tax-levying and certifying bodies in proportion to their interests in the taxes for which the parcel was sold with all interest, fees, and costs deposited in the county general fund. After assignment of a certificate of purchase which is held by the county, section 446.37 applies. In that instance, the date of cancellation shall be three years from the date the assignment is recorded by the treasurer in the county system. However, in the case of a tax sale certificate issued pursuant to section 446.19B and assigned by the county, the date of cancellation shall be one year from the date the assignment is recorded by the treasurer in the county system. When the assignment is entered and the assignment transaction fee is paid, all of the rights and title of the assignor shall vest in the assignee or the legal representative of the assignee. The statement in the treasurer's deed of the fact of the assignment is presumptive evidence of that fact.

3. A certificate of purchase for a parcel shall not be assigned to a person, other than a municipality, who is entitled to redeem that parcel.

[R60, §778; C73, §888; C97, §1433; S13, §1433; C24, 27, 31, 35, 39, §**7265;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.31]

91 Acts, ch 191, §82; 92 Acts, ch 1016, §29; 93 Acts, ch 73, §9; 95 Acts, ch 57, §20; 97 Acts, ch 121, §20; 2006 Acts, ch 1070, §24; 2018 Acts, ch 1041, §127

Referred to in §331.361, 446.45

446.32 Payment of subsequent taxes by purchaser.

The county treasurer shall provide to the purchaser of a parcel sold at tax sale a receipt for the total amount paid by the purchaser after the date of purchase for a subsequent year. Taxes for a subsequent year may be paid by the purchaser beginning one month and fourteen days following the date from which an installment becomes delinquent as provided in section 445.37. Notwithstanding any provision to the contrary, a subsequent payment must be received and recorded by the treasurer in the county system or entered through the county treasurer's authorized internet site no later than 5:00 p.m. on the last business day of the month for interest for that month to accrue and be added to the amount due under section 447.1. However, the treasurer may establish a deadline for receipt of subsequent payments that is other than 5:00 p.m. on the last business day of the month to allow for timely processing of the subsequent payments. Late interest shall be calculated through the date that the subsequent payment is recorded by the treasurer in the county system or entered through the county treasurer's authorized internet site. In no instance shall the date of postmark of a subsequent payment be used by a treasurer either to calculate interest or to determine whether interest shall accrue on the subsequent payment.

[C73, §889; C97, §1434; C24, 27, 31, 35, 39, §**7266;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.32; 81 Acts, ch 117, §1229]

91 Acts, ch 191, §83; 93 Acts, ch 73, §10; 2006 Acts, ch 1070, §25, 31; 2012 Acts, ch 1138, §106; 2017 Acts, ch 92, §4

Referred to in §420.246, 446.45, 447.1

446.33 Reserved.

446.34 School, agricultural college, or university land.

When any school, agricultural college, or university land sold on credit is sold for taxes, the purchaser shall acquire only the interest of the original purchaser therein, and no sale of any such lands for taxes shall prejudice the rights of the state, agricultural college, or university. In all cases where the real estate is mortgaged or otherwise encumbered to the

school, agricultural college, or university fund, the interest of the person who holds the fee shall alone be sold for taxes, and in no case shall the lien or interest of the state be affected by any sale thereof. The foregoing provision shall include all lands exempt from taxation by law, and any legal or equitable estate therein held, possessed, or claimed for any public purpose, and no assessment or taxation of such lands, nor the payment of any such tax by any person, or the sale and conveyance for taxes of any such lands, shall in any manner affect the right or title of the public therein, or confer upon the purchaser or person who pays such taxes any right or interest in such land.

[R60, §810, 811; C73, §900; C97, §1435; C24, 27, 31, 35, 39, §**7268;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.34]

446.35 Assessment to wrong person.

A sale of a parcel through tax sale is not invalid if taxed in any other name than that of the rightful owner, if it is in other respects sufficiently described.

[R60, §787; C73, §904; C97, §1450; C24, 27, 31, 35, 39, §**7269;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §446.35]

91 Acts, ch 191, §84

Referred to in §420.245

446.36 Certified copies of records as evidence.

The information in the county system of the office of the county treasurer, or a copy properly certified, is sufficient evidence to prove the sale of a parcel at tax sale, the redemption of the parcel, or the payment of taxes on it.

[R60, §788; C73, §905; C97, §1451; C24, 27, 31, 35, 39, §**7270;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.36; 81 Acts, ch 117, §1230]

91 Acts, ch 191, §85

Referred to in §420.245

Similar provision, §622.43

446.37 Cancellation of sale.

After three years have elapsed from the time of any tax sale, or after one year has elapsed from the time of any tax sale under section 446.19B, and the holder of a certificate has not filed an affidavit of service of notice of expiration of right of redemption under section 447.12, the county treasurer shall cancel the sale from the county system. However, if the filing of affidavit of service is stayed by operation of law, the time period for the filing of the affidavit shall not expire until the later of six months after the stay has been lifted or three years from the time of the tax sale, and in the case of a tax sale under section 446.19B, the time period for the filing of the affidavit shall not expire until the later of six months after the stay has been lifted or one year from the time of the tax sale. This section does not apply to certificates of purchase at tax sale which are held by a county.

[C97, §1452; C24, 27, 31, 35, 39, §**7271;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §446.37; 81 Acts, ch 117, §1231]

91 Acts, ch 191, §86; 2005 Acts, ch 34, §18, 26; 2006 Acts, ch 1070, §26

Referred to in §331.552, 420.247, 446.31, 446.45

446.38 Suspended taxes of supplementary assistance recipients. Repealed by 2007 Acts, ch 126, §115.

446.39 Iowa finance authority statement. Repealed by 2007 Acts, ch 54, §45.

446.40 through 446.44 Reserved.

446.45 Applicable law.

Sections 446.21, 446.31, 446.32, and 446.37, as amended by 1991 Iowa Acts, ch. 191, §73, 82, 83, and 86, only apply if associated with a tax sale that occurred on or after April 1, 1992.

For tax sales occurring prior to April 1, 1992, the provisions of sections 446.21, 446.31, 446.32, and 446.37 in effect on the date of the tax sale apply.

92 Acts, ch 1016, §31; 2014 Acts, ch 1026, §143

CHAPTER 447

TAX REDEMPTION

Referred to in §306.22, 331.559, 419.11, 435.25, 437A.11, 437B.7, 445.1, 446.9, 446.14, 448.13, 455G.9, 458A.20, 461A.25

For definitions applicable to chapter, see §445.1

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447.1 Redemption — terms.

1. A parcel sold under this chapter and chapter 446 may be redeemed at any time before the right of redemption expires, by payment to the county treasurer, to be held by the treasurer subject to the order of the purchaser, of the amount for which the parcel was sold, including the fee for the certificate of purchase, and interest of two percent per month, counting each fraction of a month as an entire month, from the month of sale, and the total amount paid by the purchaser or the purchaser's assignee for any subsequent year, with interest at the same rate added on the amount of the payment for each subsequent year from the month of payment, counting each fraction of a month as an entire month. The amount of interest must be at least one dollar and shall be rounded to the nearest whole dollar. Interest shall accrue on subsequent amounts as provided in section 446.32. The redemption must be received by the treasurer or entered through the county treasurer's authorized internet site on or before the last day of the month to avoid additional interest being added to the amount necessary to redeem. However, if the last day of a month falls on a Saturday, Sunday, or a holiday, the payment must be received by the treasurer or entered through the county treasurer's authorized internet site by the close of business on the first business day of the following month.

2. When the county or city is the certificate holder of the parcel redeemed from a sale held under section 446.19, the redemption amount shall be apportioned among the several funds for which the taxes were levied. All interest, costs, and fees shall be apportioned to the general fund of the county regardless of who is the certificate holder. If a city is the certificate holder of the parcel redeemed from a sale held under section 446.7 or 446.28, the city shall be entitled to the total amount redeemed.

[C51, §505; R60, §779; C73, §890; C97, §1436; S13, §1436; C24, 27, 31, 35, 39, §**7272;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.1; 81 Acts, ch 117, §1232]

91 Acts, ch 191, §89; 93 Acts, ch 73, §11; 2006 Acts, ch 1070, §27, 31; 2017 Acts, ch 92, §5

Referred to in §445.3, 446.19A, 446.32, 447.4, 447.7, 447.8, 447.9

Tax sale certificate fee, §331.552(23)

447.2 Nonallowable penalties. Repealed by 91 Acts, ch 191, §123, 124.

447.3 Agricultural college lands.

In redeeming from a sale of a leasehold interest in agricultural college land, the amount to be paid shall include any amount paid by the holder of the certificate as interest or principal due by the terms of the lease or otherwise to prevent a forfeiture, and for which proper voucher has been filed with the county treasurer, with interest at eight percent per annum from date of payment, which amount shall be paid by the treasurer to the holder of the certificate, and the certificate of redemption shall show the amount paid by the party redeeming.

[C51, §505; R60, §779; C73, §890; C97, §1436; S13, §1436; C24, 27, 31, 35, 39, §**7274;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.3; 81 Acts, ch 117, §1233]

91 Acts, ch 191, §90

Referred to in §447.7

447.4 Redemption from sale for part of tax.

In case a redemption is made of a parcel compromised and assigned for a sum less than the total amount due, the purchaser is entitled to receive only the amount paid and a ratable part of the interest and costs. In determining the interest to be paid upon redemption from sale, the sum due on a parcel sold shall be taken to be the total amount due on the parcel at the time of sale, and the amount paid for a parcel at sale shall be apportioned ratably in accordance with section 447.1. Parcels so sold are redeemable in the same manner and with the same interest as those sold for the taxes of the preceding year.

[C97, §1437; C24, 27, 31, 35, 39, §**7275;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.4]

90 Acts, ch 1168, §49; 91 Acts, ch 191, §91

447.5 Certificate of redemption — issued by treasurer.

The county treasurer, upon application of a party to redeem a parcel sold at a tax sale, and being satisfied that the party has a right to redeem the parcel upon the payment of the proper amount, shall issue to the party a certificate of redemption, setting forth the facts of the sale substantially as contained in the certificate, the date of the redemption, the amount paid, and by whom redeemed, and shall make the proper entries in the county system in the treasurer's office.

[R60, §780; C73, §891; C97, §1438; C24, 27, 31, 35, 39, §**7276;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.5; 81 Acts, ch 117, §1234]

91 Acts, ch 191, §92; 2006 Acts, ch 1070, §28, 31

447.6 Documentation of corrections.

The entries by the county treasurer on the county system shall be of a permanent nature and if errors are subsequently discovered the correcting entries shall be adequately documented to support the correction.

[C31, 35, §7276-c1; C39, §**7276.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.6; 81 Acts, ch 117, §1235]

91 Acts, ch 191, §93

447.7 Redemption by persons with a legal disability.

1. If a parcel of a person with a legal disability is sold at tax sale and the county treasurer has not delivered the treasurer's deed, a legal representative of the person with the legal disability may redeem the parcel under sections 447.1 and 447.3.

2. *a.* If a parcel of a person with a legal disability is sold at tax sale and the county treasurer has delivered the treasurer's deed, the person with the legal disability or the person's legal representative may redeem the parcel at any time prior to one year after the legal disability is removed by bringing an equitable action for redemption in the district court of the county where the parcel is located, unless the action is required to be brought sooner in time by operation of subsection 3 or 4.

b. To establish the right to redeem, the person maintaining the action shall prove to the court that the owner of the parcel is a person with a legal disability entitled to redeem prior to the delivery of the treasurer's deed. If the legal disability has been removed, the person

maintaining the action shall establish the date the disability was removed and explain the manner by which the legal disability was removed.

c. The person maintaining the action shall name as defendants all persons claiming an interest in the parcel derived from the tax sale, as shown by the record.

d. If the court determines that the person maintaining the action or the person's legal representative is entitled to redeem by virtue of legal disability or prior legal disability, the court shall so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption. The redemption amount shall include the amount for redemption computed in accordance with section 447.1 or 447.3, whichever is applicable, including interest computed up to and including the date of payment of the total redemption amount to the clerk of court and the amount of all costs added to the redemption amount in accordance with section 447.13. In addition, if the person claiming under the tax title is determined by the court to have made improvements on or to the parcel after the treasurer's deed was issued, the court shall enter judgment in favor of the person claiming under the tax title for an amount equal to the value of all such improvements, and such judgment shall be a lien on the parcel until paid. The order shall direct that the person maintaining the action shall pay to the clerk of court, within thirty days after the date of the order, the total redemption amount the order sets forth.

e. Upon timely receipt of the payment, the court shall enter judgment declaring the treasurer's deed to be void and determining the resulting rights, claims, and interests of all parties to the action. In its judgment, the court shall direct the clerk of court to deliver the entire amount of the redemption payment to the person claiming title under the treasurer's deed.

f. If the person maintaining the action fails to timely deliver payment of the total redemption amount to the clerk of court, the court shall enter judgment holding that all rights of redemption of the person with a legal disability who brought the action, or on whose behalf the action was brought, are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law against the claims of such person with a legal disability.

3. If a person with a legal disability remains in possession of the parcel after the recording of the treasurer's deed, and if the person claiming under the tax title properly commences an action to remove the person from possession, the person with a legal disability shall forfeit any rights of redemption that the person may have under this section, unless either of the following actions is timely filed by or on behalf of the person:

a. A counterclaim in the removal action asserting the redemption rights under subsection 2 of the person with a legal disability.

b. A separate action under subsection 2. Such action shall be filed within thirty days after the person with a legal disability and the person's legal representative were served with original notice in the removal action. If an action under subsection 2 is filed by or on behalf of the person with a legal disability within the thirty-day period, the court may order the action consolidated with the removal action.

4. If a person with a legal disability is not in possession of the parcel at the time of the recording of the treasurer's deed, the person or the person's legal representative is forever barred and estopped from commencing an action under this section if either of the following occurs:

a. An affidavit is filed pursuant to section 448.15 and claims adverse to the tax title are barred by section 448.16.

b. An action under subsection 2 is not brought within three years after the recording of the treasurer's deed.

[R60, §779; C73, §892; C97, §1439; C24, 27, 31, 35, 39, §**7277;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.7]

91 Acts, ch 191, §94; 2018 Acts, ch 1039, §2

Referred to in §229.27, 420.240, 447.8, 448.6, 448.16

"Person with a legal disability" defined, see §445.1

447.8 Redemption after delivery of deed.

1. *a.* After the delivery of the treasurer's deed, a person entitled to redeem a parcel sold at tax sale shall do so only by an equitable action in the district court of the county where the parcel is located. The action to redeem may be maintained only by a person who was entitled to redeem the parcel during the ninety-day redemption period in section 447.12, except that such a person may assign the person's right of redemption or right to maintain the action to another person, or by a person entitled to redeem under section 447.7.

b. In order to establish the right to redeem, the person maintaining the action shall be required to prove to the court either that the person maintaining the action or a predecessor in interest was not properly served with notice in accordance with the requirements of sections 447.9 through 447.12, or that the person maintaining the action or a predecessor in interest acquired an interest in or possession of the parcel during the ninety-day redemption period in section 447.12. A person shall not be entitled to maintain such action by claiming that a different person was not properly served with notice of expiration of right of redemption, if the person seeking to maintain the action, or the person's predecessor in interest, if applicable, was properly served with the notice. After the execution and delivery of the treasurer's deed, a person may only redeem a parcel sold for delinquent taxes under this section or section 447.7.

2. The person maintaining the action shall name as defendants all persons claiming an interest in the parcel derived from the tax sale, as shown by the record.

3. If the court determines that notice was properly served, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law.

4. If the court determines that notice was not properly served and that the person maintaining the action is entitled to redeem, the court shall so order. The order shall determine the rights, claims, and interests of all parties, including liens for taxes and claims for improvements made on or to the parcel by the person claiming under the tax title. The order shall establish the amount necessary to effect redemption. The redemption amount shall include the amount for redemption computed in accordance with section 447.1, including interest computed up to and including the date of payment of the total redemption amount to the clerk of court; the amount of all costs added to the redemption amount in accordance with section 447.13; and, in the event that the person claiming under the tax title has made improvements on or to the parcel after the treasurer's deed was issued, an amount equal to the value of all such improvements. The order shall direct that the person maintaining the action shall pay to the clerk of court, within thirty days after the date of the order, the total redemption amount established in the order.

5. *a.* Upon timely receipt of the payment, the court shall enter judgment declaring the treasurer's deed to be invalid and determining the resulting rights, claims, and interests of all parties to the action. In its judgment, the court shall direct the clerk of court to deliver the entire amount of the redemption payment to the person who previously claimed title under the treasurer's deed.

b. If the person maintaining the action fails to timely deliver payment of the total redemption amount to the clerk of court, the court shall enter judgment holding that all rights of redemption are terminated and that the validity of the tax title or purported tax title is conclusively established as a matter of law. No subsequent action shall be brought to challenge the treasurer's deed or to recover the parcel.

6. If an affidavit is filed pursuant to section 448.15 and if the time period for filing a claim under section 448.16 expires with no claims having been filed, all persons are thereafter barred and estopped from commencing an action under this section.

[C73, §893; C97, §1440; C24, 27, 31, 35, 39, §**7278;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.8]

91 Acts, ch 191, §95; 2005 Acts, ch 34, §19, 26; 2011 Acts, ch 25, §143; 2018 Acts, ch 1039, §3

Referred to in §420.240, 448.6, 448.12, 448.16

447.9 Notice of expiration of right of redemption — county right of redemption.

1. After one year and nine months from the date of sale, or after nine months from the date of a sale made under section 446.18, or after three months from the date of a sale made under section 446.19A or 446.19B, the holder of the certificate of purchase may cause to be served upon the person in possession of the parcel, and also upon the person in whose name the parcel is taxed, a notice signed by the certificate holder or the certificate holder's agent or attorney, stating the date of sale, the description of the parcel sold, the name of the purchaser, and that the right of redemption will expire and a deed for the parcel be made unless redemption is made within ninety days from the completed service of the notice. The notice shall be served by both regular mail and certified mail to the person's last known address and such service is deemed completed when the notice is deposited in the mail and postmarked for delivery. The ninety-day redemption period begins as provided in section 447.12. When the notice is given by a county as a holder of a certificate of purchase the notice shall be signed by the county treasurer or the county attorney, and when given by a city, it shall be signed by the city officer designated by resolution of the council. When the notice is given by the Iowa finance authority or a city or county agency holding the parcel as part of an Iowa homesteading project, it shall be signed on behalf of the agency or authority by one of its officers, as authorized in rules of the agency or authority.

2. Service of the notice shall be made by both regular mail and certified mail on any mortgagee having a lien upon the parcel, a vendor of the parcel under a recorded contract of sale, a lessor who has a recorded lease or recorded memorandum of a lease, and any other person who has an interest of record, at the person's last known address. The notice shall be served on any city where the parcel is situated. Notice shall not be served after the filing of the affidavit required by section 447.12. Only those persons who are required to be served the notice of expiration as provided in this section or who have acquired an interest in or possession of the parcel subsequent to the filing of the notice of expiration of the right of redemption are eligible to redeem a parcel from tax sale. Service of the notice is deemed completed when the notice is deposited in the mail and postmarked for delivery.

3. The county in which the parcel is located has the right of redemption for owner-occupied residential parcels as provided in this subsection. If a person is unable to contribute to the public revenue, the person may file a petition, duly sworn to, with the board of supervisors, stating that fact and giving a statement of parcels, as defined in section 445.1, owned or possessed by the petitioner, and other information as the board may require. The board of supervisors may order the county auditor to redeem a parcel owned or possessed by the petitioner from the holder of a certificate of purchase upon payment by the county to the certificate holder of the amount necessary to redeem under section 447.1. Each of the tax-levying and tax-certifying bodies having any interest in the taxes shall be charged with the total amount due the tax-levying or tax-certifying body as its just share of the purchase price, and that amount shall be deducted from the next month's disbursement made by the county to the tax-levying or tax-certifying body. Interest paid by the county to the certificate holder pursuant to section 447.1 shall be paid solely by the county and shall not be charged against the other tax-levying and tax-certifying bodies. Taxes charged and paid by the tax-levying or tax-certifying body in this manner shall be treated as suspended taxes pursuant to sections 427.8 through 427.12. Notwithstanding section 447.14, a county may redeem pursuant to this subsection for tax sales held before, on, or after July 1, 1998. A county may limit the number of times a taxpayer may file a petition for assistance under this subsection.

[R60, §781; C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7279;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.9; 81 Acts, ch 117, §1236]

83 Acts, ch 96, §157, 159; 86 Acts, ch 1139, §7; 86 Acts, ch 1241, §43; 89 Acts, ch 66, §1; 90 Acts, ch 1203, §3; 91 Acts, ch 191, §96; 95 Acts, ch 57, §21; 95 Acts, ch 67, §34; 97 Acts, ch 121, §22; 98 Acts, ch 1107, §30; 98 Acts, ch 1153, §2; 99 Acts, ch 29, §2, 3; 99 Acts, ch 83, §8, 10, 12; 2004 Acts, ch 1165, §8, 11, 12; 2006 Acts, ch 1070, §29; 2007 Acts, ch 54, §39; 2012 Acts, ch 1006, §1

Referred to in §420.207, 420.240, 420.241, 447.8, 447.10, 448.3

Acquisition of title by municipal corporations, chapter 569

Service of original notice, R.C.P. 1.302 – 1.315

447.10 Service by publication — fees.

If notice in accordance with section 447.9 cannot be served upon a person entitled to notice in the manner prescribed in that section, then the holder of the certificate of purchase shall cause the required notice to be published once in an official newspaper in the county. If service is made by publication, the affidavit required by section 447.12 shall state the reason why service in accordance with section 447.9 could not be made. Service of notice by publication shall be deemed complete on the day of the publication. Fees for publication, if required under section 447.13, shall not exceed the customary publication fees for official county publications.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7280;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.10]

86 Acts, ch 1139, §8; 97 Acts, ch 121, §23

Referred to in §420.207, 420.240, 420.241, 447.8, 447.13

447.11 Agent of nonresident.

A nonresident may in writing appoint a resident of the county in which the parcel is situated as agent, and file the appointment with the county treasurer of the county, who shall make note of the appointment in the county system, after which service of notice by certified and regular mail shall be made upon the agent.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7281;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §447.11]

91 Acts, ch 191, §97; 2001 Acts, ch 45, §8

Referred to in §420.207, 420.240, 420.241, 447.8

447.12 When service deemed complete — presumption.

Service is complete only after an affidavit has been filed with the county treasurer, showing the making of the service, the manner of service, the time when and place where made, under whose direction the service was made, and costs incurred as provided in section 447.13. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer. Costs shall not be filed with the treasurer prior to the filing of the affidavit. The affidavit shall be made by the holder of the certificate or by the holder's agent or attorney, and in either of the latter cases stating that the affiant is the agent or attorney of the holder of the certificate. The affidavit shall be filed by the treasurer and entered in the county system and is presumptive evidence of the completed service of the notice. The right of redemption shall not expire until ninety days after service is complete. A redemption shall not be considered valid unless received by the treasurer or entered through the county treasurer's authorized internet site prior to the close of business on the ninetieth day from the date of completed service except in the case of a public bidder certificate held by the county in which case the county may accept a redemption at any time prior to the issuance of the tax deed. However, if the ninetieth day falls on a Saturday, Sunday, or a holiday, payment of the total redemption amount must be received by the treasurer or entered through the county treasurer's authorized internet site before the close of business on the first business day following the ninetieth day. The date of postmark of a redemption shall not be considered as the day the redemption was received by the treasurer for purposes of the ninety-day time period.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7282;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.12; 81 Acts, ch 117, §1237]

89 Acts, ch 66, §2; 91 Acts, ch 191, §98; 93 Acts, ch 73, §12; 2006 Acts, ch 1070, §30, 31; 2007 Acts, ch 54, §40; 2017 Acts, ch 92, §6

Referred to in §420.207, 420.240, 420.241, 446.37, 447.8, 447.9, 447.10, 448.1

447.13 Cost — fee — report.

1. The cost of serving the notice, including the cost of sending certified mail notices, and the cost of publication under section 447.10, if publication is required, shall be added to the amount necessary to redeem. The cost of a record search shall also be added to the amount necessary to redeem. However, if the certificate holder is other than a county, the search must be performed by an abstractor who is an active participant in the Iowa title guaranty

program under section 16.91 or by an attorney licensed to practice law in the state of Iowa, and the amount of the cost of the record search that may be added to the amount necessary to redeem shall not exceed three hundred dollars.

2. The county treasurer shall file the proof of service and statement of costs and record these costs against the parcel. The certificate holder or the holder's agent shall report in writing to the treasurer the amount of authorized costs incurred, and the treasurer shall file the statement. Costs not filed with the treasurer before a redemption is complete shall not be collected by the treasurer and may be recovered through a court action against the parcel owner by the certificate holder.

[C73, §894; C97, §1441; S13, §1441; C24, 27, 31, 35, 39, §**7283;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §447.13; 81 Acts, ch 117, §1238]

86 Acts, ch 1139, §9; 91 Acts, ch 191, §99; 92 Acts, ch 1016, §32; 99 Acts, ch 83, §9; 2001 Acts, ch 45, §9, 11; 2005 Acts, ch 34, §20, 26; 2007 Acts, ch 54, §41; 2014 Acts, ch 1012, §7

Referred to in §420.207, 420.240, 420.241, 447.7, 447.8, 447.10, 447.12

447.14 Law in effect at time of sale.

The law in effect at the time of tax sale governs redemption.

92 Acts, ch 1016, §33

Referred to in §420.241, 447.9

CHAPTER 448

TAX DEEDS

Referred to in §306.22, 321.46, 331.559, 435.25, 437A.11, 437B.7, 445.1, 446.14, 446.16, 455G.9, 461A.25

For definitions applicable to chapter, see §445.1

448.1 Return of certificate of purchase — execution of deed — fees.
448.2 Form.
448.3 Execution and effect of deed.
448.4 Presumptive evidence.
448.5 Conclusive evidence.
448.6 Action to challenge treasurer's deed.
448.7 Additional facts necessary. Repealed by 2005 Acts, ch 34, §25, 26.
448.8 Sale made by mistake.
448.9 Fraudulent sale.
448.10 Wrongful sales — purchaser indemnified.
448.11 Correcting wrongful sale.
448.12 Limitation of actions.
448.13 Cancellation of tax sale and certificate of purchase — refund of purchase money.
448.14 Officers de facto.
448.15 Affidavit by tax-title holder.
448.16 Claims adverse to tax title barred.
448.17 Indexing and recording of affidavits and claims.
448.17A Definitions.

448.1 Return of certificate of purchase — execution of deed — fees.

1. Immediately after the expiration of ninety days from the date of completed service of the notice provided in section 447.12, the county treasurer shall make out a deed for each parcel sold and unredeemed upon the return of the certificate of purchase and payment of the appropriate deed and recording fees by the purchaser. The treasurer shall record the deed with the county recorder prior to delivering the deed to the purchaser. The treasurer shall receive twenty-five dollars for each deed made by the treasurer, and the treasurer may include any number of parcels purchased by one person in one deed, if authorized by the treasurer.

2. The tax sale certificate holder shall return the certificate of purchase and remit the appropriate deed issuance fee and recording fee to the county treasurer within ninety calendar days after the redemption period expires. The treasurer shall cancel the certificate for any tax sale certificate holder who fails to comply with this subsection. This subsection does not apply to certificates held by a county. This subsection is applicable to all certificates of purchase issued before, on, or after July 1, 1997. Holders of certificates of purchase that are outstanding on July 1, 1997, shall return the certificate of purchase and remit the

appropriate deed issuance fee to the county treasurer within ninety calendar days from that date.

[C51, §503, 504; R60, §781, 782; C73, §895; C97, §1442; C24, 27, 31, 35, 39, §**7284;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.1]

91 Acts, ch 191, §100; 97 Acts, ch 121, §24; 2000 Acts, ch 1085, §6; 2019 Acts, ch 24, §53

Referred to in §331.552, 420.241, 446.19A

Acquisition of title by municipal corporations, chapter 569

Section amended

448.2 Form.

Deeds executed by the county treasurer shall be substantially in the following form:

KNOW ALL PERSONS BY THESE PRESENTS, that the following described parcel: (Here follows the description), situated in the county of ..... and state of Iowa, was subject to taxes for the year (or years) A.D. ....., and the taxes on the parcel for the year (or years) stated remained due and unpaid at the date of the sale; and the treasurer of the county, on the ..... day of ....., A.D. ....., by virtue of the authority vested by law in the treasurer, at (an adjournment of) the sale begun and publicly held on the third Monday of June, A.D. ....., exposed to public sale at the office of the county treasurer in the county named, in substantial conformity with all the requirements of the statute, the parcel described, for the payment of the total amount then due and remaining unpaid on the parcel, and at that time and place ....., of the county of ..... and state of ....., offered to pay the sum of ..... dollars and ..... cents, being the total amount then due and remaining unpaid on the parcel, for (here follows the description of the parcel sold) which was the least quantity bid for, and payment of that sum was made by that person to the treasurer, the parcel was stricken off to that person at that price; and ..... did, on the ..... day of ....., A.D. ....., assign the certificate of the sale of the parcel and all right, title, and interest to the parcel to ..... of the county of ..... and state of .....; and by the affidavit of ....., filed in the treasurer's office on the ..... day of ....., A.D. ....., it appears that notice has been given more than ninety days before the execution of this deed to ..... and ..... of the expiration of the time of redemption allowed by law; and two years have elapsed since the date of the sale, and the parcel has not been redeemed:

Now, I, ..., treasurer of the county, for the consideration of the stated sum paid to the treasurer and by virtue of law, have granted, bargained, and sold, and by these presents do grant, bargain, and sell to ..... (or .....), and that person's heirs and assigns, the parcel described, to have and to hold unto that person (or .....), and that person's heirs and assigns, forever; subject, however, to all the rights of redemption provided by law. In witness whereof, I, ..., treasurer of ..... county, by virtue of the authority vested in me, have subscribed my name on this ..... day of ....., A.D. .....

.....
Treasurer

State of Iowa,)
..... County.) ss.

I certify that before me, ..., in and for said county, personally appeared the above named ....., treasurer of the county, personally known to me to be the treasurer of the county at the date of the execution of the above conveyance, and to be the identical person whose name is affixed to and who executed the above conveyance as treasurer of the county, and acknowledged the execution of the conveyance to be the treasurer's voluntary act and deed as treasurer of the county, for the purposes expressed in the conveyance.

Given under my hand (and seal) this ..... day of ....., A.D. .....

.....

[R60, §783; C73, §896; C97, §1443; C24, 27, 31, 35, 39, §**7285;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.2]

83 Acts, ch 101, §92; 91 Acts, ch 191, §101; 2000 Acts, ch 1058, §41

Referred to in §420.243, 448.6

448.3 Execution and effect of deed.

1. The deed shall be signed by the county treasurer as such, and acknowledged by the treasurer before some officer authorized to take acknowledgments, and when substantially thus executed and recorded in the proper record in the office of the recorder of the county in which the parcel is situated, shall vest in the purchaser all the right, title, interest, and claim of the state and county to the parcel, and all the right, title, interest, and estate of the former owner in and to the parcel conveyed. However, the deed is subject to all restrictive covenants, resulting from prior conveyances in the chain of title to the former owner, and subject to all the right and interest of a holder of a certificate of purchase from a tax sale occurring after the tax sale for which the deed was issued. The issuance of the deed shall operate to cancel all suspended taxes.

2. In the event that an owner of record or a person in whose name the parcel is taxed establishes that such person was not served with notice of expiration of right of redemption in accordance with section 447.9, then the county treasurer's deed is void, subject to the provisions of sections 448.15 and 448.16. If a person entitled to service of notice under section 447.9, other than an owner of record or a person in whose name the parcel is taxed, establishes that such person was not served with notice in accordance with section 447.9, the deed is not thereby rendered invalid. However, the deed is subject to all of the right and interest of such person not served with notice, as provided in sections 448.15 and 448.16.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7286;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.3]

91 Acts, ch 191, §102; 95 Acts, ch 57, §22; 97 Acts, ch 121, §25; 2008 Acts, ch 1050, §1, 2

Referred to in §420.244, 448.6

448.4 Presumptive evidence.

The deed shall be presumptive evidence in all the courts of this state in all controversies and actions in relation to the rights of the purchaser, and the purchaser's heirs or assigns, to the parcel conveyed, of the following facts:

1. That the parcel conveyed was subject to taxes for the year or years stated in the deed.
2. That the taxes were not paid at any time before the sale.
3. That the parcel conveyed had not been redeemed from the sale at the date of the deed.
4. That the parcel had been listed and assessed.
5. That the taxes were levied or set according to law.
6. That the parcel was duly advertised for sale.

7. That the parcel was sold as stated in the deed.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7287;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.4]

91 Acts, ch 191, §103

Referred to in §420.244, 448.5

448.5 Conclusive evidence.

The deed shall be conclusive evidence of the following facts:

1. That the manner in which the listing, assessment, levy, notice and sale were conducted was in all respects as the law directed.

2. That the grantee named in the deed was the purchaser.

3. That all the prerequisites of the law were complied with by all the officers who had, or whose duty it was to have had, any part or action in any transaction relating to or affecting the title conveyed or purporting to be conveyed by the deed, from the listing and valuation of the parcel up to the execution of the deed, both inclusive, and that all things required by law to make a good and valid sale and to vest the title in the purchaser were done, except in regard to the points named in section 448.4 for which the deed shall be presumptive evidence only.

[C51, §503; R60, §784; C73, §897; C97, §1444; C24, 27, 31, 35, 39, §**7288;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.5]

91 Acts, ch 191, §104

Referred to in §420.244

448.6 Action to challenge treasurer's deed.

1. A deed executed by the county treasurer in conformity with the requirements of sections 448.2 and 448.3 shall be presumed to effect a valid title conveyance, and the treasurer's deed may be challenged only by an equitable action in the district court in the county in which the parcel is located. If the action seeks an order of the court to allow redemption after delivery of the treasurer's deed because the person seeking to redeem is a person with a legal disability who was entitled to redeem prior to the delivery of the treasurer's deed, the action shall be brought in accordance with section 447.7. If the action seeks an order of the court to allow redemption after delivery of the treasurer's deed based on improper service of notice of expiration of right of redemption, the action shall be brought in accordance with section 447.8. If the action is not brought under section 447.7 or 447.8, the action shall be controlled by the provisions of this section.

2. A person shall not be permitted to maintain the action unless the person establishes that the person, or the person under whom the person claims title, had title to the parcel at the time of the sale, or that the title was obtained from the United States or this state after the sale, and that all amounts due upon the parcel for the applicable tax years have been paid by that person or by the person under whom that person claims title.

3. The person maintaining the action shall name as defendants the holder of the tax title and the treasurer of the county in which the parcel is located.

4. The person challenging the deed shall be required to prove, in order to invalidate the deed, any of the following:

a. That the parcel was not subject to taxes for the year or years named in the deed.

b. That the taxes had been paid before the sale.

c. That the parcel had been redeemed from the sale and that the redemption was made for the use and benefit of persons having the right of redemption.

d. That there had been an entire omission to list or assess the parcel, or to levy the taxes, or to give notice of the sale, or to sell the parcel.

5. If the court determines that the person challenging the treasurer's deed has established one or more of the elements required under subsection 4 to be proven in order to invalidate the deed, the court shall enter judgment declaring the deed to be invalid. The judgment shall order the treasurer to refund to the person claiming under the tax title all sums paid to the treasurer for the purchase of the tax sale certificate and for any subsequent taxes paid by the certificate holder. If the person claiming under the tax title is determined by the court to

have made improvements to the parcel, the court shall enter judgment in favor of the person claiming under the tax title for an amount equal to the value of such improvements made after the treasurer's deed was issued, and such judgment shall be a lien on the parcel until paid.

6. If an affidavit is filed pursuant to section 448.15, and if the time period for filing a claim under section 448.16 expires with no claims having been filed, all persons are thereafter barred and estopped from commencing an action under this section.

[C51, §503; R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7289;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.6]

91 Acts, ch 191, §105; 2005 Acts, ch 34, §21, 26; 2018 Acts, ch 1039, §4

Referred to in §420.245, 448.12, 448.16

"Person with a legal disability" defined, see §445.1

448.7 Additional facts necessary. Repealed by 2005 Acts, ch 34, §25, 26. See §448.6.

448.8 Sale made by mistake.

If an amount due was paid, and through mistake in the entry made in the county system, the parcel was afterward sold, the treasurer's deed does not convey the title.

[R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7291;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.8]

91 Acts, ch 191, §107

Referred to in §420.245

448.9 Fraudulent sale.

If the owner of a parcel sold for taxes resists the validity of the tax title, the owner may prove fraud committed by the officer selling the parcel, or in the purchaser, to defeat the title, and, if fraud is established, the sale and title shall be void.

[R60, §784; C73, §897; C97, §1445; C24, 27, 31, 35, 39, §**7292;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.9]

91 Acts, ch 191, §108

Referred to in §420.245

448.10 Wrongful sales — purchaser indemnified.

If, by mistake or wrongful act of the county treasurer, a parcel has been sold on which no tax was due at the time, or when a parcel is sold in consequence of error in describing it within the county system, the county shall hold the purchaser harmless by paying the purchaser the amount due to which the purchaser would have been entitled had the parcel been rightfully sold, and the treasurer and the treasurer's surety shall be liable to the county to the amount of the treasurer's official bond; or the purchaser, or the purchaser's assignee, may recover the amount directly from the treasurer and the treasurer's surety.

[C51, §509; R60, §785; C73, §899; C97, §1446; C24, 27, 31, 35, 39, §**7293;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.10]

91 Acts, ch 191, §109

Referred to in §420.245, 420.246

448.11 Correcting wrongful sale.

When it is made known to the county treasurer, before the execution of a deed for a parcel sold, or if the deed is returned by the purchaser, that a parcel was sold which was not subject to taxation, or upon which the taxes had been paid, the treasurer shall make an entry in the county system that the parcel was erroneously sold, and the entry shall be evidence of the fact, and the purchase money shall be refunded to the purchaser.

[R60, §789; C73, §901; C97, §1447; C24, 27, 31, 35, 39, §**7294;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.11]

91 Acts, ch 191, §110

Referred to in §420.245, 420.246

448.12 Limitation of actions.

An action under section 447.8 or 448.6 or for the recovery of a parcel sold for the nonpayment of taxes shall not be brought after three years from the execution and recording of the county treasurer's deed.

[R60, §790; C73, §902; C97, §1448; C24, 27, 31, 35, 39, §**7295;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.12]

85 Acts, ch 21, §44; 91 Acts, ch 191, §111; 92 Acts, ch 1016, §34; 96 Acts, ch 1129, §113; 2005 Acts, ch 34, §22, 26

Referred to in §420.245, 420.246

448.13 Cancellation of tax sale and certificate of purchase — refund of purchase money.

If the county treasurer receives a verified statement from a city stating that a parcel sold at tax sale contains a building which is abandoned, as those terms are defined in section 657A.1, prior to redemption of the parcel under chapter 447 or the issuance of a tax deed for the parcel, and the verified statement is accompanied by a petition filed by the city under section 657A.10B for title to the parcel, the county treasurer shall make an entry in the county system canceling the sale of the parcel and shall refund the purchase money to the tax sale certificate holder.

2010 Acts, ch 1050, §4

Referred to in §420.245

Section not amended; internal reference change applied

448.14 Officers de facto.

In all actions and controversies involving the question of title to a parcel held under a county treasurer's deed, all acts of assessors, treasurers, auditors, supervisors, and other officers de facto shall be of the same validity as acts of officers de jure.

[R60, §786; C73, §903; C97, §1449; C24, 27, 31, 35, 39, §**7296;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.14]

91 Acts, ch 191, §112

Referred to in §420.245

448.15 Affidavit by tax-title holder.

1. After taking possession of the parcel, after the issuance and recording of a tax deed or an instrument purporting to be a tax deed issued by a county treasurer of this state, the then owner or holder of the title or purported title may file with the county recorder of the county in which the parcel is located an affidavit substantially in the following form:

> State of Iowa,)
> ..... County.) ss.
>
> I, ..., being first duly sworn, on oath depose and say that on ..... (date) the county treasurer issued a tax deed to ..... (grantee) for the following described parcel: .....
> that the tax deed was filed for record in the office of the county recorder of ..... county, Iowa, on ..... (date), and appears in the records of that office in ..... county as document reference number .....; and that ..... claims title to an undivided ..... percent interest in the parcel by virtue of the tax deed, or purported tax title.
>
> Any person claiming any right, title, or interest in or to the parcel adverse to the title or purported title by virtue of the tax deed referred to shall file a claim with the recorder of the county where the parcel is located, within one hundred twenty days after the filing of this affidavit, the claim to set forth the nature of the interest, also the time and manner in which the interest claimed was acquired. A person who files such a claim shall commence an action to enforce the claim within sixty days after the filing of the claim. If a claimant fails to file a claim within one hundred twenty days after the filing

of this affidavit, or files a claim but fails to commence an action to enforce the claim within sixty days after the filing of the claim, the claim thereafter shall be forfeited and canceled without any further notice or action, and the claimant thereafter shall be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title.

.....

Subscribed and sworn to before me this ..... day of ..... (month), ... (year).

.....

Notary Public in and for

..... County, Iowa.

2. An owner or holder of a title or purported title who has entered into a lease agreement conveying possessory rights in the parcel to a tenant in possession shall be deemed to be in possession for purposes of filing an affidavit under this section.

3. For purposes of this section, if a tax deed or instrument purporting to be a tax deed has been issued to convey an undivided interest in the parcel of less than one hundred percent, the owner or holder of the tax title or purported tax title shall be deemed to be in possession and entitled to file the affidavit in subsection 1. However, before filing the affidavit, the owner or holder of the tax title or purported tax title shall serve a copy of the affidavit on any other person in possession of the parcel by sending a copy of the affidavit by both regular and certified mail to the person at the address of the parcel or at the person's last known address if different from the address of the parcel. Such service is deemed completed when the affidavit mailed by certified mail is postmarked for delivery. An affidavit of service shall be attached to, and filed with, the affidavit in subsection 1. The affidavit of service shall include the names and addresses of all persons served and the time of mailing.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.15]

91 Acts, ch 191, §113; 95 Acts, ch 57, §23; 2000 Acts, ch 1058, §56; 2005 Acts, ch 34, §23, 26; 2007 Acts, ch 101, §1

Referred to in §447.7, 447.8, 448.3, 448.6, 448.16, 448.17

448.16 Claims adverse to tax title barred.

1. When the affidavit described in section 448.15 is filed it shall be notice to all persons, and any person claiming any right, title, or interest in or to the parcel described adverse to the title or purported title by virtue of the tax deed referred to, shall file a claim with the county recorder of the county in which the parcel is located within one hundred twenty days after the filing of the affidavit, which claim shall set forth the nature of the interest, the time when and the manner in which the interest was acquired.

2. At the expiration of the period of one hundred twenty days, if no such claim has been filed, the validity of the tax title or purported tax title shall be conclusively established as a matter of law, and all persons shall thereafter be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title, including but not limited to any claim alleging improper service of notice of expiration of right of redemption. An action shall not thereafter be brought to challenge the tax deed or tax title.

3. An action to enforce a claim filed under subsection 1 shall be commenced within sixty days after the date of filing the claim. The action may be commenced by the claimant, or a person under whom the claimant claims title, under section 447.7, 447.8, or 448.6. If an action by the claimant, or such other person, is not filed within sixty days after the filing of the claim, the claim thereafter shall be forfeited and canceled without any further notice or action, and the claimant, or the person under whom the claimant claims title, thereafter shall be forever barred and estopped from having or claiming any right, title, or interest in the parcel adverse to the tax title or purported tax title.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.16]

91 Acts, ch 191, §114; 2005 Acts, ch 34, §24, 26; 2018 Acts, ch 1039, §5

Referred to in §447.7, 447.8, 448.3, 448.6, 448.17

448.17 Indexing and recording of affidavits and claims.

All affidavits and claims as provided for in sections 448.15 and 448.16, filed with the county recorder, shall be recorded as other instruments affecting parcels, and the entries required in those sections and any applicable entries specified in sections 558.49 and 558.52 shall be indexed by the recorder.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §448.17]

91 Acts, ch 191, §115; 2007 Acts, ch 101, §2

Referred to in §331.602

448.17A Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

CHAPTER 449

TAX APPORTIONMENT

Referred to in §306.22, 331.559

449.1	Definitions.	449.5	Effect of order.
449.1A	Application.	449.6	Appeal.
449.2	Notice.	449.7	Trial on appeal.
449.3	Order — record.	449.8	Interpretative clause.
449.4	Correction of books or records.		

449.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

449.1A Application.

When a parcel has been assessed and taxed as one unit, and thereafter and before the tax is paid, the title to different portions of the parcel becomes vested in different parties in severalty, and the owners are unable to agree as to what portion of the total tax each portion of the parcel should bear, any of the parties may file with the board of supervisors a written application for the apportionment of the tax.

[C24, 27, 31, 35, 39, §**7297;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.1]

91 Acts, ch 191, §116

C2001, §449.1A

Referred to in §331.401

449.2 Notice.

In the absence of the appearance of all interested parties, the board shall prescribe the notice which nonappearing parties shall receive, and the time and manner of the service thereof.

[C24, 27, 31, 35, 39, §**7298;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.2]

Referred to in §331.401

449.3 Order — record.

At the hearing, the board shall apportion the tax to the different portions of the parcel owned in severalty, in accordance with the values of the portions. All orders and

determinations of the board shall be entered in its minutes. An order of apportionment shall clearly identify each portion of the parcel owned in severalty.

[C24, 27, 31, 35, 39, §**7299;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.3]

91 Acts, ch 191, §117

Referred to in §331.401

449.4 Correction of books or records.

The county auditor shall, upon the making of an order of apportionment, correct the tax books or records in the auditor's possession, in accordance with the order, and if the books or other records have been delivered to the county treasurer, the auditor shall at once certify the order of apportionment to the treasurer who shall correct the county system.

[C24, 27, 31, 35, 39, §**7300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.4]

91 Acts, ch 191, §118

Referred to in §331.512

449.5 Effect of order.

An order of apportionment, when followed by a correction of the tax book or other record in accordance therewith, shall have the same effect as though the original assessment had been made in the same manner.

[C24, 27, 31, 35, 39, §**7301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.5]

449.6 Appeal.

A party aggrieved by an order of apportionment may appeal therefrom to the district court at any time within ten days from the date of said order, by serving written notice of said appeal on all other parties to said proceeding. Should personal service of said notice within the county be impossible as to any party, any judge of the district court may prescribe the manner of such service.

[C24, 27, 31, 35, 39, §**7302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.6]

449.7 Trial on appeal.

The district court shall try said appeal anew and in equity. The final order of the court shall be certified by the clerk of the district court to the county auditor and shall be treated in the same manner as though originally made by the board of supervisors.

[C24, 27, 31, 35, 39, §**7303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.7]

Referred to in §602.8102(62)

449.8 Interpretative clause.

This chapter shall not be construed as exclusive of other legal remedies.

[C24, 27, 31, 35, 39, §**7304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §449.8]

SUBTITLE 3

INHERITANCE TAXES

CHAPTER 450

INHERITANCE TAX

Referred to in §321.47, 421.60, 450B.1, 450B.2, 450B.5, 450B.7, 602.8102(63)

450.1 Definitions — construction.
450.2 Taxable estates and property.
450.3 Property included.
450.4 Exemptions.
450.5 Liability for tax.
450.6 Accrual of tax — maturity — extension of time.
450.7 Lien of tax.
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450.10 Rate of tax.
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450.17 Conveyance — effect.
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450.22 Administration avoided — inheritance tax duties required — penalty.
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450.49 Bonds — conditions.
450.50 Removal of property from state — bond.
450.51 Annuities — life and term estates.
450.52 Deferred estates — removal of lien.
450.53 Duty to pay tax — penalties.
450.54 Sale to pay tax.
450.55 Means to collect tax.
450.56 Reserved.
450.57 Tax deducted from legacy or collected.
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450.59 Judicial review.
450.60 Director to represent state.
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450.67 Inspection of books, records, etc.
450.68 Information confidential.
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450.70 Fees.
450.71 Proof of amount of tax due.
450.72 through 450.80 Reserved.
450.81 Duty of recorder.
450.82 and 450.83 Reserved.
450.84 Costs charged against estate — exceptions.
450.85 Appropriation.
450.86 Securities and assets held by bank, etc. Repealed by 97 Acts, ch 60, §1, 2.
450.87 Transfer of corporation stock.
450.88 Corporations to report transfers.
450.89 Reserved.
450.90 Property in this state belonging to foreign estate.
450.91 Foreign estates — reciprocity — personal property. Repealed by 2003 Acts, ch 95, §23, 24.
450.92 Compromise settlement. Repealed by 99 Acts, ch 151, §86, 89.
450.93 Unknown heirs.
450.94 Return — determination — appeal.
450.95 Appropriation.
450.96 Contingent estates.
450.97 Joint owners of bank accounts — duty to notify department of revenue. Repealed by 2005 Acts, ch 5, §1.

450.1 Definitions — construction.

1. For purposes of this chapter, unless the context otherwise requires:

a. *"Internal Revenue Code"* means the same as defined in section 422.3.

b. *"Person"* includes plural as well as singular, and artificial as well as natural persons.

c. *"Personal representative"* means an administrator, executor, or trustee as each is defined in section 633.3.

d. *"Real estate or real property"* for the purpose of appraisal under this chapter means real estate which is the land and appurtenances, including structures affixed thereto.

e. *"Stepchild"* means the child of a person who was married to the decedent at the time of the decedent's death, or the child of a person to whom the decedent was married, which person died during the marriage to the decedent.

2. This chapter shall not be construed to confer upon a county attorney authority to represent the state in any case, and the county attorney shall represent the department of revenue only when specially authorized by the department to do so.

[S13, §1481-a45; C24, 27, 31, 35, 39, §**7305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.1]

83 Acts, ch 177, §2, 38; 88 Acts, ch 1028, §35; 99 Acts, ch 152, §32, 40; 2003 Acts, ch 95, §1, 24; 2003 Acts, ch 145, §286

Referred to in §331.756(57), 422.27

450.2 Taxable estates and property.

The following estates and property and any interest in or income from any of the following estates and property, which pass from the decedent owner in any manner described in this chapter, are subject to tax as provided in this chapter:

1. Real estate and tangible personal property located in this state regardless of whether the decedent was a resident of this state at death.

2. Intangible personal property owned by a decedent domiciled in this state.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.2]

2003 Acts, ch 95, §2, 24

450.3 Property included.

The tax imposed under this chapter shall be collected upon the net market value, and shall go into the general fund of the state, to be determined as provided in this chapter, of any property passing as follows:

1. By will or under the statutes of inheritance of this or any other state or country.

2. By deed, grant, sale, gift, or transfer made within three years of the death of the grantor or donor, which is not a bona fide sale for an adequate and full consideration in money or money's worth and which is in excess of the annual gift tax exclusion allowable for each donee under section 2503, subsections (b) and (e), of the Internal Revenue Code. If both spouses consent, a gift made by one spouse to a person who is not the other spouse is considered, for the purposes of this subsection, as made one half by each spouse under the same terms and conditions provided for in section 2513 of the Internal Revenue Code. The net market value of a transfer described in this subsection shall be the net market value determined as of the date of the transfer.

3. By deed, grant, sale, gift, or transfer made or intended to take effect in possession or enjoyment after the death of the grantor or donor. A transfer of property in respect of which the transferor reserves to the transferor a life income or interest shall be deemed to have been intended to take effect in possession or enjoyment at death, provided, that if the transferor reserves to the transferor less than the entire income or interest, the transfer shall be deemed taxable thereunder only to the extent of a like proportion of the value of the property transferred.

4. To the extent of any property with respect to which the decedent has at the time of death a general power of appointment, or with respect to which the decedent has within three years of death exercised or released a general power of appointment by a disposition which is of a nature that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's gross estate under this section whether the general power was created before or after the taking effect of this chapter. A transfer involving creation of a

general power of appointment shall be treated as a transfer of a fee or equivalent interest in the property subject thereto to the donee of the power. Any transfer involving creation of any other power of appointment shall be treated, except when an election is made under subsection 7, as the transfer of a life estate or term of years in the property subject thereto to the donee of the power and as the transfer of the remainder interests to those who would take if the power is not exercised.

5. Property which is held in joint tenancy by the decedent and any other person or persons or any deposit in banks, or other institution in their joint names and payable to either or to the survivor, except such part as may be proven to have belonged to the survivor; or any interest of a decedent in property owned by a joint stock or other corporate body whereby the survivor or survivors become beneficially entitled to the decedent's interest upon the death of a shareholder. However, if such property is so held by the decedent and the surviving spouse as the only co-owners, one half of such property is not subject to taxation under the provisions of this chapter, but if the surviving spouse proves that the surviving spouse contributed to acquisition of such property an amount, in money or other property, greater than one half of the cost of the property held in joint tenancy, the portion of such property which is not subject to taxation under the provisions of this chapter shall be the proportion which the actual contribution by the surviving spouse is of the total contribution to acquisition of such property. The tax imposed upon the passing of property under the provisions of this subsection shall apply to property held under all such contracts or agreements whether made before or after the taking effect of this chapter.

6. When the decedent shall have disposed of the decedent's estate in any manner to take effect at the decedent's death with a request secret or otherwise that the beneficiary give, pay to, or share the property or any interest therein received from the decedent, with other person or persons, or to so dispose of beneficial interests conferred by the decedent upon the beneficiaries as that the property so passing would be taxable under the provisions of this chapter if passing directly by will or deed from the decedent owner to those to receive the gift from the beneficiary, compliance with such request shall constitute a transfer taxable under the provisions of this chapter, at the highest rate possible in like cases of transfers by will or deed.

7. *a.* Which qualifies as a qualified terminable interest property as defined in section 2056(b)(7)(B) of the Internal Revenue Code, shall, if an election is made, be treated and considered as passing in fee, or its equivalent, to the surviving spouse in the estate of the donor-grantor. Property on which the election is made shall be included in the gross estate of the surviving spouse and shall be deemed to have passed in fee from the surviving spouse to the persons succeeding to the remainder interest, unless the property was sold, distributed, or otherwise disposed of prior to the death of the surviving spouse. A sale, disposition, or disposal of the property prior to the death of the surviving spouse shall void the election, and shall subject the property disposed of, less amounts received or retained by the surviving spouse, to tax in the donor-grantor's estate in the same manner as if the tax had been deferred under sections 450.44 through 450.49.

b. Unless the will or trust instrument provides otherwise, the estate of the surviving spouse shall have the right to recover from the persons succeeding to the remainder interests, the additional tax imposed, if any, without interest, on the surviving spouse by reason of the election being made. The amount of tax recovered, if any, shall be a credit in the donee's estate against the tax imposed on the qualified terminable interest property.

c. An election under this subsection can only be made if an election in relation to the qualified terminable interest property is also made for federal estate tax purposes.

d. The director of revenue shall adopt and promulgate all rules necessary for the

enforcement and administration of this subsection including the form and manner of making the election.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.3]

84 Acts, ch 1240, §1; 85 Acts, ch 148, §2, 3; 85 Acts, ch 230, §12; 86 Acts, ch 1237, §27; 88 Acts, ch 1028, §36; 2003 Acts, ch 95, §3, 24; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143; 2019 Acts, ch 59, §135

Referred to in §450.8

Unnumbered paragraph 1 amended

450.4 Exemptions.

The tax imposed by this chapter shall not be collected:

1. When the entire estate of the decedent does not exceed the sum of twenty-five thousand dollars after deducting the liabilities, as defined in this chapter.

2. When the property passes for a charitable, educational, or religious purpose as defined in sections 170(c) and 2055 of the Internal Revenue Code.

3. When the property passes to public libraries or public art galleries within this state, open to the use of the public and not operated for gain, or to hospitals within this state, or to trustees for such uses within this state, or to municipal corporations for purely public purposes.

4. On bequests for the care and maintenance of the cemetery or burial lot of the decedent or the decedent's family, and bequests not to exceed five hundred dollars in any estate of a decedent for the performance of a religious service or services by some person regularly ordained, authorized, or licensed by some religious society to perform such service, which service or services are to be performed for or in behalf of the testator or some person named in the testator's last will.

5. *a.* On that portion of the decedent's interest in an employer-provided or employer-sponsored retirement plan or on that portion of the decedent's individual retirement account that will be subject to federal income tax when paid to the beneficiary. This exemption shall apply regardless of the identity of the beneficiary and regardless of the number of payments to be made after the decedent's death.

b. For purposes of this exemption:

(1) An "*individual retirement account*" includes an individual retirement annuity or any other arrangement as defined in section 408 of the Internal Revenue Code.

(2) An "*employer-provided or employer-sponsored retirement plan*" includes a qualified retirement plan as defined in section 401 of the Internal Revenue Code, a governmental or nonprofit employer's deferred compensation plan as defined in section 457 of the Internal Revenue Code, and an annuity as defined in section 403 of the Internal Revenue Code.

6. On property in an individual development account in the name of the decedent that passes to another individual development account. For purposes of this subsection, "*individual development account*" means an account that has been certified as an individual development account pursuant to chapter 541A.

7. On the value of tangible personal property as defined in section 633.276 which is distributed in kind from the estate if the aggregate of all tangible personal property in the estate does not exceed five thousand dollars.

8. On the value of any interest in a qualified tuition plan, as defined in section 529 of the Internal Revenue Code, to the same extent to which the value is excluded from the decedent's gross estate for federal estate tax purposes. This subsection shall apply to all qualified tuition plans that are in existence on or after July 1, 1998.

9. On the value of any interest in the Iowa ABLE savings plan trust created in chapter 12I, or any interest held by a resident account owner in a qualified ABLE program with which the state has contracted pursuant to section 12I.10.

[S13, §1481-a1; C24, 27, 31, 35, 39, §**7308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.4; 81 Acts, ch 147, §1, 19]

83 Acts, ch 177, §3, 38; 93 Acts, ch 97, §15, 20; 94 Acts, ch 1165, §31; 96 Acts, ch 1106, §8; 2001 Acts, ch 140, §1, 5; 2001 Acts, ch 150, §20, 21; 2002 Acts, ch 1050, §38; 2006 Acts, ch

1016, §1, 8; 2007 Acts, ch 134, §2, 28; 2008 Acts, ch 1164, §2; 2010 Acts, ch 1137, §1; 2012 Acts, ch 1123, §2, 32; 2015 Acts, ch 137, §88, 90, 162
Referred to in §12D.9, 12I.8, 12I.10, 541A.2
2012 amendment striking former subsections 7 and 8 applies to estates of decedents dying on or after July 1, 2012; 2012 Acts, ch 1123, §32
2015 amendment applies to estates of decedents dying on or after January 1, 2016; 2015 Acts, ch 137, §90

450.5 Liability for tax.

Any person becoming beneficially entitled to any property or interest in property by any method of transfer as specified in this chapter, and all personal representatives and referees of estates or transfers taxable under this chapter, are respectively liable for all taxes to be paid by them respectively.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.5]

83 Acts, ch 177, §4, 38
Referred to in §450.94

450.6 Accrual of tax — maturity — extension of time.

1. The tax imposed by this chapter accrues at the death of the decedent owner, and shall be paid to the department of revenue on or before the last day of the ninth month after the death of the decedent owner except if otherwise provided in this chapter. If in the opinion of the director of revenue additional time should be granted for payment to avoid hardship, the director may extend the period to a date not exceeding ten years from the last day of the month in which the death of the decedent occurred. In the case of an extension the tax bears interest at the rate in effect under section 421.7 from the expiration of the last day of the ninth month after the decedent's death. Interest shall be computed on a monthly basis with a fraction of a month counted as a full month.

2. Upon the approval of the executive council, the tax liability of a beneficiary, heir, surviving joint tenant, or other transferee may be paid, in lieu of money, in whole or in part by the transfer of real property or tangible personal property to the state or a political subdivision of the state to be used for public purposes. Before the tax liability may be paid by transfer of property to a political subdivision, the governing body of the political subdivision shall also approve the transfer. The property transferred in payment of tax shall have been included in the decedent's gross estate for inheritance tax purposes and its value for the payment of the tax shall be the same as its value for inheritance tax purposes. The acceptance or rejection of the property in payment of the tax liability and the value of the property shall be certified by the executive council to the director of revenue. The acceptance of the property transferred acts as payment and satisfaction of the inheritance tax liability to the extent of the value of the transferred property, but notwithstanding any other provision, the taxpayer is not entitled to a refund if the transferred property has a value in excess of the tax liability.

[S13, §1481-a; C24, 27, 31, 35, 39, §**7310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.6; 81 Acts, ch 131, §15, ch 147, §2, 20]

84 Acts, ch 1240, §2; 2003 Acts, ch 145, §286; 2019 Acts, ch 24, §104
Referred to in §450.53
Penalty and interest on delinquent taxes, §450.63
Code editor directive applied

450.7 Lien of tax.

1. The tax imposed by this chapter is a charge against and a lien upon the estate subject to tax under this chapter, and all property of the estate or owned by the decedent from the death of the decedent until paid, subject to the following limitations:

a. The share of the estate passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants is excluded from taxation under this chapter.

b. Inheritance taxes owing with respect to a passing of property of a deceased person are no longer a lien against the property ten years from the date of death of the decedent owner

regardless of whether the decedent owner died prior to or subsequent to July 1, 1995, except to the extent taxes are attributable to remainder or deferred interests and are deferred in accordance with the provisions of this chapter.

2. Notice of the lien is not required to be recorded. The rights of the state under the lien have priority over all subsequent mortgages, purchases, or judgment creditors; and a conveyance after the decedent's death of the property subject to a lien does not discharge the property except as otherwise provided in this chapter. However, if additional tax is determined to be owing under this chapter after the lien has been released under paragraph *"a"* or *"b"*, the lien does not have priority over subsequent mortgages, purchases, or judgment creditors unless notice of the lien is recorded in the office of the recorder of the county where the estate is probated, or where the property is located if the estate has not been administered. The department of revenue may release the lien by filing in the office of the clerk of the court in the county where the property is located, the decedent owner died, or the estate is pending or was administered, one of the following:

a. A receipt in full payment of the tax.

b. A certificate of nonliability for the tax as to all property reported in the estate.

c. A release or waiver of the lien as to all or any part of the property reported in the estate, which shall release the lien as to the property designated in the release or waiver.

3. The sale, exchange, mortgage, or pledge of property by the personal representative pursuant to a testamentary direction or power, pursuant to section 633.387, or under order of court, divests the property from the lien of the tax. The proceeds from that sale, exchange, mortgage, or pledge shall be held by the personal representative subject to the same priorities for the payment of the tax as existed with respect to the property before the transaction, and the personal representative is personally liable for payment of the tax to the extent of the proceeds.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.7]

83 Acts, ch 177, §5, 38; 84 Acts, ch 1240, §3; 90 Acts, ch 1232, §20; 95 Acts, ch 63, §1; 97 Acts, ch 1, §1, 8; 99 Acts, ch 151, §45, 89; 2003 Acts, ch 145, §286; 2008 Acts, ch 1119, §7; 2009 Acts, ch 133, §152; 2010 Acts, ch 1138, §53; 2014 Acts, ch 1076, §16

Referred to in §450.17, 450.88

450.8 Transfers and trusts.

If the decedent makes transfer of, or creates a trust with respect to, property passing under section 450.3, subsection 2, or intended to take effect after death, except in the case of a bona fide sale for a fair consideration in money or money's worth, and if the tax in respect to the transfer is not paid when due, the transferee or trustee is personally liable for the tax, and the property, to the extent of the decedent's interest in the property at the time of death, is subject to a lien for the payment of the tax.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7312;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.8]

84 Acts, ch 1240, §4

450.9 Individual exemptions.

In computing the tax on the net estate, the entire amount of property, interest in property, and income passing to the surviving spouse, lineal ascendants, lineal descendants, and stepchildren and their lineal descendants are exempt from tax. *"Lineal descendants"* includes descendants by adoption.

[C31, 35, §7312-d1; C39, §**7312.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.9; 81 Acts, ch 147, §3, 19]

91 Acts, ch 159, §23, 24; 94 Acts, ch 1046, §10; 97 Acts, ch 1, §2, 8; 2015 Acts, ch 125, §2, 5, 6

Referred to in §450.22, 450.53

2015 amendment by 2015 Acts, ch 125, §2, takes effect July 1, 2016, and applies to estates of decedents dying on or after that date; 2015 Acts, ch 125, §5, 6

450.10 Rate of tax.

The property or any interest therein or income therefrom, subject to the provisions of this chapter, shall be taxed as herein provided:

1. When the property or any interest in property, or income from property, taxable under the provisions of this chapter, passes to the brother or sister, son-in-law, or daughter-in-law, the rate of tax imposed on the individual share so passing shall be as follows:

a. Five percent on any amount up to twelve thousand five hundred dollars.

b. Six percent on any amount in excess of twelve thousand five hundred dollars and up to twenty-five thousand dollars.

c. Seven percent on any amount in excess of twenty-five thousand dollars and up to seventy-five thousand dollars.

d. Eight percent on any amount in excess of seventy-five thousand dollars and up to one hundred thousand dollars.

e. Nine percent on any amount in excess of one hundred thousand dollars and up to one hundred fifty thousand dollars.

f. Ten percent on all sums in excess of one hundred fifty thousand dollars.

2. When the property or interest in property or income from property, taxable under this chapter, passes to a person not included in subsections 1 and 6, the rate of tax imposed on the individual share so passing shall be as follows:

a. Ten percent on any amount up to fifty thousand dollars.

b. Twelve percent on any amount in excess of fifty thousand dollars and up to one hundred thousand dollars.

c. Fifteen percent on all sums in excess of one hundred thousand dollars.

3. When the property or any interest in property or income from property, taxable under the provisions of this chapter, passes in any manner to societies, institutions or associations incorporated or organized under the laws of any other state, territory, province or country than this state, for charitable, educational or religious purposes, or to cemetery associations, including humane societies not organized under the laws of this state, or to resident trustees for uses without this state, the rate of tax imposed shall be ten percent on the entire amount so passing.

4. When the property or any interest in property or income from property, taxable under this chapter, passes to any firm, corporation, or society organized for profit, including fraternal and social organizations which do not qualify for exemption under sections 170(c) and 2055 of the Internal Revenue Code, the rate of tax imposed shall be fifteen percent on the entire amount so passing.

5. When the property or any interest in property, or income from property, taxable under this chapter, passes to any person included under subsection 1, there shall be credited to the tax imposed on the individual share so passing an amount equal to the tax imposed in this state on the decedent on any property, real, personal or mixed, or the proportionate share thereof on property passing to the person taxed hereunder, which can be identified as having been received by the decedent as a share in the estate of any person who died within two years prior to the death of the decedent, or which can be identified as having been acquired by the decedent in exchange for property so received. The credit shall not be applicable to taxes on property of the decedent which was not acquired from the prior estate.

6. Property, interest in property, or income passing to the surviving spouse, and parents, grandparents, great-grandparents, and other lineal ascendants, children including legally adopted children and biological children entitled to inherit under the laws of this state, stepchildren, and grandchildren, great-grandchildren, and other lineal descendants, is not taxable under this section.

[C97, §1467; S13, §1481-a; C24, 27, 31, 35, 39, §**7313;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.10; 81 Acts, ch 147, §4]

91 Acts, ch 159, §25 – 27; 94 Acts, ch 1046, §11; 97 Acts, ch 1, §3 – 8; 2001 Acts, ch 116, §24, 28; 2011 Acts, ch 34, §101

450.11 Reserved.

450.12 Liabilities deductible.

1. Subject to the limitations in subsections 2 and 3, there shall be deducted from the gross value of the estate only the liabilities defined as follows:

a. The debts owing by the decedent at the time of death, the local and state taxes accrued before the decedent's death, the federal estate tax and federal taxes owing by the decedent, a reasonable sum for funeral expenses, the allowance for surviving spouse and minor children granted by the probate court or its judge, court costs, and any other administration expenses allowable pursuant to section 2053 of the Internal Revenue Code.

b. A liability shall not be deducted unless the personal representative or other person filing the inheritance tax return as provided in section 450.22 certifies that it has been paid or, if not paid, the director of revenue is satisfied that it will be paid. If the amount of liabilities deductible under this section exceeds the amount of property subject to the payment of the liabilities, the excess shall be deducted from other property included in the gross estate on a prorated basis that the gross value of each item of other property bears to the total gross value of all the other property. Subject to the previous provision, a liability is deductible whether or not the liability is legally enforceable against the decedent's estate.

2. If the decedent's gross estate includes property with a situs outside of Iowa, the liabilities deductible under subsection 1 shall be prorated on the basis that the gross value of property with a situs in Iowa bears to the total gross estate. Only the Iowa portion of the liabilities shall be deductible in computing the tax imposed by this chapter. However, a liability secured by a lien on property shall be allocated to the state where the property has a situs and shall not be prorated except to the extent the liability exceeds the value of the property.

3. If a liability under subsection 1 is secured by property, or a portion of property, not included in the decedent's gross estate, only that portion of the liability attributable to property or a portion of property included in the decedent's gross estate is deductible in computing the tax imposed by this chapter.

83 Acts, ch 177, §6, 38; 90 Acts, ch 1232, §21; 94 Acts, ch 1165, §32, 49; 95 Acts, ch 63, §2; 2003 Acts, ch 145, §286

Referred to in §450.90

450.13 through 450.16 Reserved.

450.17 Conveyance — effect.

When real estate or an interest in real estate is subject to tax, a conveyance does not discharge the real estate conveyed from the lien except as provided in section 450.7.

[S13, §1481-a26; C24, 27, 31, 35, 39, §**7323;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.17]

83 Acts, ch 177, §7, 38

450.18 and 450.19 Reserved.

450.20 Record of deferred estates.

The department of revenue shall keep a separate record of any deferred estate upon which the tax due is not paid on or before the last day of the ninth month after the death of the decedent, showing substantially the same facts as are required in other cases, and also showing:

1. The date and amount of all bonds given to secure the payment of the tax with a list of the sureties thereon.

2. The type and amount of any security, other than a bond, given to secure the payment of the tax.

3. The name of the person beneficially entitled to such estate or interest, with place of residence.

4. A description of the property or a statement of conditions upon which such deferred estate is based or limited.

[S13, §1481-a46; C24, 27, 31, 35, 39, §**7326;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.20]

2003 Acts, ch 95, §4, 24; 2003 Acts, ch 145, §286; 2018 Acts, ch 1134, §1, 4

2018 amendment applies to estates of decedents that include a deferred estate or remainder interest and that have not, on or before July 1, 2018, received approval from the department of revenue to defer payment of tax pursuant to §450.44 – 450.49; 2018 Acts, ch 1134, §4

450.21 Administration on application of director.

If, upon the death of any person leaving an estate that may be liable to a tax under this chapter, a will disposing of the estate is not offered for probate, or an application for administration made within four months from the time of the decease, the director of revenue may, at any time thereafter, make application to the proper court, setting forth that fact and requesting that a personal representative be appointed, and the court shall appoint a personal representative to administer upon the estate.

[S13, §1481-a3; C24, 27, 31, 35, 39, §**7327;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.21]

83 Acts, ch 177, §8, 38; 2003 Acts, ch 145, §286

Referred to in §450.22

450.22 Administration avoided — inheritance tax duties required — penalty.

1. When the heirs or persons entitled to inherit the property of an estate subject to tax under this chapter desire to avoid the appointment of a personal representative as provided in section 450.21, and in all instances where real estate is involved and there are no regular probate proceedings, they or one of them shall file under oath the inventories required by section 633.361 and the required reports, perform all the duties required by this chapter of the personal representative, and file the inheritance tax return.

2. However, this section does not apply and a return is not required to be filed even though real estate is part of the assets subject to tax under this chapter, if all of the assets are held in joint tenancy with right of survivorship between husband and wife alone, or if the estate exclusively consists of property held in joint tenancy with the right of survivorship solely by the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax and the estate does not have a federal estate tax obligation.

3. *a.* However, this section does not apply and a return is not required to be filed, even though real estate is involved, if the estate does not have a federal estate tax filing obligation and if all the estate's assets are described in any of the following categories:

(1) Assets held in joint tenancy with right of survivorship between husband and wife alone.

(2) Assets held in joint tenancy with right of survivorship solely between the decedent and individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

(3) Assets passing by beneficiary designation, pursuant to a trust intended to pass the decedent's property at death or through any other nonprobate transfer solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax.

b. This subsection does not apply to interests in an asset or assets that pass to both an individual listed in section 450.9 and to that individual's spouse.

4. If a return is not required to be filed pursuant to subsection 3, and if real estate is involved, one of the individuals with an interest in, or succeeding to an interest in, the real estate shall file an affidavit in the county in which the real estate is located setting forth the legal description of the real estate and the fact that an inheritance tax return is not required pursuant to subsection 3. Anyone with or succeeding to an interest in real estate who willfully fails to file such an affidavit, or who willfully files a false affidavit, is guilty of a fraudulent practice.

5. When this section applies, proceedings for the collection of the tax when a personal

representative is not appointed shall conform as nearly as possible to proceedings under this chapter in other cases.

[S13, §1481-a3; C24, 27, 31, 35, 39, §**7328;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.22]

83 Acts, ch 177, §9, 38; 89 Acts, ch 251, §36; 99 Acts, ch 151, §46, 89; 2004 Acts, ch 1073, §30; 2005 Acts, ch 14, §1, 6; 2011 Acts, ch 25, §143

Referred to in §450.12, 450.94, 633.31, 633.481, 635.7

450.23 Reserved.

450.24 Appraisers.

In each county, the chief judge of the judicial district for that county shall, on or before January 15 of the year an appointment is required, appoint three competent residents and freeholders of the county to act as appraisers of the real property within its jurisdiction which is charged or sought to be charged with an inheritance tax. The appraisers shall serve for four years, and until their successors are appointed and qualified. They shall each take an oath to faithfully and impartially perform the duties of the office, but shall not be required to give bond. They shall be subject to removal at any time at the discretion of the chief judge of the judicial district for that county. The chief judge may also in the chief judge's discretion, either before or after the appointment of the regular appraisers, appoint other appraisers to act in any given case. Vacancies occurring otherwise than by expiration of term shall be filled by appointment of the chief judge of the judicial district for that county. A person interested in any manner in the estate to be appraised shall not serve as an appraiser of that estate.

[S13, §1481-a4; C24, 27, 31, 35, 39, §**7330;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.24]

83 Acts, ch 177, §10, 38; 2000 Acts, ch 1032, §2; 2000 Acts, ch 1057, §5

Referred to in §654.16

450.25 and 450.26 Reserved.

450.27 Commission to appraisers.

When an appraisal of real estate is requested by the department of revenue, as provided in section 450.37, or is otherwise required by this chapter, the clerk shall issue a commission to the appraisers, who shall fix a time and place for appraisement, except that if the only interest that is subject to tax is a remainder or deferred interest upon which the tax is not payable until the determination of a prior estate or interest for life or term of years, the clerk shall not issue the commission until the determination of the prior estate, except at the request of the department of revenue when the parties in interest seek to remove an inheritance tax lien. When valuing the real estate for purposes of inheritance tax, an appraiser does not have the jurisdiction to determine what property or partial interests may or may not be subject to tax. Whole interests in the property should be appraised and the question of the actual property or partial interest subject to inheritance tax is to be determined by means of the administrative procedures pursuant to section 450.94. All joint property that is to be appraised should be listed at its full market value. Long-term leases are not considered in determining the value of property when being appraised.

[S13, §1481-a5; C24, 27, 31, 35, 39, §**7331;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.27]

83 Acts, ch 177, §11, 38; 99 Acts, ch 152, §33, 40; 2003 Acts, ch 145, §286

Referred to in §450.37

450.28 Notice of appraisement.

It shall be the duty of all appraisers appointed under the provisions of this chapter, upon receiving a commission as herein provided, to give notice to the director of revenue, the attorney of record of the estate, if any, and other persons known to be interested in the property to be appraised, of the time and place at which they will appraise such property, which time shall not be less than ten days from the date of such notice. The notice shall further state that the director of revenue or any person interested in the estate or property

appraised may, within sixty days after filing of the appraisement with the clerk of court, file objections to the appraisement. The notice shall be served by certified mail and such notice is deemed completed when the notice is deposited in the mail and postmarked for delivery.

[S13, §1481-a6; C24, 27, 31, 35, 39, §**7332;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.28]

97 Acts, ch 157, §1; 2003 Acts, ch 145, §286

450.29 Notice of filing.

Upon service of such notice and the making of such appraisement, the notice and appraisement shall be filed with the clerk, and a copy of the appraisement shall at once be filed by the clerk with the director of revenue. The clerk shall send a notice, by ordinary mail, to the attorney of record of the estate, if any, to the personal representative of the estate, and to each person known to be interested in the estate or property appraised. The notice shall state the date the appraisement was filed with the clerk of court and shall include a copy of the appraisement.

[C97, §1476; S13, §1481-a6; C24, 27, 31, 35, 39, §**7333;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.29]

97 Acts, ch 157, §2; 2003 Acts, ch 145, §286

450.30 Real property in different counties.

If real property is located in more than one county, the appraisers of the county in which the estate is being administered may appraise all real estate, or those of the several counties may serve for the real property within their respective counties or other appraisers be appointed as the district court may direct.

[C97, §1476; S13, §1481-a6; C24, 27, 31, 35, 39, §**7334;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.30]

83 Acts, ch 177, §12, 38

450.31 Objections.

The director of revenue or any person interested in the estate or property appraised may, within sixty days after filing of the appraisement with the clerk, file objections to said appraisement and give notice thereof as in beginning civil actions, to the director of revenue or the representative of the estate or trust, if any, otherwise to the person interested as heir, legatee, or transferee, on the hearing of which as an action in equity either party may produce evidence competent or material to the matters therein involved.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7335;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.31]

2003 Acts, ch 145, §286

Service of notice, R.C.P. 1.302 – 1.315

450.32 Hearing — order.

If upon the hearing the court finds the amount at which the real property is appraised is the property's value on the market in the ordinary course of trade and the appraisement was fairly and in good faith made, the court shall approve the appraisement. If the court finds that the appraisement was made at a greater or lesser sum than the value of the real property in the ordinary course of trade, or that the appraisement was not made fairly or in good faith, the court shall set aside the appraisement. Upon the appraisement being set aside, the court shall fix the value of the real property of the estate for inheritance tax purposes and the valuation fixed is that upon which the tax shall be paid, unless an appeal is taken from the order of the court as provided for in this chapter.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7336;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.32]

83 Acts, ch 177, §13, 38; 2019 Acts, ch 24, §54

Section amended

450.33 Appeal and notice.

The director of revenue or anyone interested in the property appraised may appeal to the supreme court from the order of the district court fixing the value of the property of said estate. Notice of appeal shall be served within sixty days from the date of the order appealed from, and the appeal shall be perfected in the time now provided for appeals in equitable actions.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7337;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.33]

2003 Acts, ch 145, §286

450.34 Bond on appeal.

In case of appeal the appellant, if not the director of revenue, shall give bond to be approved by the clerk of the court, which bond shall provide that the said appellant and sureties shall pay the tax for which the property may be liable with cost of appeal.

[S13, §1481-a7; C24, 27, 31, 35, 39, §**7338;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.34]

2003 Acts, ch 145, §286

450.35 Reserved.

450.36 Appraisal of other property.

If there is an estate or real property subject to tax and the records in the clerk's office do not disclose that there may be a tax due under this chapter, the persons interested in the real property shall report the matter to the department of revenue with a request that the real property be appraised.

[S13, §1481-a8; C24, 27, 31, 35, 39, §**7341;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.36]

83 Acts, ch 177, §14, 38; 2003 Acts, ch 145, §286

450.37 Value for computing the tax.

1. Unless the value has been determined under chapter 450B, the tax shall be computed based upon one of the following:

a. The fair market value of the property in the ordinary course of trade determined under subsection 2.

b. The alternate value of the property, if the personal representative so elects, that has been established for federal estate tax purposes under section 2032 of the Internal Revenue Code. The election shall be exercised on the return by the personal representative or other person signing the return, within the time prescribed by law for filing the return or before the expiration of any extension of time granted for filing the return.

2. Fair market value of real estate in the ordinary course of trade shall be established by agreement, including an agreement to accept the values as finally determined for federal estate tax purposes. The agreement shall be between the department of revenue, the personal representative, and the persons who have an interest in the property.

a. If an agreement has not been reached on the fair market value of real property in the ordinary course of trade, the director of revenue has sixty days after the return is filed to request an appraisal under section 450.27. If an appraisal request is not made within the sixty-day period, the value listed on the return is the agreed value of the real property.

b. If an agreement is not reached on the fair market value of personal property in the ordinary course of trade, the personal representative or any person interested in the personal property may appeal to the director of revenue for a revision of the department of revenue's determination of the value and after the appeal hearing may seek judicial review of the director's decision. The provisions of section 450.94, subsection 3, relating to appeal of a determination of the department and review of the director's decision apply to an appeal and review made under this subsection.

3. In addition to the applicable period of limitation for examination and determination, the department shall make an examination to adjust the value of real property for Iowa

inheritance tax purposes to the value accepted by the internal revenue service for federal estate tax purposes. The department shall make an examination and adjustment for the value of the real property at any time within six months from the date of receipt by the department of written notice from the personal representative for the estate that all federal estate tax matters between the estate and the internal revenue service have been concluded. To begin the running of the six-month period, the notice shall be in writing in a form sufficient to inform the department of the final disposition of the federal estate tax obligation with the internal revenue service and a copy of the federal document showing the final disposition and final federal adjustments of all real property values must be attached. The department shall make an adjustment to the value of real property for inheritance tax purposes to the value accepted for federal estate tax purposes regardless of whether an inheritance clearance has been issued, an appraisal has been obtained on the real property indicating a contrary value, whether there has been an acceptance of another value for real property by the department, or whether an agreement has been entered into by the department and the personal representative for the estate and persons having an interest in the real property regarding the value of the real property. Notwithstanding the period of limitation specified in section 450.94, subsection 3, the personal representative for the estate shall have six months from the day of final disposition of any real property valuation matter between the personal representative for the estate and the internal revenue service to claim a refund of an overpayment of tax due to the change in the valuation of real property by the internal revenue service.

[S13, §1481-a8; C24, 27, 31, 35, 39, §**7342;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.37; 81 Acts, ch 147, §6]

83 Acts, ch 177, §15, 38; 84 Acts, ch 1305, §37; 88 Acts, ch 1028, §37; 89 Acts, ch 6, §6; 99 Acts, ch 151, §47, 89; 99 Acts, ch 152, §34, 40; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §31

Referred to in §450.27, 450.44, 450.45, 450.47, 450B.2

450.38 through 450.43 Reserved.

450.44 Remainders — valuation.

When a person whose estate over and above the amount of that person's liabilities, as defined in this chapter, exceeds the sum of twenty-five thousand dollars, bequeaths, devises, or otherwise transfers real property to or for the use of persons exempt from the tax imposed by this chapter, during life or for a term of years and the remainder to persons not thus exempt, this property, upon the determination of the estate for life or years, shall be valued at its then actual market value from which shall be deducted the value of any improvements on it made by the person who owns the remainder interest during the time of the prior estate, to be determined as provided in section 450.37, subsection 1, paragraph "*a*", and the tax on the remainder shall be paid by the person who owns the remainder interest as provided in section 450.46.

[S13, §1481-a10; C24, 27, 31, 35, 39, §**7349;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.44; 81 Acts, ch 147, §7, 19]

83 Acts, ch 177, §16, 38; 2001 Acts, ch 140, §2, 5

Referred to in §450.3, 450.46, 633.31

450.45 Life and term estates — valuation.

If an estate or interest for life or term of years in real property is given to a party other than those exempt by this chapter, the property shall be valued as provided in section 450.37 as is provided in ordinary cases, and the party entitled to the estate or interest shall, on or before the last day of the ninth month from the death of the decedent owner, pay the tax, and in default the court shall order the estate or interest, or as much as necessary to pay the tax, penalty, and interest, to be sold.

[S13, §1481-a11; C24, 27, 31, 35, 39, §**7350;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.45; 81 Acts, ch 147, §8, 20]

83 Acts, ch 177, §17, 38; 84 Acts, ch 1240, §5

Referred to in §450.3

450.46 Deferred estate — valuation.

Upon the determination of a prior estate or interest, when the remainder or deferred estate or interest or a part of it is subject to tax and the tax upon the remainder or deferred interest has not been paid, the persons entitled to the remainder or deferred interest shall immediately report to the department of revenue the fact of the determination of the prior estate, and upon receipt of the report, or upon information from any source, of the determination of a prior estate when the remainder interest has not been valued for the purpose of assessing tax, the property shall be valued as provided in like cases in section 450.44 and the tax upon the remainder interest shall be paid by the person who owns the remainder interest on or before the last day of the ninth month after the determination of the prior estate. If the tax is not paid within this time the court shall then order the property, or as much as necessary to pay the tax, penalty, and interest, to be sold.

[S13, §1481-a11; C24, 27, 31, 35, 39, §**7351;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.46; 81 Acts, ch 147, §9, 20]

83 Acts, ch 177, §18, 38; 84 Acts, ch 1240, §6; 2003 Acts, ch 145, §286

Referred to in §450.3, 450.44

450.47 Life and term estates in personal property.

If an estate or interest for life or term of years in personal property is given to one or more persons other than those exempt by this chapter and the remainder or deferred estate to others, the property devised or conveyed shall be valued under section 450.37 as provided in ordinary estates and the value of the estates or interests devised or conveyed shall be determined as provided in section 450.51. The tax upon the estates or interests liable for the tax shall be paid to the department of revenue from the property valued or by the persons entitled to the estate or interest on or before the last day of the ninth month after the death of the testator, grantor, or donor. However, payment of the tax upon a deferred estate or remainder interest may be deferred until the determination of the prior estate as provided in section 450.48.

[S13, §1481-a12; C24, 27, 31, 35, 39, §**7352;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.47; 81 Acts, ch 147, §10, 20]

83 Acts, ch 177, §19, 38; 84 Acts, ch 1240, §7; 2003 Acts, ch 145, §286; 2018 Acts, ch 1134, §2, 4; 2019 Acts, ch 24, §55

Referred to in §450.3

2018 amendment applies to estates of decedents that include a deferred estate or remainder interest and that have not, on or before July 1, 2018, received approval from the department of revenue to defer payment of tax pursuant to §450.44 – 450.49; 2018 Acts, ch 1134, §4

Section amended

450.48 Payment deferred — bond — exceptions.

1. Except as provided in subsection 2, when in case of deferred estates or remainder interests in personal property or in the proceeds of any real estate that may be sold during the time of a life, term, or prior estate, the persons interested who may desire to defer the payment of the tax until the determination of the prior estate, shall file with the clerk of the proper district court a bond as provided in this chapter in other cases. The bond shall be renewed every two years until the tax upon the deferred estate is paid. If at the end of any two-year period the bond is not promptly renewed as provided in this section and the tax has not been paid, the bond shall be declared forfeited, and the amount of the bond forthwith collected.

2. When the estate of a decedent includes an estate for life or for a term of years to one or more persons and a deferred or remainder estate to others, and such deferred or remainder estate is in whole or in part subject to the tax imposed by this chapter, then payment of the tax upon such deferred or remainder estates may be postponed until the determination of the prior estate without giving bond to secure payment of such tax as required under subsection 1 if one of the following requirements is satisfied:

a. The deferred or remainder estates or interests are so disposed that good and sufficient security for the payment of the tax for which such deferred or remainder estates may be liable can be had because of the lien imposed by this chapter upon the real property of such estate,

but the tax shall remain a lien upon such real estate until the tax upon such deferred estate or interest is paid.

b. Security satisfactory to the department of revenue has been provided, which security includes but is not limited to a bank or securities account with an irrevocable pay on death or transfer on death provision naming the department of revenue as beneficiary, or an escrow agreement with the department of revenue under which a private attorney will act as escrow agent and hold the escrow funds in the attorney's trust account.

[S13, §1481-a13; C24, 27, 31, 35, 39, §**7353;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.48]

2018 Acts, ch 1134, §3, 4; 2019 Acts, ch 59, §136

Referred to in §450.3, 450.47

2018 amendment applies to estates of decedents that include a deferred estate or remainder interest and that have not, on or before July 1, 2018, received approval from the department of revenue to defer payment of tax pursuant to §450.44 – 450.49; 2018 Acts, ch 1134, §4

Subsection 1 amended

450.49 Bonds — conditions.

All bonds required by this chapter shall be payable to the department of revenue and shall be conditioned upon the payment of the tax, interest, and costs for which the estate may be liable, and for the faithful performance of all the duties hereby imposed upon and required of the person whose acts are by such bond to be guaranteed, and shall be in an amount equal to twice the amount of the tax, interest, and costs that may be due, but in no case less than five hundred dollars, and must be secured by not less than two resident freeholders or by a fidelity or surety company authorized by the commissioner of insurance to do business in this state.

[S13, §1481-a14; C24, 27, 31, 35, 39, §**7354;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.49]

2003 Acts, ch 145, §286

Referred to in §450.3, 450.50

450.50 Removal of property from state — bond.

It shall be unlawful for any person to remove from this state any property, or the proceeds thereof, that may be subject to the tax imposed by this chapter, without paying the said tax to the department of revenue. Any person violating the provisions of this section shall be guilty of a serious misdemeanor and upon conviction shall be fined an amount equal to twice the amount of tax, interest, and costs for which the estate may be liable; provided, however, that the penalty hereby imposed shall not be enforced if, prior to the removal of such property or the proceeds thereof, the person desiring to effect such removal files with the clerk a bond conditioned upon the payment of the tax, interest, and costs, as is provided in section 450.49 hereof.

[S13, §1481-a15; C24, 27, 31, 35, 39, §**7355;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.50]

2003 Acts, ch 145, §286

450.51 Annuities — life and term estates.

The value of any annuity, deferred estate, or interest, or any estate for life or term of years, subject to inheritance tax shall be determined for the purpose of computing the tax by the use of current, commonly used tables of mortality and actuarial principles pursuant to regulations prescribed by the director of revenue. The taxable value of annuities, life or term, deferred, or future estates, shall be computed at the rate of four percent per annum of the established value of the property in which the estate or interest exists or is founded.

[S13, §1481-a16; C24, 27, 31, 35, 39, §**7356;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.51]

83 Acts, ch 177, §20, 38; 2003 Acts, ch 145, §286

Referred to in §450.47

See mortality tables at end of Vol VI

450.52 Deferred estates — removal of lien.

Whenever it is desired to remove the lien of the inheritance tax on remainders, reversions, or deferred estates, parties owning the beneficial interest may pay at any time the said tax on the present worth of such interests determined according to the rules herein fixed.

[S13, §1481-a16; C24, 27, 31, 35, 39, §**7357;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.52]

450.53 Duty to pay tax — penalties.

1. *a.* All personal representatives, except guardians and conservators, and other persons charged with the management or settlement of any estate or trust from which a tax is due under this chapter, shall file an inheritance tax return, within the time limits set by section 450.6, with a copy of any federal estate tax return and other documents required by the director which may reasonably tend to prove the amount of tax due, and at the time of filing, shall pay to the department of revenue the amount of the tax due from any devisee, grantee, donee, heir, or beneficiary of the decedent, except in cases where payment of the tax is deferred until the determination of a prior estate. The owner of the future interest shall file a supplemental inheritance tax return and pay to the department of revenue the tax due within the time limits set in this chapter. The inheritance tax returns shall be in the form prescribed by the director.

b. Notwithstanding paragraph *"a"*, an inheritance tax return is not required to be filed if the estate does not have a federal estate tax filing obligation and if all the estate or trust assets pass solely to individuals listed in section 450.9 as individuals that are entirely exempt from Iowa inheritance tax. This paragraph is not applicable if interests in the asset pass to both an individual listed in section 450.9 and to that individual's spouse.

2. A person in possession of assets to be reported for purposes of taxation, including a personal representative or trustee, who willfully makes a false or fraudulent return, or who willfully fails to pay the tax, or who willfully fails to supply the information necessary to prepare the return or determine if a return is required, or who willfully fails to make, sign, or file the required return within the time required by law, is guilty of a fraudulent practice. This subsection does not apply to failure to make, sign, or file a return or failure to pay the tax if a return is not required to be filed pursuant to subsection 1, paragraph *"b"*.

3. A person who willfully attempts in any manner to evade taxes imposed by this chapter or avoid payment of the tax, is guilty of an aggravated misdemeanor.

4. The jurisdiction of any offense as defined in this section is in the county of the residence of the decedent at the time of death. If the decedent is a nonresident of the state, jurisdiction is in any county in which property subject to the tax is located.

5. A prosecution for any offense defined in this section shall be commenced not later than six years following the commission of the offense.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7358;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.53]

83 Acts, ch 177, §21, 38; 94 Acts, ch 1165, §33; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §32; 2005 Acts, ch 14, §2, 6

Referred to in §450.58, 450.94

Fraudulent practices, see §714.8 – 714.14

450.54 Sale to pay tax.

Personal representatives or the director of revenue may sell as much of the property of the decedent as will enable them to pay the tax, in the same manner as provided by law for the sale of that property for the payment of debts of testators or intestates.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7359;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.54]

83 Acts, ch 177, §22, 38; 2003 Acts, ch 145, §286

450.55 Means to collect tax.

The provisions of sections 422.26 and 422.30, pertaining to jeopardy assessments and distress warrants, apply to the unpaid tax, penalty, and interest imposed under this chapter. In addition the director of revenue may bring, or cause to be brought in the director's name

of office, suit for the collection of the tax, penalty, interest, and costs, against the personal representative or against the person entitled to property subject to the tax, or upon any bond given to secure payment of the tax, either jointly or severally, and upon obtaining judgment may cause execution to be issued as is provided by statute in other cases. The proceedings shall conform as nearly as may be to those for the collection of ordinary debt by suit.

[S13, §1481-a17; C24, 27, 31, 35, 39, §**7360;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.55]

83 Acts, ch 177, §23, 38, 39; 84 Acts, ch 1240, §8; 2003 Acts, ch 145, §286

450.56 Reserved.

450.57 Tax deducted from legacy or collected.

Every personal representative or referee having in charge or trust any property of an estate subject to tax which is made payable by the personal representative or referee, shall deduct the tax from the property or shall collect the tax from the legatee or person entitled to the property and pay the tax to the department of revenue, and the personal representative or referee shall not deliver any specific legacy or property subject to tax to any person until the personal representative or referee has collected the tax.

[S13, §1481-a18; C24, 27, 31, 35, 39, §**7362;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.57]

83 Acts, ch 177, §24, 38; 2003 Acts, ch 145, §286

450.58 Final settlement to show payment.

1. Except as provided in subsection 2, the final settlement of the account of a personal representative shall not be accepted or allowed unless it shows, and the court finds, that all taxes imposed by this chapter upon any property or interest in property that are made payable by the personal representative and to be settled by the account, have been paid, and that the receipt of the department of revenue for the tax has been obtained as provided in section 450.64.

2. If an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph *"b"*, the personal representative's final settlement of account need not contain an inheritance tax receipt from the department, but shall, instead, contain the personal representative's certification under section 633.35 that an inheritance tax return is not required to be filed pursuant to section 450.53, subsection 1, paragraph *"b"*.

3. Any order contravening any provision of this section is void.

[S13, §1481-a19; C24, 27, 31, 35, 39, §**7363;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.58]

83 Acts, ch 177, §25, 38; 85 Acts, ch 148, §4; 86 Acts, ch 1054, §2; 86 Acts, ch 1241, §44; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §33; 2005 Acts, ch 14, §3, 6

Referred to in §633.479, 635.7

Similar provision, §422.27

450.59 Judicial review.

Judicial review of a decision of the director may be sought under the Iowa administrative procedure Act, chapter 17A, except that the petition may be filed in the district court in the county in which some part of the property is situated, if the decedent was not a resident, or such court in the county of which the deceased was a resident at the time of the decedent's death or where such estate is administered.

[S13, §1481-a20; C24, 27, 31, 35, 39, §**7364;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.59]

2003 Acts, ch 44, §114

Referred to in §450.94

450.60 Director to represent state.

The director of revenue shall, with all the rights and privileges of a party in interest, represent the state in any such proceedings.

[S13, §1481-a20; C24, 27, 31, 35, 39, §**7365;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.60]

2003 Acts, ch 145, §286

450.61 Bequests to personal representatives.

If a decedent appoints one or more personal representatives and, in lieu of their allowance or commission, makes a bequest or devise of property to them which would otherwise be liable to tax, or appoints them residuary legatees, and the bequests, devises, or residuary legacies exceed the statutory fees as compensation for their services, the excess is liable to tax.

[S13, §1481-a21; C24, 27, 31, 35, 39, §**7366;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.61]

83 Acts, ch 177, §26, 38

450.62 Legacies charged upon real estate.

If legacies subject to tax are charged upon or payable out of real estate, the heir or devisee, before paying the tax, shall deduct the tax from it and pay it to the personal representative or department of revenue, and the tax shall remain a charge against and be a lien upon the real estate until it is paid. Payment of the tax shall be enforced by the personal representative or director of revenue as provided in this chapter.

[S13, §1481-a22; C24, 27, 31, 35, 39, §**7367;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.62]

83 Acts, ch 177, §27, 38; 2003 Acts, ch 145, §286

450.63 Maturity of tax — interest — penalty.

All taxes not paid within the time prescribed in this chapter are subject to a penalty as provided in section 421.27 and shall draw interest at the rate in effect under section 421.7 until paid.

[S13, §1481-a23; C24, 27, 31, 35, 39, §**7368;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.63; 81 Acts, ch 131, §16, ch 147, §11, 20; 82 Acts, ch 1180, §7, 8]

84 Acts, ch 1173, §9; 86 Acts, ch 1007, §39; 90 Acts, ch 1172, §13

450.64 Receipt showing payment.

Upon payment of the tax in full the department of revenue shall forthwith transmit a receipt to the person designated by the taxpayer signing the return showing payment of the tax. If the tax is not paid in full, a taxpayer whose tax liability is paid in full may request a receipt as to that taxpayer's share of the tax.

[S13, §1481-a23; C24, 27, 31, 35, 39, §**7369;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.64]

83 Acts, ch 177, §28, 38; 2003 Acts, ch 145, §286

Referred to in §450.58

450.65 Director to enforce collection.

It shall be the duty of the director of revenue to enforce the collection of the delinquent inheritance tax, and the provisions of law with reference thereto.

[C24, 27, 31, 35, 39, §**7370;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.65]

2003 Acts, ch 145, §286

450.66 Investigation by director.

The director of revenue may issue a citation to any person who the director may believe or has reason to believe has any knowledge or information concerning any property which the director believes or has reason to believe has been transferred by any person and as to which there is or may be a tax due to the state under the provisions of the inheritance tax

laws of this state, and by such citation require such person to appear before the director or anyone designated by the director at the county seat of the county where said person resides and at a time to be designated in such citation, and testify under oath as to any fact or information within the person's knowledge touching the quantity, value, and description of any such property and the disposition thereof which may have been made by any person, and to produce and submit to the inspection of the director of revenue, any books, records, accounts, or documents in the possession of or under the control of any person so cited.

[C24, 27, 31, 35, 39, §**7371;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.66]

2003 Acts, ch 145, §286

Referred to in §450.68

450.67 Inspection of books, records, etc.

The director of revenue may also inspect and examine the books, records, and accounts of any person, firm, or corporation, including the stock transfer books of any corporation, for the purpose of acquiring any information deemed necessary or desirable by the director for the proper enforcement of the inheritance tax laws of this state, and the collection of the full amount of the tax which may be due to the state thereunder.

[C24, 27, 31, 35, 39, §**7372;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.67]

2003 Acts, ch 145, §286

Referred to in §450.68

450.68 Information confidential.

1. *a.* Any and all information acquired by the department of revenue under and by virtue of the means and methods provided for by sections 450.66 and 450.67 shall be deemed and held as confidential and shall not be disclosed by the department except so far as the same may be necessary for the enforcement and collection of the inheritance tax provided for by the laws of this state; provided, however, that the director of revenue may authorize the examination of the information by other state officers or, if a reciprocal arrangement exists, by tax officers of another state or of the federal government.

b. Federal tax returns, copies of returns, return information as defined in section 6103(b) of the Internal Revenue Code, and state inheritance tax returns, which are required to be filed with the department for the enforcement of the inheritance tax laws of this state, shall be deemed and held as confidential by the department. However, such returns or return information may be disclosed by the director to officers or employees of other state agencies, subject to the same confidentiality restrictions imposed on the officers and employees of the department.

2. It shall be unlawful for any present or former officer or employee of the state to disclose, except as provided by law, any return, return information, or any other information deemed and held confidential under the provisions of this section. Any person violating the provisions of this section shall be guilty of a serious misdemeanor.

[C24, 27, 31, 35, 39, §**7373;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.68]

92 Acts, 2nd Ex, ch 1001, §245; 2003 Acts, ch 145, §286; 2008 Acts, ch 1119, §8; 2009 Acts, ch 41, §257; 2010 Acts, ch 1138, §54; 2014 Acts, ch 1076, §17

450.69 Contempt.

Refusal of any person to attend before the director of revenue in obedience to any such citation, or to testify, or produce any books, accounts, records, or documents in the person's possession or under the person's control and submit the same to inspection of the department of revenue when so required, may, upon application of the director of revenue, be punished by any district court in the same manner as if the proceedings were pending in such court.

[C24, 27, 31, 35, 39, §**7374;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.69]

2003 Acts, ch 145, §286

450.70 Fees.

Witnesses so cited before the director of revenue, and any sheriff or other officer serving such citation shall receive the same fees as are allowed in civil actions; to be audited by the

department of revenue and paid upon the certificate of the director of revenue out of funds not otherwise appropriated.

[C24, 27, 31, 35, 39, §**7375;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.70]

2003 Acts, ch 145, §286

Sheriff's fees, §331.655; witness fees, §622.69 – 622.75

450.71 Proof of amount of tax due.

Before issuing a receipt for the tax, the director of revenue may demand from personal representatives or beneficiaries information as necessary to verify the correctness of the amount of the tax and interest, and when this demand is made they shall send to the director of revenue certified copies of wills, deeds, or other papers, or of those parts of their reports as the director may demand, and upon the refusal or neglect of the parties to comply with the demand of the director, the clerk of the court shall comply with the demand, and the expenses of making copies and transcripts shall be charged against the estate, as are other costs in probate, or the tax may be assessed without deducting liabilities for which the estate is liable.

[S13, §1481-a24; C24, 27, 31, 35, 39, §**7376;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.71]

83 Acts, ch 177, §29, 38; 2003 Acts, ch 145, §286

450.72 through 450.80 Reserved.

450.81 Duty of recorder.

Each county recorder shall, upon the filing in the recorder's office of a deed, bill of sale, or other transfer of any description which shows upon its face that it was made or intended to take effect in possession or enjoyment at or after the death of the maker of the instrument, forward to the department of revenue a copy of the instrument.

[C24, 27, 31, 35, 39, §**7385;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.81]

91 Acts, ch 191, §119; 2003 Acts, ch 145, §286

Referred to in §331.602

450.82 and 450.83 Reserved.

450.84 Costs charged against estate — exceptions.

If an estate or interest in an estate passes so as to be liable to taxation under this chapter, all costs of the proceedings for the assessment of the tax are chargeable to the estate as other costs in probate proceedings and, to discharge the lien, all costs as well as the taxes must be paid. In all other cases the costs are to be paid as ordered by the court. When a decision adverse to the state has been rendered, with an order that the state pay the costs, the clerk of the court in which the action was pending shall certify the amount of the costs to the director of revenue, who shall, if the costs are correctly certified and the case has been finally terminated and the tax, if any is due, has been paid, audit the claim and direct the department of administrative services to issue a warrant on the treasurer of state in payment of the costs.

[S13, §1481-a35; C24, 27, 31, 35, 39, §**7388;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.84]

88 Acts, ch 1134, §84; 2003 Acts, ch 145, §260

Referred to in §450.85

450.85 Appropriation.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.84.

[C27, 31, 35, §7388-a1; C39, §**7388.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.85]

450.86 Securities and assets held by bank, etc. Repealed by 97 Acts, ch 60, §1, 2.

450.87 Transfer of corporation stock.

If a foreign personal representative assigns or transfers any corporate stock or obligations in this state standing in the name of a decedent or in trust for a decedent liable to tax, the tax shall be paid to the department of revenue on or before the transfer; otherwise the corporation permitting its stock to be transferred is liable to pay the tax, interest, and costs, and the director of revenue shall enforce the payment of the tax, interest, and costs.

[S13, §1481-a37; C24, 27, 31, 35, 39, §**7390;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.87]

83 Acts, ch 177, §31, 38; 2003 Acts, ch 145, §286

450.88 Corporations to report transfers.

1. Every Iowa corporation organized for pecuniary profit shall, on July 1 of each year, by its proper officers under oath, make a full and correct report to the director of revenue of all transfers of its stocks made during the preceding year by any person who appears on the books of the corporation as the owner of the stock, when the transfer is made to take effect at or after the death of the owner or transferor, and all transfers which are made by a personal representative, referee, or any person other than the owner or person in whose name the stocks appeared of record on the books of the corporation, prior to the transfer. This report shall show the name of the owner of the stocks and the owner's place of residence, the name of the person at whose request the stock was transferred, the person's place of residence and the authority by virtue of which the person acted in making the transfer, the name of the person to whom the transfer was made, and the residence of the person, together with other information the officers reporting have relating to estates of persons deceased who may have been owners of stock in the corporation. If it appears that any stock transferred is subject to tax under this chapter, and the tax has not been paid, the director of revenue shall notify the corporation in writing of its liability for the payment of the tax, and shall bring suit against the corporation as in other cases unless payment of the tax is made within sixty days from the date of notice.

2. This section does not apply if the lien has been released under section 450.7 or the director has issued a consent to transfer.

[S13, §1481-a38; C24, 27, 31, 35, 39, §**7391;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.88]

83 Acts, ch 177, §32, 38; 2003 Acts, ch 145, §286; 2019 Acts, ch 24, §104

Code editor directive applied

450.89 Reserved.

450.90 Property in this state belonging to foreign estate.

When property, real or personal, within this state belongs to a foreign estate and the foreign estate passes in part exempt from the tax imposed by this chapter and in part subject to the tax and there is not a specific devise of the property within this state to exempt persons or if it is within the authority or discretion of the foreign personal representative administering the estate to dispose of the property not specifically devised to exempt persons in the payment of liabilities owing by the decedent at the time of death, or in the satisfaction of legacies, devises, or trusts given to direct or collateral legatees or devisees or in payment of the distributive shares of any direct and collateral heirs, then the property within the jurisdiction of this state belonging to the foreign estate is subject to the tax imposed by this chapter, and the tax due shall be assessed as provided in section 450.12, subsection 2, relating to the deduction of the proportionate share of liabilities. However, if the value of the property so situated exceeds the total amount of the estate passing to other persons than those exempt from the tax imposed by this chapter, the excess is not subject to tax.

[S13, §1481-a40; C24, 27, 31, 35, 39, §**7393;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.90]

83 Acts, ch 177, §33, 38

450.91 Foreign estates — reciprocity — personal property. Repealed by 2003 Acts, ch 95, §23, 24.

450.92 Compromise settlement. Repealed by 99 Acts, ch 151, §86, 89.

450.93 Unknown heirs.

Whenever the heirs or persons entitled to any estate or any interest therein are unknown or their place of residence cannot with reasonable certainty be ascertained, a tax of five percent shall be paid to the department of revenue upon all such estates or interests, subject to refund as provided herein in other cases; provided, however, that if it be afterwards determined that any estate or interest passes to aliens, there shall be paid within sixty days after such determination and before delivery of such estate or property, an amount equal to the difference between five percent, the amount paid, and the amount which such person should pay under the provisions of this chapter.

[S13, §1481-a42; C24, 27, 31, 35, 39, §**7395;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.93]

2003 Acts, ch 145, §286

450.94 Return — determination — appeal.

1. *"Taxpayer"* as used in this section means a person liable for the payment of tax as stated in section 450.5.

2. Unless a return is not required to be filed pursuant to section 450.22, subsection 3, or section 450.53, subsection 1, paragraph *"b"*, the taxpayer shall file an inheritance tax return on forms to be prescribed by the director of revenue on or before the last day of the ninth month after the death of the decedent. When an inheritance tax return is filed, the department shall examine it and determine the correct amount of tax. If the amount paid is less than the correct amount due, the department shall notify the taxpayer of the total amount due together with any penalty and interest which shall be computed as a sum certain, with interest computed to the last day of the month in which the notice is dated.

3. If the amount paid is greater than the correct tax, penalty, and interest due, the department shall refund the excess with interest in accordance with section 421.60, subsection 2, paragraph *"e"*. However, the director shall not allow a claim for refund or credit that has not been filed with the department within three years after the tax payment upon which a refund or credit is claimed became due, or one year after the tax payment was made, whichever time is later. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest due or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing, and upon the hearing the director shall determine the correct tax, penalty, and interest or refund due, and notify the appellant of the decision by mail. The decision of the director is final unless the appellant seeks judicial review of the director's decision under section 450.59 within sixty days after the date of the notice of the director's decision.

4. Payments received must be credited first to the penalty and interest accrued and then to the tax due.

5. *a.* The amount of tax imposed under this chapter shall be assessed according to one of the following:

(1) Within three years after the return is filed with respect to property reported on the final inheritance tax return.

(2) At any time after the tax became due with respect to property not reported on the final inheritance tax return, but not later than three years after the omitted property is reported to the department on an amended return or on the final inheritance tax return if one was not previously filed.

(3) The period for examination and determination of the correct amount of tax to be

reported and due under this chapter is unlimited in the case of failure to file a return or the filing of a false or fraudulent return or affidavit.

b. In addition to the applicable periods of limitations for examination and determination specified in paragraph *"a"*, subparagraphs (1) and (2), the department may make an examination and determination at any time within six months from the date of receipt by the department of written notice from the taxpayer of the final disposition of any matter between the taxpayer and the internal revenue service with respect to the federal estate, gift, or generation skipping transfer tax. In order to begin the running of the six months assessment period, the notice shall be in writing in form sufficient to inform the department of the final disposition of any matter with respect to the federal estate, gift, or generation skipping transfer tax, and a copy of the federal document showing the final disposition or final federal adjustments shall be attached to the notice.

[S13, §1481-a43; C24, 27, 31, 35, 39, §**7396;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.94; 81 Acts, ch 131, §17]

83 Acts, ch 177, §34, 38; 84 Acts, ch 1240, §9, 10; 85 Acts, ch 148, §5; 86 Acts, ch 1007, §40; 86 Acts, ch 1241, §45; 89 Acts, ch 285, §9; 91 Acts, ch 159, §28; 94 Acts, ch 1133, §11, 16; 96 Acts, ch 1034, §42; 99 Acts, ch 151, §48, 89; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §34; 2005 Acts, ch 14, §4; 2011 Acts, ch 25, §99; 2014 Acts, ch 1128, §2; 2018 Acts, ch 1161, §13, 15, 16

Referred to in §450.27, 450.37, 450.95, 450.96

2018 amendment to subsection 3 applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

450.95 Appropriation.

There is hereby appropriated out of any funds in the state treasury not otherwise appropriated a sum sufficient to carry out the provisions of section 450.94.

[C27, 31, 35, §7396-a1; C39, §**7396.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.95]

Referred to in §450.96

450.96 Contingent estates.

Estates in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation has been held in abeyance, shall be valued at their full, undiminished value when the persons entitled to the estates come into the beneficial enjoyment or possession of the estates, without diminution for or on account of any valuation previously made. When an estate, devise, or legacy can be divested by the act or omission of the legatee or devisee, it shall be taxed as if there were no possibility of the divesting. When a devise, bequest, or transfer is one in part contingent, and in part vested so that the beneficiary will come into possession and enjoyment of a portion of the inheritance on or before the happening of the event upon which the possible defeating contingency is based, a tax shall be imposed and collected upon the bequest or transfer as upon a vested interest, at the highest rate possible under this chapter if no contingency existed; provided that if the contingency reduces the value of the estate or interest taxed, and the amount of tax paid is in excess of the tax for which the bequest or transfer is liable upon the removal of the contingency, the excess shall be refunded as provided in sections 450.94 and 450.95 in other cases.

[S13, §1481-a44; C24, 27, 31, 35, 39, §**7397;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §450.96]

83 Acts, ch 177, §35, 38

450.97 Joint owners of bank accounts — duty to notify department of revenue. Repealed by 2005 Acts, ch 5, §1.

CHAPTER 450A

GENERATION SKIPPING TRANSFER TAX

Repealed by 2014 Acts, ch 1076, §25

CHAPTER 450B

QUALIFIED USE INHERITANCE TAX

Referred to in §450.37

450B.1 Definitions.
450B.2 Alternate election of value for qualified use.
450B.3 Additional inheritance tax applicable.
450B.4 Reserved.
450B.5 Ratio of applicable tax.
450B.6 Lien of tax.
450B.7 Other inheritance tax laws applicable.

450B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Internal Revenue Code"* means the same as defined in section 422.3.

2. *"Qualified real property"*, *"qualified use"*, *"cessation of qualified use"*, and *"qualified heir"* mean the same as defined in section 2032A of the Internal Revenue Code.

3. *"Taxpayer"* means a qualified heir liable for the inheritance tax imposed under chapter 450 on qualified real property.

4. For purposes of subsection 1, the Internal Revenue Code shall be interpreted to include the provisions of Pub. L. No. 98-4.

[81 Acts, ch 147, §12]

83 Acts, ch 179, §18, 23; 84 Acts, ch 1305, §39; 88 Acts, ch 1028, §39

450B.2 Alternate election of value for qualified use.

1. Notwithstanding section 450.37, the value of qualified real property for the purpose of the tax imposed under chapter 450 may, at the election of the taxpayer, be its value for the use under which it qualifies as prescribed by section 2032A of the Internal Revenue Code. A taxpayer may make an election under this section only if all of the following conditions are met:

a. An election for federal estate tax purposes was made with regard to the qualified real property under section 2032A of the Internal Revenue Code.

b. All persons who signed the agreement referred to in section 2032A(d)(2) of the Internal Revenue Code make the election under this section and sign an agreement with the department of revenue consenting to the application of section 450B.3 with respect to the qualified real property.

c. The total decrease in the value of the qualified real property as a result of the election under this section does not exceed the dollar limitation specified in section 2032A(a)(2) of the Internal Revenue Code.

2. The election under this section shall be made by the taxpayer in the manner as the director of revenue may prescribe by rule. The value for the qualified use under this section shall be the value as determined and accepted for federal estate tax purposes.

3. The definitions and special rules specified in section 2032A(e) of the Internal Revenue Code shall apply with respect to qualified real property for which an election was made under this section except that rules shall be prescribed by the director of revenue in lieu of the regulations promulgated by the secretary of the treasury.

4. The director shall prescribe regulations setting forth the application of this chapter in the case of an interest in a partnership, corporation, or trust which, with respect to the decedent, is an interest in a closely held business within the meaning of section 6166(b)(1) of the Internal Revenue Code. Such regulations shall conform as nearly as possible with the

regulations promulgated by the United States secretary of the treasury in respect to such interests.

[81 Acts, ch 147, §13]

88 Acts, ch 1028, §40; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143

Referred to in §450B.3, 450B.5, 450B.6

450B.3 Additional inheritance tax applicable.

There is imposed upon the qualified heir an additional inheritance tax if, within ten years after the decedent's death and before the death of the qualified heir, the qualified heir disposes of, other than to a member of the family, any interest in qualified real property for which an election under section 450B.2 was made or ceases to use for the qualified use the qualified real property for which an election under section 450B.2 was made as prescribed in section 2032A(c) of the Internal Revenue Code. The additional inheritance tax shall be the amount computed under section 450B.5 and shall be due six months after the date of the disposition or cessation of qualified use referred to in this section. The amount of the additional inheritance tax shall accrue interest at the rate of ten percent per year from nine months after the decedent's death to the due date of the tax. The tax shall be paid to the department of revenue and shall be deposited into the general fund of the state. Taxes not paid within the time prescribed in this section shall draw interest at the rate of ten percent per annum until paid. There shall not be an additional inheritance tax if the disposition or cessation occurs ten years or more after the decedent's death.

[81 Acts, ch 147, §14, 15; 82 Acts, ch 1023, §26, 27, 34]

88 Acts, ch 1028, §41; 2003 Acts, ch 145, §286

Referred to in §450B.2, 450B.5, 450B.6

450B.4 Reserved.

450B.5 Ratio of applicable tax.

The amount of the additional inheritance tax imposed by section 450B.3 is the excess of what the tax imposed by chapter 450 would have been had the election to use the qualified use valuation under section 450B.2 not been made over the tax paid on the real estate based on qualified use valuation. However, if all of the real estate valued under section 450B.2 is not disposed of or does not cease to be used for the qualified use, the amount of the additional inheritance tax is the amount computed by applying the ratio that the real estate subject to the qualified use valuation which has been disposed of or which the qualified use ceases bears to all the real estate subject to the qualified use valuation passing to the taxpayer to the excess of the tax which would have been imposed by chapter 450 had the election under section 450B.2 not been made over the tax paid on the real estate based on qualified use valuation. However, the additional inheritance tax shall not be computed on a value greater than the fair market value of the qualified real estate at the time the disposition or cessation of the qualified use occurs.

[81 Acts, ch 147, §16]

Referred to in §450B.3

450B.6 Lien of tax.

A lien is created in favor of the state for the additional inheritance tax which may be imposed by section 450B.3 on the qualified real property for which an election has been made under section 450B.2. The lien created by this section shall continue until the tax has been paid or ten years after the tax is due, whichever date occurs first. However, the lien shall expire ten years after the decedent's death if the qualified heir has not disposed of or ceased to use for the qualified use the qualified real property which would impose the tax under section 450B.3. The department of revenue may release the lien prior to the payment of the tax due, if any, if adequate security for payment of the tax is given.

Unless the lien has been perfected by recording in the office of the recorder in the county where the estate is probated, a transfer of the qualified real property to a bona fide purchaser for value shall divest the property of the lien. If the lien is perfected by recording, the rights of the state under the lien have priority over all subsequent mortgagees, purchasers or judgment

creditors. The lien may be foreclosed by the director of revenue in the same manner as is now prescribed for the foreclosure of real estate mortgages and upon judgment, execution shall be issued to sell as much of the property necessary to satisfy the tax, interest and costs due.

[81 Acts, ch 147, §17; 82 Acts, ch 1023, §28, 34]

2003 Acts, ch 145, §286

450B.7 Other inheritance tax laws applicable.

All the provisions of chapter 450 with respect to the payment, collection and administration of the inheritance tax imposed under that chapter, including the confidentiality of the tax return, are applicable to the provisions of this chapter to the extent consistent. The director of revenue shall adopt and promulgate all rules necessary for the enforcement and administration of this chapter.

[81 Acts, ch 147, §18]

92 Acts, 2nd Ex, ch 1001, §247; 2003 Acts, ch 145, §286

CHAPTER 451

IOWA ESTATE TAX

Repealed by 2014 Acts, ch 1076, §25

SUBTITLE 4

EXCISE TAXES

CHAPTER 452

RESERVED

CHAPTER 452A

MOTOR FUEL AND SPECIAL FUEL TAXES

Referred to in §312.1, 321.40, 321.56, 323.1, 326.24, 423.14, 423B.5, 423E.3

This chapter not enacted as a part of this title; transferred from chapter 324 in Code 1993

SUBCHAPTER I

MOTOR FUEL AND SPECIAL FUEL TAX

452A.1 Short title.
452A.2 Definitions.
452A.3 Levy of excise tax.
452A.4 Supplier's, restrictive supplier's, importer's, exporter's, dealer's, and user's license.
452A.5 Distribution allowance.
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452A.7 Foreign suppliers.
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452A.9 Returns from persons not licensed as suppliers, restrictive suppliers, importers, or blenders.
452A.10 Required records.
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452A.15 Transportation reports — refinery and pipeline and marine terminal reports.
452A.16 Credit or refund to licensee — fuel used other than in watercraft, aircraft, or motor vehicles — casualty losses. Repealed by 95 Acts, ch 155, §43, 44.
452A.17 Refunds.
452A.18 Refund permit.
452A.19 Revocation of refund permit.
452A.20 Posting price and discounts. Repealed by 95 Acts, ch 155, §43, 44.
452A.21 Refund — credit.
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MOTOR FUEL GALLONAGE — FLEXIBLE FUEL VEHICLES

452A.31 Special terms.
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SUBCHAPTER III

MOTOR FUEL AND SPECIAL FUEL USE TAX FOR INTERSTATE MOTOR VEHICLE OPERATIONS

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452A.51 Purpose.
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PROVISIONS COMMON TO TAXES IMPOSED UNDER SUBCHAPTERS I AND III

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452A.66 Statutes applicable to motor fuel tax.
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452A.70 Discontinuance of licensed activity — liability for taxes and penalties.
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452A.73 Embezzlement of fuel tax money — penalty.
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452A.78 Other remedies available.
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452A.86 Method of determining gallonage.

SUBCHAPTER I

MOTOR FUEL AND SPECIAL FUEL TAX

Referred to in §452A.54, 452A.57, 452A.76

452A.1 Short title.

This subchapter, plus applicable provisions of subchapter IV of this chapter, shall be known and may be cited as the *"Motor Fuel and Special Fuel Tax Law"*.

[C35, §5093-f40; C39, §**5093.39;** C46, 50, 54, §324.66; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.1]

C93, §452A.1

95 Acts, ch 155, §8; 2018 Acts, ch 1041, §127

452A.2 Definitions.

As used in this subchapter:

1. *"Aviation gasoline"* means any gasoline which is capable of being used for propelling aircraft, which is invoiced as aviation gasoline or is received, sold, stored, or withdrawn from storage by any person for the purpose of propelling aircraft. Motor fuel capable of being used for propelling motor vehicles is not aviation gasoline.

2. *"Biodiesel"* means the same as defined in section 214A.1.

3. *"Biodiesel blended fuel"* means the same as defined in section 214A.1.

4. *"Biofuel"* means the same as defined in section 214A.1.

5. *"Blender"* means a person who owns and blends ethanol with gasoline to produce ethanol blended gasoline and blends the product at a nonterminal location. The person is not restricted to blending ethanol with gasoline. Products blended with gasoline other than ethanol are taxed as gasoline. *"Blender"* also means a person blending two or more special fuel products at a nonterminal location where the tax has not been paid on all of the products blended. This blend is taxed as a special fuel.

6. *"Common carrier"* or *"contract carrier"* means a person involved in the movement of motor fuel or special fuel from the terminal or movement of the motor fuel or special fuel imported into this state, who is not an owner of the motor fuel or special fuel.

7. *"Conventional blendstock for oxygenate blending"* means one or more motor fuel components intended for blending with an oxygenate or oxygenates to produce gasoline.

8. *"Dealer"* means a person, other than a distributor, who engages in the business of selling or distributing motor fuel or special fuel to the end user in this state.

9. *"Denatured ethanol"* means ethanol that is to be blended with gasoline, has been derived from cereal grains, complies with ASTM (American society for testing and materials) international designation D-4806-95b, and may be denatured only as specified in Code of Federal Regulations, Titles 20, 21, and 27. Alcohol and denatured ethanol have the same meaning in this chapter.

10. *"Department"* means the department of revenue.

11. *"Diesel fuel"* or *"diesel"* means diesel fuel as defined in section 214A.1.

12. *"Director"* means the director of revenue.

13. *"Distributor"* means a person who acquires tax paid motor fuel or special fuel from a supplier, restrictive supplier or importer, or another distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both. The department may require that the distributor be registered to have terminal purchase rights.

14. *"E-85 gasoline"* means the same as defined in section 214A.1.

15. *"Eligible purchaser"* means a distributor of motor fuel or special fuel or an end user of special fuel who has purchased a minimum of two hundred forty thousand gallons of special fuel each year in the preceding two years. Eligible purchasers who elect to make delayed payments to a licensed supplier shall use electronic funds transfer. Additional requirements for qualifying as an eligible purchaser shall be established by rule.

16. *"Ethanol"* means the same as defined in section 214A.1.

17. *"Ethanol blended gasoline"* means the same as defined in section 214A.1.

18. *"Export"* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.

19. *"Exporter"* means a person or other entity who acquires fuel in this state for export to another state.

20. *"Flexible fuel vehicle"* means a motor vehicle as defined in section 321M.1 which is powered by an engine capable of operating using E-85 gasoline.

21. *"Fuel supply tank"*, with respect to motor vehicles that use hydrogen as a special fuel, means a motor vehicle's hydrogen fuel cells.

22. *a.* *"Gallon"*, with respect to compressed natural gas, means a gasoline gallon equivalent. A gasoline gallon equivalent of compressed natural gas is five and sixty-six hundredths pounds or one hundred twenty-six and sixty-seven hundredths cubic feet measured at a base temperature of 60 degrees Fahrenheit and a pressure of fourteen and seventy-three hundredths pounds per square inch absolute.

b. *"Gallon"*, with respect to liquefied natural gas, means a diesel gallon equivalent. A diesel gallon equivalent of liquefied natural gas is six and six hundredths pounds.

c. *"Gallon"*, with respect to hydrogen, means a diesel gallon equivalent. A diesel gallon equivalent of hydrogen is two and forty-nine hundredths pounds.

23. *"Gasoline"* means the same as defined in section 214A.1.

24. *"Import"* means delivery across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.

25. *"Importer"* means a person who imports motor fuel or undyed special fuel in bulk or transport load into the state by truck, rail, or barge.

26. *"Licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen dealer"* means a person in the business of handling untaxed compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen who delivers any part of the fuel into a fuel supply tank of any motor vehicle.

27. *"Licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen user"* means a person licensed by the department who dispenses compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen, upon which the special fuel tax has not been previously paid, for highway use from fuel sources owned and controlled by the person into the fuel supply tank of a motor vehicle, or commercial vehicle owned or controlled by the person.

28. *"Licensee"* means a person holding an uncanceled supplier's, restrictive supplier's, importer's, exporter's, dealer's, user's, or blender's license issued by the department under

this subchapter or any prior motor fuel tax law or any other person who possesses fuel for which the tax has not been paid.

29. *a.* *"Motor fuel"* means motor fuel as defined in section 214A.1 and includes all of the following:

(1) All products commonly or commercially known or sold as gasoline, including ethanol blended gasoline, casinghead, and absorption or natural gasoline, regardless of the products' classifications or uses, and including transmix which serves as a buffer between fuel products in the pipeline distribution process.

(2) Any liquid advertised, offered for sale, sold for use as, or commonly or commercially used as a fuel for propelling motor vehicles which, when subjected to distillation of gasoline, naphtha, kerosene and similar petroleum products [ASTM (American society for testing and materials) international designation D-86], shows not less than ten percent distilled (recovered) below 347 degrees Fahrenheit (175 degrees Centigrade) and not less than ninety-five percent distilled (recovered) below 464 degrees Fahrenheit (240 degrees Centigrade).

b. *"Motor fuel"* does not include special fuel, and does not include liquefied gases which would not exist as liquids at a temperature of 60 degrees Fahrenheit and a pressure of fourteen and seven-tenths pounds per square inch absolute, or naphthas and solvents unless the liquefied gases or naphthas and solvents are used as a component in the manufacture, compounding, or blending of a liquid within paragraph *"a"*, subparagraph (2), in which event the resulting product shall be deemed to be motor fuel. *"Motor fuel"* does not include methanol unless blended with other motor fuels for use in an aircraft or for propelling motor vehicles.

30. *"Motor fuel pump"* means the same as defined in section 214.1.

31. *"Naphthas and solvents"* shall mean and include those liquids which come within the distillation specifications for motor fuel set out under subsection 29, paragraph *"a"*, subparagraph (2), but which are designed and sold for exclusive use other than as a fuel for propelling motor vehicles.

32. *"Nonethanol blended gasoline"* means gasoline other than ethanol blended gasoline.

33. *"Nonrefiner biofuel manufacturer"* means an entity that produces, manufactures, or refines biofuel and does not directly or through a related entity refine, blend, import, or produce a conventional blendstock for oxygenate blending, gasoline, or diesel fuel.

34. *"Nonterminal storage facility"* means a facility where motor fuel or special fuel, other than liquefied petroleum gas, is stored that is not supplied by a pipeline or a marine vessel. *"Nonterminal storage facility"* includes a facility that manufactures products such as ethanol as defined in section 214A.1, biofuel, blend stocks, or additives which may be used as motor fuel or special fuel, other than liquefied petroleum gas, for operating motor vehicles or aircraft.

35. *"Racing fuel"* means leaded gasoline of one hundred ten octane or more that does not meet ASTM (American society for testing and materials) international designation D-4814 for gasoline and is sold in bulk for use in nonregistered motor vehicles.

36. *"Refiner"* means a person engaged in the refining of crude oil to produce motor fuel or special fuel, and includes any affiliate of such person.

37. *"Regional transit system"* means regional transit system as defined in section 452A.57, subsection 11.

38. *"Restrictive supplier"* means a person who imports motor fuel or undyed special fuel into this state in tank wagons or in small tanks not otherwise licensed as an importer.

39. *"Retail dealer"* means the same as defined in section 214A.1.

40. *"Special fuel"* means fuel oils and all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles or turbine-powered aircraft, and includes any substance used for that purpose, except that it does not include motor fuel. Kerosene shall not be considered to be a special fuel, unless blended with other special fuels for use in a motor vehicle with a diesel engine. Methanol shall not be considered to be a special fuel unless blended with other special fuels for use in a motor vehicle with a diesel engine. Hydrogen shall be considered to be a special fuel when used or intended for use in combination with oxygen to generate electricity for propulsion of a motor vehicle.

41. *"Supplier"* means a person who acquires motor fuel or special fuel by pipeline or marine vessel from a state, territory, or possession of the United States, or from a foreign country for storage at and distribution from a terminal and who is registered under 26 U.S.C. §4101 for tax-free transactions in gasoline, a person who produces in this state or acquires by truck, railcar, or barge for storage at and distribution from a terminal, biofuel, biodiesel, alcohol, or alcohol derivative substances, or a person who produces, manufactures, or refines motor fuel or special fuel in this state. *"Supplier"* includes a person who does not meet the jurisdictional connection to this state but voluntarily agrees to act as a supplier for purposes of collecting and reporting the motor fuel or special fuel tax. *"Supplier"* does not include a retail dealer or wholesaler who merely blends alcohol with gasoline or biofuel with diesel before the sale or distribution of the product or a terminal operator who merely handles, in a terminal, motor fuel or special fuel consigned to the terminal operator.

42. *"Terminal"* means a motor fuel or special fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which the fuel may be removed at a rack. *"Terminal"* does not include a facility at which motor fuel or special fuel blend stocks and additives are used in the manufacture of products other than motor fuel or special fuel and from which no motor fuel or special fuel is removed.

43. *"Terminal operator"* means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, *"terminal operator"* means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.

44. *"Terminal owner"* means a person who holds a legal interest or equitable interest in a terminal.

45. *"Urban transit system"* means Iowa urban transit system as defined in section 452A.57, subsection 6.

46. *"Use"*, with respect to liquefied petroleum gas, means the receipt, delivery, or placing of liquefied petroleum gas by a licensed liquefied petroleum gas user into a fuel supply tank of a motor vehicle while the vehicle is in the state. With respect to natural gas used as a special fuel, *"use"* means the receipt, delivery, or placing of the natural gas into equipment for compressing the gas for subsequent delivery into the fuel supply tank of a motor vehicle while the vehicle is in the state. With respect to hydrogen used as a special fuel, *"use"* means the receipt, delivery, or placing of hydrogen by a licensed hydrogen user into a fuel supply tank of a motor vehicle while the vehicle is in the state.

47. *"Withdrawn from terminal"* means physical movement from a supplier to a distributor or eligible end user and includes an importer going out of state and obtaining fuel from a terminal and bringing the fuel into the state, and a restrictive supplier bringing fuel into the state even though not purchased directly from a terminal.

[C27, 31, §5093-a2; C35, §5093-f2; C39, §**5093.02;** C46, 50, 54, §324.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.2]

85 Acts, ch 231, §12; 86 Acts, ch 1116, §1; 86 Acts, ch 1245, §414; 88 Acts, ch 1205, §2; 91 Acts, ch 87, §3

C93, §452A.2

95 Acts, ch 155, §9 – 13; 96 Acts, ch 1066, §2, 21; 99 Acts, ch 151, §50, 51, 89; 2001 Acts, ch 150, §22, 23; 2002 Acts, ch 1050, §39, 40; 2002 Acts, ch 1151, §20; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §129; 2004 Acts, ch 1086, §106; 2005 Acts, ch 140, §60, 61; 2006 Acts, ch 1142, §50 – 53, 79, 80; 2008 Acts, ch 1184, §62; 2013 Acts, ch 30, §99; 2013 Acts, ch 127, §6; 2014 Acts, ch 1026, §95, 96; 2014 Acts, ch 1032, §1, 2; 2018 Acts, ch 1041, §127; 2019 Acts, ch 151, §4 – 6, 17

Referred to in §214A.1, 323.1, 422.11N, 452A.86, 570A.1

Additional definitions, see §452A.57

2019 amendments effective January 1, 2020; 2019 Acts, ch 151, §17

Section amended and subsections editorially renumbered

452A.3 Levy of excise tax.

1. Except as otherwise provided in this section and in this subchapter, until June 30, 2020, this subsection shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

a. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state, which is referred to as the distribution percentage. For purposes of this subsection, only ethanol blended gasoline and nonblended gasoline, not including aviation gasoline, shall be used in determining the percentage basis for the excise tax. The department shall determine the percentage basis for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period.

b. The rate for the excise tax shall be as follows:

(1) If the distribution percentage is not greater than fifty percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty cents for motor fuel other than ethanol blended gasoline.

(2) If the distribution percentage is greater than fifty percent but not greater than fifty-five percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(3) If the distribution percentage is greater than fifty-five percent but not greater than sixty percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty and three-tenths cents for motor fuel other than ethanol blended gasoline.

(4) If the distribution percentage is greater than sixty percent but not greater than sixty-five percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty and five-tenths cents for motor fuel other than ethanol blended gasoline.

(5) If the distribution percentage is greater than sixty-five percent but not greater than seventy percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(6) If the distribution percentage is greater than seventy percent but not greater than seventy-five percent, the rate shall be twenty-nine cents for ethanol blended gasoline and thirty-one cents for motor fuel other than ethanol blended gasoline.

(7) If the distribution percentage is greater than seventy-five percent but not greater than eighty percent, the rate shall be twenty-nine and three-tenths cents for ethanol blended gasoline and thirty and eight-tenths cents for motor fuel other than ethanol blended gasoline.

(8) If the distribution percentage is greater than eighty percent but not greater than eighty-five percent, the rate shall be twenty-nine and five-tenths cents for ethanol blended gasoline and thirty and seven-tenths cents for motor fuel other than ethanol blended gasoline.

(9) If the distribution percentage is greater than eighty-five percent but not greater than ninety percent, the rate shall be twenty-nine and seven-tenths cents for ethanol blended gasoline and thirty and four-tenths cents for motor fuel other than ethanol blended gasoline.

(10) If the distribution percentage is greater than ninety percent but not greater than ninety-five percent, the rate shall be twenty-nine and nine-tenths cents for ethanol blended gasoline and thirty and one-tenth cents for motor fuel other than ethanol blended gasoline.

(11) If the distribution percentage is greater than ninety-five percent, the rate shall be thirty cents for ethanol blended gasoline and thirty cents for motor fuel other than ethanol blended gasoline.

c. The provisions of paragraph "*b*" and subsection 6, paragraph "*a*", subparagraph (2), shall be subject to legislative review at least every six years. The review shall be based upon a fuel distribution percentage formula status report containing the recommendations of a legislative interim committee appointed to conduct a review of the fuel distribution percentage formulas, to be prepared with the assistance of the department of revenue in association with the department of transportation. The report shall include recommendations for changes or revisions to the fuel distribution percentage formulas based upon advances in technology, fuel use trends, and fuel price fluctuations observed during the preceding six-year interval; an analysis of the operation of the fuel distribution percentage formulas during the preceding six-year interval; and a summary of issues that have arisen since the previous review and potential approaches for resolution of those issues. The first such report shall be submitted to the general assembly no later than January 1, 2020, with subsequent reports developed and submitted by January 1 at least every sixth year thereafter.

2. Except as otherwise provided in this section and in this subchapter, after June 30, 2020, an excise tax of thirty cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

3. An excise tax of seventeen cents is imposed on each gallon of E-85 gasoline, subject to the determination provided in subsection 4.

4. The rate of the excise tax on E-85 gasoline imposed in subsection 3 shall be determined based on the number of gallons of E-85 gasoline that are distributed in this state during the previous calendar year. The department shall determine the actual tax paid for E-85 gasoline for each period beginning January 1 and ending December 31. The amount of the tax paid on E-85 gasoline during the past calendar year shall be compared to the amount of tax on E-85 gasoline that would have been paid using the tax rate for gasoline imposed in subsection 1 or 2 and a difference shall be established. If this difference is equal to or greater than twenty-five thousand dollars, the tax rate for E-85 gasoline for the period beginning July 1 following the end of the determination period shall be the rate in effect as stated in subsection 1 or 2.

5. For the privilege of operating aircraft in this state an excise tax of eight cents per gallon is imposed on the use of all aviation gasoline.

6. *a.* For the privilege of operating motor vehicles or aircraft in this state, there is imposed an excise tax on the use of special fuel in a motor vehicle or aircraft.

(1) Except as otherwise provided in this section and in this subchapter, for the period ending June 30, 2015, and for the period beginning July 1, 2020, and thereafter, the tax rate on special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state is thirty-two and five-tenths cents per gallon.

(2) Except as provided in this section and in this subchapter, for the period beginning July 1, 2015, and ending June 30, 2020, this subparagraph shall apply to the excise tax imposed on each gallon of special fuel for diesel engines of motor vehicles used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of biodiesel blended fuel classified as B-11 or higher that is distributed in this state as expressed as a percentage of the number of gallons of special fuel for diesel engines of motor vehicles distributed in this state, which is referred to as the distribution percentage. The department shall determine the percentage basis for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

(a) If the distribution percentage is not greater than fifty percent, the rate shall be twenty-nine and five-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(b) If the distribution percentage is greater than fifty percent but not greater than fifty-five percent, the rate shall be twenty-nine and eight-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(c) If the distribution percentage is greater than fifty-five percent but not greater than sixty percent, the rate shall be thirty and one-tenth cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(d) If the distribution percentage is greater than sixty percent but not greater than sixty-five percent, the rate shall be thirty and four-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(e) If the distribution percentage is greater than sixty-five percent but not greater than seventy percent, the rate shall be thirty and seven-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(f) If the distribution percentage is greater than seventy percent but not greater than seventy-five percent, the rate shall be thirty-one cents for biodiesel blended fuel classified

as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(g) If the distribution percentage is greater than seventy-five percent but not greater than eighty percent, the rate shall be thirty-one and three-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(h) If the distribution percentage is greater than eighty percent but not greater than eighty-five percent, the rate shall be thirty-one and six-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(i) If the distribution percentage is greater than eighty-five percent but not greater than ninety percent, the rate shall be thirty-one and nine-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(j) If the distribution percentage is greater than ninety percent but not greater than ninety-five percent, the rate shall be thirty-two and two-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(k) If the distribution percentage is greater than ninety-five percent, the rate shall be thirty-two and five-tenths cents for biodiesel blended fuel classified as B-11 or higher and thirty-two and five-tenths cents for special fuel for diesel engines of motor vehicles other than biodiesel blended fuel classified as B-11 or higher.

(3) The rate of tax on special fuel for aircraft is five cents per gallon.

(4) On all other special fuel, unless otherwise specified in this section, the per gallon rate is the same as the motor fuel tax.

b. Indelible dye meeting United States environmental protection agency and internal revenue service regulations must be added to fuel before or upon withdrawal at a terminal or refinery rack for that fuel to be exempt from tax and the dyed fuel may be used only for an exempt purpose.

7. For liquefied petroleum gas used as a special fuel, the rate of tax shall be thirty cents per gallon.

8. For compressed natural gas used as a special fuel, the rate of tax is thirty-one cents per gallon.

9. For liquefied natural gas used as a special fuel, the rate of tax is thirty-two and one-half cents per gallon.

10. For hydrogen used as a special fuel, the rate of tax is sixty-five cents per gallon.

11. *a.* The tax shall be paid by the following:

(1) The supplier, upon the invoiced gross gallonage of all motor fuel or undyed special fuel withdrawn from a terminal for delivery in this state.

(2) Tax shall not be paid when the sale of alcohol occurs within a terminal from an alcohol manufacturer to an Iowa licensed supplier. The tax shall be paid by the Iowa licensed supplier when the invoiced gross gallonage of the alcohol or the alcohol part of ethanol blended gasoline is withdrawn from a terminal for delivery in this state.

(3) The person who owns the fuel at the time it is brought into the state by a restrictive supplier or importer, upon the invoiced gross gallonage of motor fuel or undyed special fuel imported.

(4) The blender on total invoiced gross gallonage of alcohol or other product sold to be blended with gasoline or special fuel.

(5) Any other person who possesses taxable fuel upon which the tax has not been paid to a licensee.

b. The tax shall not be imposed or collected under this subchapter with respect to motor fuel or special fuel sold for export or exported from this state to any other state, territory, or foreign country.

12. Thereafter, except as otherwise provided in this subchapter, the per gallon amount of the tax shall be added to the selling price of every gallon of such motor fuel or undyed special

fuel sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

13. All excise taxes collected under this chapter by a supplier, restrictive supplier, importer, dealer, blender, user, or any individual are deemed to be held in trust for the state of Iowa.

[C27, 31, §4755-b38, 5093-a1; C35, §5093-f3, -f4; C39, §**5093.03, 5093.04;** C46, 50, 54, §324.2, 324.3; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.3; 81 Acts, 2nd Ex, ch 2, §7 – 9; 82 Acts, ch 1170, §3, 4]

83 Acts, ch 150, §1, 2; 84 Acts, ch 1141, §1; 84 Acts, ch 1253, §5; 85 Acts, ch 231, §13, 14; 86 Acts, ch 1116, §2, 3; 88 Acts, ch 1019, §13, 14; 88 Acts, ch 1205, §3; 91 Acts, ch 87, §4; 91 Acts, ch 254, §19, 20

C93, §452A.3

95 Acts, ch 155, §14, 44; 96 Acts, ch 1034, §43; 98 Acts, ch 1108, §1; 99 Acts, ch 151, §52, 89; 2001 Acts, ch 123, §4 – 6; 2001 Acts, ch 150, §24; 2002 Acts, ch 1150, §15, 16; 2004 Acts, ch 1073, §35; 2005 Acts, ch 3, §73; 2005 Acts, ch 150, §83, 84, 86; 2006 Acts, ch 1142, §81; 2007 Acts, ch 215, §113, 114; 2009 Acts, ch 130, §44; 2012 Acts, ch 1021, §79; 2012 Acts, ch 1114, §1 – 3; 2013 Acts, ch 127, §11 – 13; 2014 Acts, ch 1026, §97; 2014 Acts, ch 1032, §3, 4; 2014 Acts, ch 1128, §3, 4, 6; 2015 Acts, ch 2, §5 – 10, 15; 2015 Acts, ch 30, §124; 2018 Acts, ch 1041, §127; 2019 Acts, ch 151, §7, 17

Referred to in §312.2

Motor fuel classifications and standards, see §214A.2

Subsection 10 effective January 1, 2020; 2019 Acts, ch 151, §17

NEW subsection 10 and former subsections 10 – 12 renumbered as 11 – 13

452A.4 Supplier's, restrictive supplier's, importer's, exporter's, dealer's, and user's license.

1. It shall be unlawful for any person to sell motor fuel or undyed special fuel within this state or to otherwise act as a supplier, restrictive supplier, importer, exporter, dealer, or user unless the person holds an uncanceled license issued by the department. To procure a license, a supplier, restrictive supplier, importer, exporter, dealer, or user shall file with the department an application signed under penalty for false certificate setting forth and complying with all of the following:

a. The name under which the licensee will transact business in this state.

b. The location, with street number address, of the principal office or place of business of the licensee within this state.

c. The name and complete residence address of the owner or the names and addresses of the partners, if the licensee is a partnership, or the names and addresses of the principal officers, if the licensee is a corporation or association.

d. A dealer's or user's license shall be required for each separate place of business or location where compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen is delivered or placed into the fuel supply tank of a motor vehicle.

e. An applicant for an exporter's license shall provide verification as required by the department that the applicant has the appropriate license valid in the state or states into which the motor fuel or undyed special fuel will be exported.

2. *a.* The department may deny the issuance of a license to an applicant who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department. If the applicant is a partnership, a license may be denied if a partner owes any delinquent tax, interest, or penalty. If the applicant is a corporation, a license may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest, or penalty of the applicant corporation.

b. The department may deny the issuance of a license if an application for a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state is filed by a person whose license or registration has been canceled for cause at any time under the provisions of this chapter or any prior motor fuel tax law, if the department has reason to believe that the application is not filed in good faith, or if the application is filed by some person as a subterfuge for the real person in interest whose license or registration

has been canceled for cause under the provisions of this chapter or any prior motor fuel tax law. The applicant shall be given fifteen days' notice in writing of the date of the hearing and shall have the right to appear in person or by counsel and present testimony.

3. *a.* The application in proper form having been accepted for filing, and the other conditions and requirements of this section and subchapter IV having been complied with, the department shall issue to the applicant a license to transact business as a supplier, restrictive supplier, importer, exporter, dealer, or user in this state. The license shall remain in full force and effect until canceled as provided in this chapter.

b. The license shall not be assignable and shall be valid only for the licensee in whose name it is issued.

c. The department shall keep and file all applications and bonds and a record of all licensees.

[C31, §5093-c2; C35, §5093-f5, -f6, -f7; C39, §**5093.05 – 5093.07;** C46, 50, 54, §324.5, 324.6, 324.8 – 324.10; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.4]

86 Acts, ch 1007, §10; 89 Acts, ch 251, §4

C93, §452A.4

94 Acts, ch 1165, §35; 95 Acts, ch 155, §15, 44; 2014 Acts, ch 1032, §5; 2018 Acts, ch 1041, §127; 2019 Acts, ch 151, §8, 17

Referred to in §452A.6

2019 amendment to subsection 1, paragraph d effective January 1, 2020; 2019 Acts, ch 151, §17

Subsection 1, paragraph d amended

452A.5 Distribution allowance.

1. A supplier shall retain a distribution allowance of not more than one and six-tenths percent of all gallons of motor fuel and a distribution allowance of not more than seven-tenths percent of all gallons of undyed special fuel removed from the terminal during the reporting period for purposes of tax computation under section 452A.8.

2. The distribution allowance shall be prorated between the supplier and the distributor or dealer as follows:

a. Motor fuel: four-tenths percent retained by the supplier, one and two-tenths percent to the distributor.

b. Undyed special fuel: thirty-five hundredths percent retained by the supplier, thirty-five hundredths percent to the distributor or dealer purchasing directly from a supplier.

3. Gallons exported outside of the state shall not be included in the calculation of the distribution.

[C27, 31, §5093-a3, -a4; C39, §**5093.04, 5093.05;** C46, 50, 54, §324.4, 324.6; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.5]

C93, §452A.5

95 Acts, ch 155, §16, 44; 96 Acts, ch 1066, §3, 21; 2012 Acts, ch 1023, §52

452A.6 Ethanol blended gasoline and other products — blender's license.

1. *a.* A person other than a supplier, restrictive supplier, or importer licensed under this subchapter, who blends gasoline with ethanol as defined in section 214A.1 in order to formulate ethanol blended gasoline, shall obtain a blender's license.

b. A person who blends two or more special fuel products or sells one hundred percent biofuel shall obtain a blender's license.

2. A blender's license shall be obtained by following the procedure under section 452A.4 and the blender's license is subject to the same restrictions as contained in that section.

3. A blender required to obtain a license pursuant to this section shall maintain records as required by section 452A.10 as to motor fuel, ethanol, ethanol blended gasoline, and special fuels.

[C81, §324.6]

92 Acts, ch 1163, §79

C93, §452A.6

95 Acts, ch 155, §17, 44; 2002 Acts, ch 1151, §21; 2006 Acts, ch 1142, §82; 2018 Acts, ch 1041, §127

Referred to in §452A.6A

452A.6A Right of distributors and dealers to blend conventional blendstock for oxygenate blending, gasoline, or diesel fuel using a biofuel.

1. *a.* A dealer or distributor may blend a conventional blendstock for oxygenate blending, gasoline, or diesel fuel using the appropriate biofuel, or sell unblended or blended gasoline or diesel fuel on any premises in this state.

b. Paragraph "*a*" does not apply to the extent that the use of the premises is restricted by federal, state, or local law.

2. A refiner, supplier, terminal operator, or terminal owner who in the ordinary course of business sells or transports a conventional blendstock for oxygenate blending, gasoline unblended or blended with a biofuel, or diesel fuel unblended or blended with a biofuel shall not refuse to sell or transport to a distributor or dealer any conventional blendstock for oxygenate blending, unblended gasoline, or unblended diesel fuel that is at the terminal, based on the distributor's or dealer's intent to use the conventional blendstock for oxygenate blending or to blend the gasoline or diesel fuel with a biofuel.

3. This section shall not be construed to do any of the following:

a. Prohibit a distributor or dealer from purchasing, selling, or transporting a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

b. Affect the blender's license requirements under section 452A.6.

c. Prohibit a dealer or distributor from leaving a terminal with a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

d. Require a nonrefiner biofuel manufacturer to offer or sell a conventional blendstock for oxygenate blending, gasoline that has not been blended with a biofuel, or diesel fuel that has not been blended with a biofuel.

4. A refiner, supplier, terminal operator, or terminal owner who violates this section is subject to a civil penalty of not more than ten thousand dollars per violation. Each day that a violation continues is deemed a separate offense.

2013 Acts, ch 127, §7; 2014 Acts, ch 1092, §96

Legislative intent regarding use of renewable fuels; 2013 Acts, ch 127, §1

452A.7 Foreign suppliers.

The director, upon application, may authorize the collection and reporting of the tax by any supplier not having jurisdictional connections with this state. A foreign supplier shall be issued a license to collect and report the tax and shall be subject to the same regulations and requirements as suppliers having a jurisdictional connection with the state, or other regulations and agreements as prescribed by the director.

95 Acts, ch 155, §18

452A.8 Tax reports — computation and payment of tax — credits.

1. For the purpose of determining the amount of the supplier's, restrictive supplier's, or importer's tax liability, a supplier or restrictive supplier shall file a return not later than the last day of each calendar month and an importer shall file a return semimonthly with the department, signed under penalty for false certification. For an importer for the reporting period from the first day of the month through the fifteenth of the month, the return is due on the last day of the month. For an importer for the reporting period from the sixteenth of the month through the last day of the month, the return is due on the fifteenth day of the following month. The returns shall include the following:

a. A statement of the number of invoiced gallons of motor fuel and undyed special fuel withdrawn from the terminal by the licensee within this state during the preceding calendar month in such detail as determined by the department. This includes on-site blending reports at the terminal.

b. For information purposes only, a supplier, restrictive supplier, or importer shall show the number of invoiced gallons of dyed special fuel withdrawn from the terminal.

c. A statement showing the deductions authorized in this subchapter in such detail and with such supporting evidence as required by the department.

d. Any other information the department may require for the enforcement of this chapter.

2. At the time of filing a return, a supplier or restrictive supplier shall pay to the department the full amount of the fuel tax due for the preceding calendar month. An importer shall pay to the department the full amount of fuel tax due for the preceding semimonthly period. The tax shall be computed as follows:

a. From the total number of invoiced gallons of motor fuel or undyed special fuel withdrawn from the terminal by the licensee during the preceding calendar month or semimonthly period the following deductions shall be made:

(1) The gallonage of motor fuel or undyed special fuel withdrawn from a terminal by a licensee and exported outside Iowa.

(2) For suppliers only, the one and six-tenths percent of the number of gallons of motor fuel or seven-tenths percent of the number of gallons of undyed special fuel of the invoiced gallons of motor fuel or undyed special fuel withdrawn from a terminal within this state during the preceding calendar month.

b. The number of invoiced gallons remaining after the deductions in paragraph *"a"* shall be multiplied by the per gallon fuel tax rate.

c. The tax due under paragraph *"b"* shall be the amount of fuel tax due from the supplier, restrictive supplier, or importer for the preceding reporting period. The director may require by rule that the payment of taxes by suppliers, restrictive suppliers, and importers be made by electronic funds transfer. The director may allow a tax float by rule where the eligible purchaser is not required to pay the tax to the supplier until one business day prior to the date the tax is due. A licensed supplier who is unable to recover the tax from an eligible purchaser is not liable for the tax, upon proper documentation, and may credit the amount of unpaid tax against a later remittance of tax. Under this provision, a supplier does not qualify for a credit if the purchaser did not elect to use the eligible purchaser status, or otherwise does not qualify to be an eligible purchaser. To qualify for the credit, the supplier must notify the department of the uncollectible account no later than ten calendar days after the due date for payment of the tax. If a supplier sells additional motor fuel or undyed special fuel to a delinquent eligible purchaser after notifying the department that the supplier has an uncollectible debt with that eligible purchaser, the limited liability provision does not apply to the additional fuel. The supplier is liable for tax collected from the purchaser.

d. The director may require by rule that reports and returns be filed by electronic transmission.

e. (1) For purposes of this paragraph *"e"*, *"dealer"* or *"user"* means a licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen dealer or user and *"fuel"* means compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen.

(2) The tax for compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen delivered by a licensed dealer for use in this state shall attach at the time of the delivery and shall be collected by the dealer from the purchaser and paid to the department as provided in this chapter. The tax, with respect to compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen acquired by a purchaser in any manner other than by delivery by a licensed dealer into a fuel supply tank of a motor vehicle, attaches at the time of the use of the fuel and shall be paid over to the department by the purchaser as provided in this chapter.

(3) The department shall adopt rules governing the dispensing of compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen by licensed dealers and licensed users. The director may require by rule that reports and returns be filed by electronic transmission. The department shall require that all pumps located at dealer locations and user locations through which liquefied petroleum gas can be dispensed shall be metered, inspected, tested for accuracy, and sealed and licensed by the department of agriculture and land stewardship, and that fuel delivered into the fuel supply tank of any motor vehicle shall be dispensed only through tested metered pumps and may be sold without temperature correction or corrected to a temperature of 60 degrees Fahrenheit. If the metered gallonage is to be temperature-corrected, only a temperature-compensated meter shall be used. Natural gas used as fuel shall be delivered into compressing equipment

through sealed meters certified for accuracy by the department of agriculture and land stewardship. Hydrogen used as fuel shall be delivered into the fuel supply tank of any motor vehicle through sealed meters certified for accuracy by the department of agriculture and land stewardship. The department of agriculture and land stewardship may adopt rules pursuant to chapter 17A relating to the certification and accuracy of meters used to deliver hydrogen.

(4) (a) All gallonage which is not for highway use, dispensed through metered pumps as licensed under this section on which fuel tax is not collected, must be substantiated by exemption certificates as provided by the department or by valid exemption certificates provided by the dealers, signed by the purchaser, and retained by the dealer. A *"valid exemption certificate provided by a dealer"* is an exemption certificate which is in the form prescribed by the director to assist a dealer to properly account for fuel dispensed for which tax is not collected and which is complete and correct according to the requirements of the director.

(b) For the privilege of purchasing liquefied petroleum gas, dispensed through licensed metered pumps, on a basis exempt from the tax, the purchaser shall sign exemption certificates for the gallonage claimed which is not for highway use.

(c) The department shall disallow all sales of gallonage which is not for highway use unless proof is established by the certificate. Exemption certificates shall be retained by the dealer for a period of three years.

(5) (a) For the purpose of determining the amount of liability for fuel tax, each dealer and each user shall file with the department not later than the last day of each calendar month a monthly tax return certified under penalties for false certification. The return shall show, with reference to each location at which fuel is delivered or placed by the dealer or user into a fuel supply tank of any motor vehicle during the next preceding calendar month, information as required by the department.

(b) The amount of tax due shall be computed by multiplying the appropriate tax rate per gallon by the number of gallons of fuel delivered or placed by the dealer or user into supply tanks of motor vehicles.

(c) The return shall be accompanied by remittance in the amount of the tax due for the month in which the fuel was placed into the supply tanks of motor vehicles.

3. For the purpose of determining the amount of the tax liability on alcohol blended to produce ethanol blended gasoline or a blend of special fuel products, each licensed blender shall, not later than the last day of each month following the month in which the blending is done, file with the department a monthly return, signed under penalty for false certificate, containing information required by rules adopted by the director. The director may require by rule that reports and returns be filed by electronic transmission.

4. A person who possesses fuel or uses fuel in a motor vehicle upon which no tax has been paid by a licensee in this state is subject to reporting and paying the applicable tax. The director may require by rule that reports and returns be filed by electronic transmission.

[C27, 31, §5093-a5, -b1; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.13 – 324.15, 324.17, 324.29; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.8; 81 Acts, 2nd Ex, ch 2, §10, 11]

91 Acts, ch 87, §5, 6

C93, §452A.8

94 Acts, ch 1165, §36; 95 Acts, ch 155, §19, 44; 96 Acts, ch 1066, §4 – 7, 21; 99 Acts, ch 151, §53 – 56, 89; 2002 Acts, ch 1151, §22; 2005 Acts, ch 140, §62, 63; 2012 Acts, ch 1023, §53; 2014 Acts, ch 1032, §6; 2015 Acts, ch 30, §125 – 128; 2018 Acts, ch 1041, §127; 2019 Acts, ch 151, §9, 17

Referred to in §452A.5, 452A.21, 452A.54

2019 amendment to subsection 2, paragraph e, subparagraphs (1) – (3) effective January 1, 2020; 2019 Acts, ch 151, §17

Subsection 2, paragraph e, subparagraphs (1) – (3) amended

452A.9 Returns from persons not licensed as suppliers, restrictive suppliers, importers, or blenders.

Every person other than a licensed supplier, restrictive supplier, importer, or blender, who purchases, brings into this state, or otherwise acquires within this state motor fuel or undyed special fuel, not otherwise exempted, which the person has knowingly not paid or incurred

liability to pay either to a licensee or to a dealer the motor fuel or special fuel tax, shall be subject to the provisions of this subchapter that apply to suppliers, restrictive suppliers, importers, and blenders of motor fuel or undyed special fuel and shall file the same returns and make the same tax payments and be subject to the same penalties for delinquent filing or nonfiling or delinquent payment or nonpayment as apply to suppliers, restrictive suppliers, importers, and blenders.

[C31, §5093-c2; C35, §5093-f6; C39, §**5093.06;** C46, 50, 54, §324.8, 324.9; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.9]

C93, §452A.9

95 Acts, ch 155, §20, 44; 99 Acts, ch 151, §57, 89; 2002 Acts, ch 1151, §23; 2018 Acts, ch 1041, §127

452A.10 Required records.

1. *a.* A motor fuel or special fuel supplier, restrictive supplier, importer, exporter, blender, dealer, user, common carrier, contract carrier, terminal, or nonterminal storage facility shall maintain, for a period of three years, records of all transactions by which the supplier, restrictive supplier, or importer withdraws from a terminal or a nonterminal storage facility within this state or imports into this state motor fuel or undyed special fuel together with invoices, bills of lading, and other pertinent records and papers as required by the department.

b. If in the normal conduct of a supplier's, restrictive supplier's, importer's, exporter's, blender's, dealer's, user's, common carrier's, contract carrier's, terminal's, or nonterminal storage facility's business the records are maintained and kept at an office outside this state, the records shall be made available for audit and examination by the department at the office outside this state, but the audit and examination shall be without expense to this state.

2. Each distributor handling motor fuel or special fuel in this state shall maintain for a period of three years records of all motor fuel or undyed special fuel purchased or otherwise acquired by the distributor, together with delivery tickets, invoices, and bills of lading, and any other records required by the department.

3. The department, after an audit and examination of records required to be maintained under this section, may authorize their disposal upon the written request of the supplier, restrictive supplier, importer, exporter, blender, dealer, user, carrier, terminal, nonterminal storage facility, or distributor.

[C27, 31, §5093-a4, -a5; C35, §5093-f5, -f8; C39, §**5093.05, 5093.08;** C46, 50, 54, §324.7, 324.11; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.10]

C93, §452A.10

95 Acts, ch 155, §21, 44; 2005 Acts, ch 140, §64; 2016 Acts, ch 1011, §71

Referred to in §452A.6

452A.11 Reserved.

452A.12 Loading and delivery evidence on transportation equipment.

1. A serially numbered manifest shall be carried on every vehicle, except small tank wagons, while in use in transportation service, on which shall be entered the following information as to the cargo of motor fuel or special fuel being moved in the vehicle: The date and place of loading, the place to be unloaded, the person for whom it is to be delivered, the nature and kind of product, the amount of product, and other information required by the department. The manifest for small tank wagons shall be retained at the home office. The manifest covering each load transported, upon consummation of the delivery, shall be completed by showing the date and place of actual delivery and the person to whom actually delivered and shall be kept as a permanent record for a period of three years. However, the record of the manifest of past cargoes need not be carried on the conveyance but shall be preserved by the carrier for inspection by the department. A carrier subject to this subsection when distributing for a licensee may with the approval of the department substitute the loading and delivery evidence required in subsection 2 for the manifest.

2. A person while transporting motor fuel or undyed special fuel from a refinery or marine

or pipeline terminal in this state or from a point outside this state over the highways of this state in service other than that under subsection 1 shall carry in the vehicle a loading invoice showing the name and address of the seller or consignor, the date and place of loading, and the kind and quantity of motor fuel or special fuel loaded, together with invoices showing the kind and quantity of each delivery and the name and address of each purchaser or consignee. An invoice carried pursuant to this subsection for ethanol blended gasoline or biodiesel blended fuel shall state its designation as provided in section 214A.2.

[C35, §5093-f19; C39, §**5093.19;** C46, 50, 54, §324.34, 324.35; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.12]

84 Acts, ch 1174, §1

C93, §452A.12

95 Acts, ch 155, §22, 44; 2009 Acts, ch 179, §140

452A.13 Evidence produced upon request. Repealed by 95 Acts, ch 155, §43, 44.

452A.14 Reserved.

452A.15 Transportation reports — refinery and pipeline and marine terminal reports.

1. *a.* Every railroad and common carrier or contract carrier transporting motor fuel or special fuel either in interstate or intrastate commerce within this state and every person transporting motor fuel or special fuel by whatever manner into this state shall, subject to penalties for false certificate, report to the department all deliveries of motor fuel or special fuel to points within this state other than refineries or marine or pipeline terminals. If any supplier, restrictive supplier, importer, blender, or distributor is also engaged in the transportation of motor fuel or special fuel for others, the supplier, restrictive supplier, importer, blender, or distributor shall make the same reports as required of common carriers and contract carriers.

b. The report shall cover monthly periods and shall show as to each delivery:

(1) The name and address of the person to whom delivery was actually made.

(2) The name and address of the originally named consignee, if delivered to any other than the originally named consignee.

(3) The point of origin, the point of delivery, and the date of delivery.

(4) The number and initials of each tank car and the number of gallons contained in the tank car, if shipped by rail.

(5) The name of the boat, barge, or vessel, and the number of gallons contained in the boat, barge, or vessel, if shipped by water.

(6) The registration number of each tank truck and the number of gallons contained in the tank truck, if transported by motor truck.

(7) The manner, if delivered by other means, in which the delivery is made.

(8) Additional information relative to shipments of motor fuel or special fuel as the department may require.

c. If a person required under this section to file transportation reports is a licensee under this subchapter and if the information required in the transportation report is contained in any other report rendered by the person under this subchapter, a separate transportation report of that information shall not be required.

2. A person operating storage facilities at a refinery or at a terminal in this state shall make a monthly accounting to the department of all motor fuel, alcohol, and undyed special fuel withdrawn from the refinery and all motor fuel, alcohol, and undyed special fuel delivered into, withdrawn from, and on hand in the refinery or terminal.

3. Persons operating storage facilities at a nonterminal location shall file a monthly report with the department accounting for all motor fuel, alcohol, and special fuel that is delivered into, stored within, withdrawn from, or sold from the storage facility.

4. The reports required in this section shall be for information purposes only and the department may in its discretion waive the filing of any of these reports not necessary for proper administration of this subchapter. The reports required in this section shall be certified under penalty for false certificate and filed with the department within the time allowed for

filing of suppliers' and restrictive suppliers' returns of motor fuel or special fuel withdrawn from a terminal within this state or imported into this state.

5. The director may impose a civil penalty against any person who fails to file the reports or keep the records required under this section. The penalty shall be one hundred dollars for the first violation and shall increase by one hundred dollars for each additional violation occurring in the calendar year in which the first violation occurred.

6. The director may require by rule that reports be filed by electronic transmission.

[C27, 31, §5093-a6, -b1; C35, §5093-f25, -f26, -f27; C39, §**5093.25 – 5093.27;** C46, 50, 54, §324.46 – 324.48; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.15]

C93, §452A.15

95 Acts, ch 155, §23; 99 Acts, ch 151, §58, 89; 2002 Acts, ch 1150, §17; 2002 Acts, ch 1151, §24 – 26; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127

452A.16 Credit or refund to licensee — fuel used other than in watercraft, aircraft, or motor vehicles — casualty losses. Repealed by 95 Acts, ch 155, §43, 44.

452A.17 Refunds.

1. A person who uses motor fuel or undyed special fuel for any of the nontaxable purposes listed in this subsection, and who has paid the motor fuel or special fuel tax either directly to the department or by having the tax added to the price of the fuel, and who has a refund permit, upon presentation to and approval by the department of a claim for refund, shall be reimbursed and repaid the amount of the tax which the claimant has paid on the gallonage so used, except that the amount of a refund payable under this subchapter may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

a. The refund is allowable for motor fuel or undyed special fuel sold directly to and used for the following:

(1) The United States or any agency or instrumentality of the United States or where collection of the tax would be prohibited by the Constitution of the United States or the laws of the United States or by the Constitution of the State of Iowa.

(2) An Iowa urban transit system, or a company operating a taxicab service under contract with an Iowa urban transit system, which is used for a purpose specified in section 452A.57, subsection 6.

(3) A regional transit system, the state, any of its agencies, any political subdivision of the state, or any benefited fire district which is used for a purpose specified in section 452A.57, subsection 11, or for public purposes, including fuel sold for the transportation of pupils of approved public and nonpublic schools by a carrier who contracts with the public school under section 285.5.

(4) Fuel used in unlicensed vehicles, stationary engines, implements used in agricultural production, and machinery and equipment used for nonhighway purposes.

(5) Fuel used for producing denatured alcohol.

(6) Fuel used for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, exports by distributors, and blending errors for special fuel. The department shall adopt rules setting forth specific requirements relating to refunds for idle time, power takeoffs, reefer units, pumping credits, and transport diversions, fuel lost through casualty, and blending errors for special fuel.

(7) A bona fide commercial fisher, licensed and operating under an owner's certificate for commercial gear issued pursuant to section 482.4.

(8) For motor fuel or undyed special fuel placed in motor vehicles and used, other than on a public highway, in the extraction and processing of natural deposits, without regard to whether the motor vehicle was registered under section 321.18. An applicant under this subparagraph shall maintain adequate records for a period of three years beyond the date of the claim.

(9) Undyed special fuel used in watercraft.

(10) Racing fuel.

b. A claim for refund is subject to the following conditions:

(1) The claim shall be on a form prescribed by the department and be certified by the claimant under penalty for false certificate.

(2) The claim shall include proof as prescribed by the department showing the purchase of the motor fuel or undyed special fuel on which a refund is claimed.

(3) An invoice shall not be acceptable in support of a claim for refund unless it is a separate serially numbered invoice covering no more than one purchase of motor fuel or undyed special fuel, prepared by the seller on a form approved by the department which will prevent erasure or alteration and unless it is legibly written with no corrections or erasures and shows the date of sale, the name and address of the seller and of the purchaser, the kind of fuel, the gallonage in figures, the per gallon price of the motor fuel or undyed special fuel, the total purchase price including the Iowa motor fuel or undyed special fuel tax and that the total purchase price including tax has been paid. However, with respect to refund invoices made on a billing machine, the department may waive any of the requirements of this subparagraph.

(4) The claim shall state the gallonage of motor fuel that was used or will be used by the claimant other than in aircraft, watercraft, or to propel motor vehicles and the gallonage of undyed special fuel that was or will be used by the claimant other than in aircraft or to propel motor vehicles, the manner in which the motor fuel or undyed special fuel was used or will be used, and the equipment in which it was used or will be used.

(5) The claim shall state whether the claimant used fuel for aircraft, watercraft, or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the motor fuel on which the refund is claimed or whether the claimant used fuel for aircraft or to propel motor vehicles from the same tanks or receptacles in which the claimant kept the undyed special fuel on which the refund is claimed.

(6) If an original invoice is lost or destroyed the department may in its discretion accept a copy identified and certified by the seller as being a true copy of the original.

(7) Claim shall be made by and the amount of the refund shall be paid to the person who purchased the motor fuel or undyed special fuel as shown in the supporting invoice unless that person designates another person as an agent for purposes of filing and receiving the refund for idle time, power takeoff, reefer units, pumping credits, and transport diversions. A governmental agency may be designated as an agent for another governmental agency for purposes of filing and receiving the refund under this section.

(8) In order to verify the validity of a claim for refund the department shall have the right to require the claimant to furnish such additional proof of validity as the department may determine and to examine the books and records of the claimant. Failure of a claimant to furnish the claimant's books and records for examination shall constitute a waiver of all rights to refund related to the transaction in question.

2. In lieu of the refund provided in this section, a person may receive an income tax credit as provided in chapter 422, division IX, but only as to motor fuel not used in motor vehicles, aircraft, or watercraft or as to undyed special fuel not used in motor vehicles or aircraft.

3. *a.* A claim for refund shall not be allowed unless the claimant has accumulated sixty dollars in credits for one calendar year. A claim for refund may be filed anytime the sixty dollar minimum has been met within the calendar year. If the sixty dollar minimum has not been met in the calendar year, the credit shall be claimed on the claimant's income tax return unless the taxpayer is not required to file an income tax return in which case a refund shall be allowed. Once the sixty dollar minimum has been met, the claim for refund must be filed within three years following the end of the month in which the earliest invoice is dated.

b. A refund shall not be paid with respect to any motor fuel taken out of this state in supply tanks of watercraft, aircraft, or motor vehicles or with respect to any undyed special fuel taken out of this state in supply tanks of aircraft or motor vehicles.

[C27, 31, §5093-a8; C35, §5093-f29, -f30, -f36; C39, §**5093.29, 5093.30, 5093.36;** C46, 50, 54, §324.50, 324.52 – 324.57, 324.64; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.17; 82 Acts, ch 1176, §1]

86 Acts, ch 1141, §18; 88 Acts, ch 1205, §5, 6; 89 Acts, ch 251, §5

C93, §452A.17
95 Acts, ch 155, §24, 44; 96 Acts, ch 1066, §8 – 11, 21; 97 Acts, ch 158, §42, 43, 53; 99 Acts, ch 151, §59 – 63, 89; 2001 Acts, ch 150, §25; 2002 Acts, ch 1150, §18; 2003 Acts, ch 50, §1; 2005 Acts, ch 8, §43; 2009 Acts, ch 144, §13; 2018 Acts, ch 1041, §127
Referred to in §422.110, 452A.18, 452A.21, 452A.65, 452A.84
See §452A.81

452A.18 Refund permit.
A person shall not claim a refund under section 452A.17 or section 452A.21 until the person has obtained a refund permit from the department. A special permit shall be obtained by an applicant claiming a refund under this chapter for motor fuel used to blend ethanol blended gasoline. Application for a refund permit shall be made to the department, shall be certified by the applicant under penalty for false certificate, and shall contain among other things, the name, address, and occupation of the applicant, the nature of the applicant's business, and a sufficient description for identification of the machines and equipment in which the motor fuel or undyed special fuel is to be used. Each permit shall bear a separate number and each claim for refund shall bear the number of the permit under which it is made. The department shall keep a permanent record of all permits issued and a cumulative record of the amount of refund claimed and paid under each. A refund permit shall continue in effect until it is revoked or becomes invalid.
[C27, 31, §5093-a8; C35, §5093-f29, -f30; C39, §**5093.29, 5093.30;** C46, 50, 54, §324.52, 324.57; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.18]
86 Acts, ch 1241, §6; 88 Acts, ch 1205, §7; 91 Acts, ch 87, §7
C93, §452A.18
95 Acts, ch 155, §25, 44
Referred to in §422.110, 452A.19, 452A.21

452A.19 Revocation of refund permit.
1. Any refund permit issued under this chapter may be revoked by the department for any of the following violations, but only after the holder of the permit has been given reasonable notice of the intention to revoke the permit and reasonable opportunity to be heard:
a. Using in support of a refund claim a false or altered invoice.
b. Making a false statement in a claim for refund or in response to an investigation by the department of a claim for refund.
c. Refusal to submit the holder's books and records for examination by the department.
2. A person whose refund permit is revoked for cause may not obtain another refund permit for a period of one year after the revocation. A refund permit under which a refund is not claimed for a period of three years or a refund permit whose holder has moved from the county in which the holder resided at the time of application for the permit is invalid subject to reinstatement or issuance of a new permit upon application as provided in section 452A.18.
[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f22, -f31; C39, §**5093.22, 5093.31;** C46, 50, 54, §324.43, 324.58, 324.59; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.19]
86 Acts, ch 1241, §7
C93, §452A.19
2002 Acts, ch 1150, §19; 2011 Acts, ch 25, §143
Referred to in §452A.74

452A.20 Posting price and discounts. Repealed by 95 Acts, ch 155, §43, 44.

452A.21 Refund — credit.
1. Persons not licensed under this subchapter who blend motor fuel and alcohol to produce ethanol blended gasoline may file for a refund for the difference between taxes paid on the motor fuel purchased to produce ethanol blended gasoline and the tax due on the ethanol blended gasoline blended. If, during any month, a person licensed under this subchapter uses tax paid motor fuel to blend ethanol blended gasoline and the refund otherwise due under this section is greater than the licensee's total tax liability for that

month, the licensee is entitled to a credit. The claim for credit shall be filed as part of the return required by section 452A.8.

2. In order to obtain the refund established by this section, the person shall do all of the following:

a. Obtain a blender's permit as provided in section 452A.18.

b. File a refund claim containing the information as required by the department and certified by the claimant under penalty for false certificate.

c. Retain invoices meeting the requirements of section 452A.17, subsection 1, paragraph "*b*", subparagraph (3), for the motor fuel purchased.

d. Retain invoices for the purchase of alcohol.

3. A refund shall not be issued unless the claim is filed within three years following the end of the month during which the ethanol blended gasoline was actually blended. An income tax credit is not allowed under this section.

[C81, §324.21]

91 Acts, ch 87, §8, 9

C93, §452A.21

95 Acts, ch 155, §26, 44; 96 Acts, ch 1066, §12, 21; 99 Acts, ch 151, §64, 65, 89; 2002 Acts, ch 1150, §20; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127

Referred to in §452A.18, 452A.65

452A.22 Tax collected on exempt fuel.

If an amount of tax represented by a licensee to a purchaser as constituting tax due is computed upon gallonage that is not taxable or the amount represented is in excess of the actual amount of tax due and the amount represented is actually paid by the purchaser to the licensee, the excess amount of tax paid shall be returned to the purchaser by the licensee. If the licensee fails to return the excess tax paid to the purchaser, the amount which the purchaser has paid to the licensee shall be remitted by the licensee to the department.

99 Acts, ch 151, §66, 89

452A.23 through 452A.30 Reserved.

SUBCHAPTER II

MOTOR FUEL GALLONAGE — FLEXIBLE FUEL VEHICLES

452A.31 Special terms.

For purposes of this subchapter, all of the following shall apply:

1. A determination period is any twelve-month period beginning on January 1 and ending on December 31.

2. *a.* A retail dealer's total gasoline gallonage is the total number of gallons of gasoline which the retail dealer sells and dispenses from all motor fuel pumps operated by the retail dealer in this state during a twelve-month period beginning January 1 and ending December 31. The retail dealer's total gasoline gallonage is divided into the following classifications:

(1) The total ethanol blended gasoline gallonage which is the retail dealer's total number of gallons of ethanol blended gasoline and which includes all of the following subclassifications:

(a) The total E-xx gasoline gallonage which is the total number of gallons of ethanol blended gasoline other than E-85 gasoline.

(b) The total E-85 gasoline gallonage which is the total number of gallons of E-85 gasoline.

(2) The total nonblended gasoline gallonage which is the total number of gallons of nonblended ethanol gasoline.

b. A retail dealer's total ethanol gallonage is the total number of gallons of ethanol which is a component of ethanol blended gasoline which the retail dealer sells and dispenses from motor fuel pumps as provided in paragraph "*a*" during a twelve-month period beginning January 1 and ending December 31.

3. *a.* A retail dealer's total diesel fuel gallonage is the total number of gallons of diesel fuel which the retail dealer sells and dispenses from all motor fuel pumps operated by the retail dealer in this state during a twelve-month period beginning January 1 and ending December 31. The retail dealer's total diesel fuel gallonage is divided into the following classifications:

(1) The total biodiesel blended fuel gallonage which is the retail dealer's total number of gallons of biodiesel blended fuel.

(2) The total nonblended diesel fuel gallonage which is the total number of gallons of diesel fuel which is not biodiesel or biodiesel blended fuel.

b. A retail dealer's total biodiesel gallonage is the total number of gallons of biodiesel which may or may not be a component of biodiesel blended fuel, and which the retail dealer sells and dispenses from motor fuel pumps as provided in paragraph "*a*" during a twelve-month period beginning January 1 and ending December 31.

4. *a.* The aggregate gasoline gallonage is the total number of gallons of gasoline which all retail dealers sell and dispense from all motor fuel pumps operated by the retail dealers in this state during a twelve-month period beginning January 1 and ending December 31. The aggregate gasoline gallonage is divided into the following classifications:

(1) The aggregate ethanol blended gasoline gallonage which is the aggregate total number of gallons of ethanol blended gasoline and which includes all of the following subclassifications:

(a) The aggregate E-xx gasoline gallonage which is the aggregate total number of gallons of ethanol blended gasoline other than E-85 gasoline.

(b) The aggregate E-85 gasoline gallonage which is the aggregate total number of gallons of E-85 gasoline.

(2) The aggregate nonblended gasoline gallonage, which is the aggregate number of gallons of nonblended ethanol gasoline.

b. The aggregate ethanol gallonage is the total number of gallons of ethanol which is a component of ethanol blended gasoline which all retail dealers sell and dispense from motor fuel pumps as provided in paragraph "*a*" during a twelve-month period beginning January 1 and ending December 31.

5. *a.* The aggregate diesel fuel gallonage is the total number of gallons of diesel fuel which all retail dealers sell and dispense from all motor fuel pumps operated by the retail dealers in this state during a twelve-month period beginning January 1 and ending December 31. The aggregate diesel fuel gallonage is divided into the following classifications:

(1) The aggregate biodiesel blended fuel gallonage which is the aggregate number of gallons of biodiesel blended fuel.

(2) The aggregate nonblended diesel fuel gallonage which is the aggregate number of gallons of diesel fuel which is not biodiesel or biodiesel blended fuel.

b. The aggregate biodiesel gallonage is the total number of gallons of biodiesel which may or may not be a component of biodiesel blended fuel, and which all retail dealers sell and dispense from motor fuel pumps as provided in paragraph "*a*" during a twelve-month period beginning January 1 and ending December 31.

6. *a.* The aggregate ethanol distribution percentage is the aggregate ethanol gallonage expressed as a percentage of the aggregate gasoline gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

b. The aggregate per gallon distribution percentage is the aggregate ethanol blended gasoline gallonage expressed as a percentage of the aggregate gasoline gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

7. *a.* The aggregate biodiesel distribution percentage is the aggregate biodiesel gallonage expressed as a percentage of the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

b. The aggregate per gallon distribution percentage is the aggregate biodiesel blended fuel gallonage expressed as a percentage of the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

8. The aggregate biofuel distribution percentage is the sum of the aggregate ethanol gallonage plus the aggregate biodiesel gallonage expressed as a percentage of the sum of

the aggregate gasoline gallonage plus the aggregate diesel fuel gallonage calculated for a twelve-month period beginning January 1 and ending December 31.

2006 Acts, ch 1142, §54; 2007 Acts, ch 22, §78; 2018 Acts, ch 1041, §127

Referred to in §422.11N, 422.11O, 422.11P, 422.11Y, 452A.32, 452A.33

452A.32 Schedule for averaging ethanol content in E-85 gasoline.

The department shall establish a schedule listing the average amount of ethanol contained in E-85 gasoline as defined in section 214A.1, for use by a retail dealer in calculating the retail dealer's total ethanol gallonage, as provided in section 452A.31. In establishing the schedule, the department shall assume that a retail dealer begins selling and dispensing E-85 gasoline from a motor fuel pump on the first day of a month and ceases selling and distributing E-85 gasoline on the last day of a month.

2006 Acts, ch 1142, §55

Referred to in §422.11O

452A.33 Reporting requirements.

1. *a.* Each retail dealer shall report its total motor fuel gallonage for a determination period as follows:

(1) Its total gasoline gallonage and its total ethanol gallonage, including for each classification and subclassification as provided in section 452A.31.

(2) Its total diesel fuel gallonage and its total biodiesel gallonage, including for each classification and subclassification as provided in section 452A.31.

b. The report shall include information required in paragraph "*a*" on a company-wide and site-by-site basis, as required by the department.

(1) The information submitted on a company-wide basis shall include the total motor fuel gallonage, including for each classification and subclassification, sold and dispensed by the retail dealer as provided in paragraph "*a*" for all retail motor fuel sites from which the retail dealer sells and dispenses motor fuel.

(2) The information submitted on a site-by-site basis shall include the total motor fuel gallonage, including for each classification and subclassification, sold and dispensed by the retail dealer as provided in paragraph "*a*" separately for each retail motor fuel site from which the retail dealer sells and dispenses motor fuel.

c. The retail dealer shall prepare and submit the report in a manner and according to procedures required by the department. The department may require that retail dealers report to the department on an annual, quarterly, or monthly basis.

d. The information included in a report submitted by a retail dealer is deemed to be a trade secret, protected as a confidential record pursuant to section 22.7.

2. On or before April 1 the department shall deliver a report to the governor and the legislative services agency. The report shall compile information reported by retail dealers to the department as provided in this section and shall at least include all of the following:

a. (1) The aggregate gasoline gallonage for the previous determination period, including for all classifications and subclassifications as provided in section 452A.31.

(2) The aggregate diesel fuel gallonage for the previous determination period, including for all classifications and subclassifications as provided in section 452A.31.

b. (1) The aggregate ethanol distribution percentage for the previous determination period.

(2) The aggregate biodiesel distribution percentage for the previous determination period.

c. The report shall not provide information regarding motor fuel or biofuel which is sold and dispensed by an individual retail dealer or at a particular retail motor fuel site. The report shall not include a trade secret protected as a confidential record pursuant to section 22.7.

3. On or before February 1 of each year, the state department of transportation shall deliver a report to the governor and the legislative services agency providing information regarding flexible fuel vehicles registered in this state during the previous determination period. The information shall state all of the following:

a. The aggregate number of flexible fuel vehicles.

b. Of the aggregate number of flexible fuel vehicles, all of the following:

(1) The number of flexible fuel vehicles according to the year of manufacture.

(2) The number of passenger vehicles and the number of passenger vehicles according to the year of manufacture.

(3) The number of light pickup trucks and the number of light pickup trucks according to the year of manufacture.

2006 Acts, ch 1142, §56; 2008 Acts, ch 1184, §63; 2011 Acts, ch 113, §10, 13, 14
Referred to in §422.11N

452A.34 through 452A.39 Reserved.

452A.40 through 452A.44 Reserved.
For future text of these sections, effective July 1, 2023, see 2019 Acts, ch 151, §23 – 27, 46

452A.45 through 452A.49 Reserved.

SUBCHAPTER III

MOTOR FUEL AND SPECIAL FUEL USE TAX FOR INTERSTATE MOTOR VEHICLE OPERATIONS

Referred to in §452A.57, 452A.58, 452A.65, 452A.76

452A.50 Short title.

This subchapter and applicable provisions of subchapter IV of this chapter and any amendments to either shall be known and may be cited as the *"Interstate Fuel Use Tax Law,"* and as so constituted is hereinafter referred to as this subchapter.

[C35, §5093-f40; C39, §**5093.39;** C46, 50, 54, §324.66; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.50]

C93, §452A.50

2018 Acts, ch 1041, §127

452A.51 Purpose.

The purpose of this subchapter is to provide an additional method of collecting fuel taxes from interstate motor vehicle operators commensurate with their operations on Iowa highways; and to permit the state department of transportation to suspend this collection as to transportation entering Iowa from any other state where it appears that Iowa highway fuel tax revenue and interstate highway transportation moving out of Iowa will not be unduly prejudiced thereby. Further, all motor vehicle operators from jurisdictions not participating in the international fuel tax agreement are required to comply with this chapter using the guidelines from the international fuel tax agreement for Iowa fuel tax compliance reporting purposes, penalty, interest, refunds, and credential display.

[C27, 31, §4755-b38, 5093-a1; C35, §5093-f3; C39, §**5093.03;** C46, 50, 54, §324.2; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.51]

C93, §452A.51

97 Acts, ch 108, §42; 2018 Acts, ch 1041, §127

452A.52 Fuels imported in supply tanks of motor vehicles.

1. No person shall bring into this state in the fuel supply tanks of a commercial motor vehicle, or any other container, regardless of whether or not the supply tanks are connected to the motor of the vehicle, any motor fuel or special fuel to be used in the operation of the vehicle in this state unless that person has paid or made arrangements in advance with the state department of transportation for payment of Iowa fuel taxes on the gallonage consumed in operating the vehicle in this state; except that this subchapter shall not apply to a private passenger automobile.

2. Any person who is unable to display either of the permits or the license provided in section 452A.53 and brings into the state in the fuel supply tanks of a commercial motor vehicle more than thirty gallons of motor fuel or special fuel in violation of subsection 1

commits a simple misdemeanor punishable as a scheduled violation under section 805.8A, subsection 13, paragraph "*c*".

[C35, §5093-f19; C39, §**5093.19;** C46, 50, 54, §324.34, 324.37; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.52]

C93, §452A.52

98 Acts, ch 1100, §61; 2001 Acts, ch 176, §57, 59; 2018 Acts, ch 1041, §127

Referred to in §452A.53, 805.8A(13)(c)

For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §28, 46

452A.53 Permit or license.

1. The advance arrangements referred to in section 452A.52 shall include the procuring of a permanent international fuel tax agreement permit or license or single-trip interstate permit.

2. Persons choosing not to make advance arrangements with the state department of transportation by procuring a permit or license are not relieved of their responsibility to purchase motor fuel and special fuel commensurate with their use of the state's highway system. When there is reasonable cause to believe that there is evasion of the fuel tax on commercial motor vehicles, the state department of transportation may audit persons not holding a permit or license. Audits shall be conducted pursuant to section 452A.55 and in accordance with international fuel tax agreement guidelines. The state department of transportation shall collect all taxes due and refund any overpayment.

3. A permanent international fuel tax agreement permit or license may be obtained upon application to the state department of transportation. A fee of ten dollars shall be charged for each permit or license issued. The holder of a permanent permit or license shall have the privilege of bringing into this state in the fuel supply tanks of commercial motor vehicles any amount of motor fuel or special fuel to be used in the operation of the vehicles and for that privilege shall pay Iowa motor fuel or special fuel taxes as provided in section 452A.54.

4. A single-trip interstate permit may be obtained from the state department of transportation. A fee of twenty dollars shall be charged for each individual single-trip interstate permit issued. A single-trip interstate permit is subject to the following provisions and limitations:

a. The permit shall be issued and be valid for seventy-two consecutive hours, except in emergencies, or until the time of leaving the state, whichever first occurs.

b. The permit shall cover only one commercial motor vehicle and is not transferable.

c. Single-trip interstate fuel permits may be made available from sources other than indicated in this section at the discretion of the state department of transportation.

5. Each vehicle operated into or through Iowa in interstate operations using motor fuel or special fuel acquired in any other state shall carry in or on the vehicle a duplicate or evidence of the permit or license required in this section. A fee not to exceed fifty cents shall be charged for each duplicate or other evidence of a permit or license issued.

[C35, §5093-f19, -f20; C39, §**5093.19, 5093.20;** C46, 50, 54, §324.38; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.53]

84 Acts, ch 1174, §2

C93, §452A.53

97 Acts, ch 108, §43; 98 Acts, ch 1100, §62; 2008 Acts, ch 1032, §54

Referred to in §452A.52

For future amendments to subsections 2, 3, and 5, effective July 1, 2023, see 2019 Acts, ch 151, §29, 46

452A.54 Fuel tax computation — refund — reporting and payment.

1. Fuel tax liability under this subchapter shall be computed on the total number of gallons of each kind of motor fuel and special fuel consumed in the operation in Iowa by commercial motor vehicles subject to this subchapter at the same rate for each kind of fuel as would be applicable if taxed under subchapter I of this chapter. A refund against the fuel tax liability so computed shall be allowed, on excess Iowa motor fuel purchased, in the amount of fuel tax paid at the prevailing rate per gallon set out under subchapter I of this chapter on motor fuel and special fuel consumed by commercial motor vehicles, the operation of which is subject to this subchapter.

2. Notwithstanding any provision of this chapter to the contrary, except as provided in this section, the holder of a permanent international fuel tax agreement permit or license may make application to the state department of transportation for a refund, not later than the last day of the third month following the quarter in which the overpayment of Iowa fuel tax paid on excess purchases of motor fuel or special fuel was reported as provided in section 452A.8, and which application is supported by such proof as the state department of transportation may require. The state department of transportation shall refund Iowa fuel tax paid on motor fuel or special fuel purchased in excess of the amount consumed by such commercial motor vehicles in their operation on the highways of this state.

3. Application for a refund of fuel tax under this subchapter must be made for each quarter in which the excess payment was reported, and will not be allowed unless the amount of fuel tax paid on the fuel purchased in this state, in excess of that consumed for highway operation in this state in the quarter applied for, is in an amount exceeding ten dollars. An application for a refund of excess Iowa fuel tax paid under this subchapter which is filed for any period or in any manner other than as set out in this section shall not be allowed.

4. To determine the amount of fuel taxes due under this subchapter and to prevent the evasion thereof, the state department of transportation shall require a quarterly report on forms prescribed by the state department of transportation. It shall be filed not later than the last day of the month following the quarter reported, and each quarter thereafter. These reports shall be required of all persons who have been issued a permit or license under this subchapter and shall cover actual operation and fuel consumption in Iowa on the basis of the permit or license holder's average consumption of fuel in Iowa, determined by the total miles traveled and the total fuel purchased and consumed for highway use by the permittee's or licensee's commercial motor vehicles in the permittee's or licensee's entire operation in all states to establish an overall miles per gallon ratio, which ratio shall be used to compute the gallons used for the miles traveled in Iowa. Failure to receive a quarterly report or fuel credentials by mail, facsimile transmission, or any other means of delivery does not relieve a person from the person's fuel tax liability or from the requirement to display current fuel credentials.

5. Subject to compliance with rules adopted by the department, annual reporting may be permitted in lieu of quarterly reporting. A licensee permitted to report annually shall maintain records in compliance with this chapter.

[C27, 31, §5093-b1; C35, §5093-f18, -f25; C39, §**5093.18, 5093.25;** C46, 50, 54, §324.32, 324.46; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.54; 81 Acts, 2nd Ex, ch 2, §14]

87 Acts, ch 170, §15

C93, §452A.54

95 Acts, ch 155, §27; 97 Acts, ch 108, §44, 45; 2007 Acts, ch 143, §29; 2018 Acts, ch 1041, §127; 2019 Acts, ch 59, §137

Referred to in §452A.53, 452A.55, 452A.71

For future amendments to subsections 1, 2, and 4, effective July 1, 2023, see 2019 Acts, ch 151, §30, 46

Subsection 3 amended

452A.55 Records.

1. Every person operating within the purview of this subchapter shall make and keep for a period of four years such records as may reasonably be required by the state department of transportation for the administration of this subchapter. If in the normal conduct of the business, the required records are maintained and kept at an office outside the state of Iowa, it shall be a sufficient compliance with this section if the records are made available for audit and examination by the state department of transportation at the office outside Iowa.

2. The state department of transportation, within a period of one year from the issuance of a permanent international fuel tax agreement fuel permit or license, may audit the records of the permittee or licensee for the two years preceding the issuance of the permit or license. The state department of transportation shall collect all taxes due had the permittee or licensee been licensed for the two years prior to the issuance of the permit or license and shall refund any overpayment pursuant to section 452A.54. When, as a result of an audit, fuel taxes unpaid and due the state of Iowa exceed five hundred dollars, the audit shall be at the expense of the person whose records are being audited. However, if an audit of records maintained under

this section is made outside the state of Iowa in a state which requires payment of the costs for similar audits performed by officials or employees of the other state when made in Iowa, then all costs of audits performed outside of Iowa in the other state shall be at the expense of the person whose records are audited.

[C27, 31, §5093-a8; C35, §5093-f14, -f21; C39, §**5093.14, 5093.21;** C46, 50, 54, §324.27, 324.28, 324.41; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.55]

84 Acts, ch 1174, §3

C93, §452A.55

97 Acts, ch 108, §46; 2018 Acts, ch 1041, §127

Referred to in §452A.53

452A.56 Interstate motor fuel tax — reciprocity agreements.

1. The director of transportation may enter into motor fuel tax agreements on behalf of this state with authorized representatives of other states. The director of transportation may enter into and the state department of transportation may become a member of a motor fuel tax agreement for the collection and refund of interstate motor fuel tax. The director of transportation may adopt rules pursuant to chapter 17A to implement the agreement for the collection and refund of interstate motor fuel tax.

2. The department may enter into an agreement for the collection and refund of interstate motor fuel tax which conflicts with sections 452A.57, 452A.58, 452A.65, and 452A.68 and the agreement shall govern carriers covered by the agreement. Copies of the agreement shall be filed with the secretary of the senate and the chief clerk of the house.

[82 Acts, ch 1071, §1]

C83, §324.56

86 Acts, ch 1245, §1942

C93, §452A.56

2018 Acts, ch 1041, §127

SUBCHAPTER IV

PROVISIONS COMMON TO TAXES IMPOSED UNDER SUBCHAPTERS I AND III

Referred to in §452A.1, 452A.4, 452A.50

452A.57 Definitions.

1. *"Appropriate state agency"* or *"state agency"* means the department of revenue or the state department of transportation, whichever is responsible for control, maintenance, or supervision of the power, requirement, or duty referred to in the provision. The department of revenue shall administer the provisions of subchapter I of this chapter, and the state department of transportation shall administer the provisions of subchapter III. The state department of transportation shall have enforcement authority for subchapter I as agreed upon by the director of revenue and the director of transportation.

2. *"Carrier"* means and includes any person who operates or causes to be operated any commercial motor vehicle on any public highway in this state.

3. *"Commercial motor vehicle"* means a passenger vehicle that has seats for more than nine passengers in addition to the driver, any road tractor, any truck tractor, or any truck having two or more axles which passenger vehicle, road tractor, truck tractor, or truck is propelled on the public highways by either motor fuel or special fuel. *"Commercial motor vehicle"* does not include a motor truck with a combined gross weight of less than twenty-six thousand pounds, operated as a part of an identifiable one-way fleet and which is leased for less than thirty days to a lessee for the purpose of moving property which is not owned by the lessor.

4. *"Department of revenue"* includes the director of revenue or the director's authorized representative.

5. *"Fuel taxes"* means the per gallon excise taxes imposed under subchapters I and III of this chapter with respect to motor fuel and undyed special fuel.

6. An *"Iowa urban transit system"* is a system whereby motor buses are operated primarily

upon the streets of cities for the transportation of passengers for an established fare and which accepts passengers who present themselves for transportation without discrimination up to the limit of the capacity of each motor bus. *"Iowa urban transit system"* also includes motor buses operated upon the streets of adjoining cities, whether interstate or intrastate, for the transportation of passengers without discrimination up to the limit of the capacity of the motor bus. Privately chartered bus services, motor carriers and interurban carriers subject to the jurisdiction of the state department of transportation, school bus services and taxicabs shall not be construed to be an urban transit system nor a part of any such system.

7. *"Mobile machinery and equipment"* means vehicles self-propelled by an internal combustion engine but not designed or used primarily for the transportation of persons or property on public highways and only incidentally operated or moved over a highway including but not limited to corn shellers, truck-mounted feed grinders, roller mills, ditch digging apparatus, power shovels, drag lines, earth moving equipment and machinery, and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth moving scrapers. However, *"mobile machinery and equipment"* does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property on public highways and to which machinery, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus or lime spreaders, has been attached.

8. *"Motor vehicle"* shall mean and include all vehicles, except those operated on rails, which are propelled by internal combustion engines and are of such design as to permit their mobile use on public highways for transporting persons or property. A farm tractor while operated on a farm or for the purpose of hauling farm machinery, equipment, or produce shall not be deemed to be a motor vehicle. *"Motor vehicle"* shall not include *"mobile machinery and equipment"* as defined in this section.

9. *"Person"* shall mean and include natural persons, partnerships, firms, associations, corporations, representatives appointed by any court and political subdivisions of this state and use of the singular shall include the plural.

10. *"Public highways"* shall mean and include any way or place available to the public for purposes of vehicular travel notwithstanding that it is temporarily closed.

11. *"Regional transit system"* means a public transit system serving one county or all or part of a multicounty area whose boundaries correspond to the same boundaries as those of the regional planning areas designated by the governor, except as agreed upon by the department. Each county board of supervisors within the region is responsible for determining the service and funding within its county. However, the administration and overhead support services for the overall regional transit system shall be consolidated into one existing or new agency to be mutually agreed upon by the participating members. Privately chartered bus services and uses other than providing services that are open and public on a shared ride basis shall not be construed to be a regional transit system.

[C27, 31, §5093-a2; C35, §5093-f2; C39, §**5093.02;** C46, 50, 54, §324.1; C58, 62, 66, 71, 73, 75, 77, 79, 81, §324.57; 81 Acts, ch 108, §4; 82 Acts, ch 1140, §1]

84 Acts, ch 1253, §7; 86 Acts, ch 1245, §416

C93, §452A.57

95 Acts, ch 155, §28, 44; 96 Acts, ch 1034, §44; 2003 Acts, ch 145, §286; 2016 Acts, ch 1011, §72; 2018 Acts, ch 1041, §127

Referred to in §325A.13, 452A.2, 452A.17, 452A.56, 452A.58

See also §452A.2

For future amendments to subsections 3, 5, and 8, effective July 1, 2023, see 2019 Acts, ch 151, §31, 46

452A.58 Commercial motor vehicles on lease.

1. Every commercial motor vehicle as defined in section 452A.57, subsection 3, leased to a carrier shall be subject to the provisions of this subchapter and rules and regulations enforced pursuant thereto to the same extent and in the same manner as commercial vehicles owned by such carrier.

2. A lessor of a commercial motor vehicle shall be deemed a carrier with respect to such vehicles leased to others by the lessor and motor fuel or special fuel consumed thereby if the

lessor supplies or pays for the motor fuel or special fuel consumed by such vehicle or makes rental or other charges calculated to include the cost of such fuel.

3. The provisions of this section shall govern the primary liability pursuant to this section if either lessor or lessee primarily fails in whole or in part to discharge this liability. Such failing party as lessor or lessee party to the transaction shall be jointly and severally responsible and liable for the provisions of subchapter III of this chapter and for payment of any tax unpaid and due pursuant thereto, provided that any taxes collected by this state shall not exceed the total amount or amounts of the taxes due on account of the transaction in question and such penalties and costs, if any, as may be imposed.

[C71, 73, 75, 77, 79, 81, §324.58]

C93, §452A.58

2016 Acts, ch 1011, §121; 2018 Acts, ch 1041, §127

Referred to in §452A.56

For future amendment to subsection 2, effective July 1, 2023, see 2019 Acts, ch 151, §32, 46

452A.59 Administrative rules.

The department of revenue and the state department of transportation are authorized and empowered to adopt rules under chapter 17A, relating to the administration and enforcement of this chapter as deemed necessary by the departments. However, when in the opinion of the director it is necessary for the efficient administration of this chapter, the director may regard persons in possession of motor fuel, special fuel, biofuel, alcohol, or alcohol derivative substances as blenders, dealers, eligible purchasers, exporters, importers, restrictive suppliers, suppliers, terminal operators, or nonterminal storage facility operators.

[C35, §5093-f18, -f21, -f36; C39, §**5093.18, 5093.21, 5093.36;** C46, 50, 54, §324.32, 324.40, 324.64; C58, 62, 66, §324.58; C71, 73, 75, 77, 79, 81, §324.59]

C93, §452A.59

95 Acts, ch 155, §29; 2003 Acts, ch 145, §286; 2008 Acts, ch 1184, §64

For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §33, 46

452A.60 Forms of report, refund claim, and records.

1. The department of revenue or the state department of transportation shall prescribe and furnish all forms, as applicable, upon which reports, returns, and applications shall be made and claims for refund presented under this chapter and may prescribe forms of record to be kept by suppliers, restrictive suppliers, importers, exporters, blenders, common carriers, contract carriers, licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen dealers and users, terminal operators, nonterminal storage facility operations, and interstate commercial motor vehicle operators.

2. The department of revenue or the state department of transportation may approve a form of record, other than a prescribed form, if the required information is presented in a reasonably accessible form which substantially complies with the prescribed form.

[C35, §5093-f21, -f36; C39, §**5093.21, 5093.36;** C46, 50, 54, §324.42, 324.64; C58, 62, 66, §324.59; C71, 73, 75, 77, 79, 81, §324.60]

C93, §452A.60

95 Acts, ch 155, §30; 99 Acts, ch 151, §67, 89; 2002 Acts, ch 1151, §27; 2003 Acts, ch 145, §286; 2014 Acts, ch 1032, §7; 2019 Acts, ch 151, §10, 17

For future amendment to subsection 1, effective July 1, 2023, see 2019 Acts, ch 151, §34, 46

2019 amendment to subsection 1 effective January 1, 2020; 2019 Acts, ch 151, §17

Subsection 1 amended

452A.61 Timely filing of reports and returns — extension.

1. The reports, returns, and remittances required under this chapter shall be deemed filed within the required time if postpaid, properly addressed, and postmarked on or before midnight of the day on which due and payable. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

2. The department of revenue or the state department of transportation upon application

may grant a reasonable extension of time for the filing of any required report, return, or tax payment.

[C27, 31, §5093-a5, -b1; C35, §5093-f9, -f21, -f25; C39, §**5093.09, 5093.21, 5093.25;** C46, 50, 54, §324.13, 324.41, 324.46; C58, 62, 66, §324.60; C71, 73, 75, 77, 79, 81, §324.61]

C93, §452A.61

99 Acts, ch 151, §68, 89; 2003 Acts, ch 145, §286; 2018 Acts, ch 1041, §127

452A.62 Inspection of records.

1. The department of revenue or the state department of transportation, whichever is applicable, is hereby given the authority within the time prescribed for keeping records to do the following:

a. To examine, during the usual business hours of the day, the records, books, papers, receipts, invoices, storage tanks, and any other equipment of any of the following:

(1) A distributor, supplier, restrictive supplier, importer, exporter, blender, terminal operator, nonterminal storage facility, common carrier, or contract carrier, pertaining to motor fuel or undyed special fuel withdrawn from a terminal or a nonterminal storage facility, or brought into this state.

(2) A licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer, user, or person supplying compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen to a licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user.

(3) An interstate operator of motor vehicles to verify the truth and accuracy of any statement, report, or return, or to ascertain whether or not the taxes imposed by this chapter have been paid.

(4) Any person selling fuels that can be used for highway use.

b. To examine the records, books, papers, receipts, and invoices of any distributor, supplier, restrictive supplier, importer, blender, exporter, terminal operator, nonterminal storage facility, licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user, or any other person who possesses fuel upon which the tax has not been paid to determine financial responsibility for the payment of the taxes imposed by this chapter.

2. If a person under this section refuses access to pertinent records, books, papers, receipts, invoices, storage tanks, or any other equipment, the appropriate state agency shall certify the names and facts to any court of competent jurisdiction, and the court shall enter an order to enforce this chapter.

[C27, 31, §5093-a6; C35, §5093-f26, -f29; C39, §**5093.26, 5093.29;** C46, 50, 54, §324.47, 324.52; C58, 62, 66, §324.61; C71, 73, 75, 77, 79, 81, §324.62]

C93, §452A.62

95 Acts, ch 155, §31, 44; 2002 Acts, ch 1151, §28; 2003 Acts, ch 145, §286; 2005 Acts, ch 140, §65, 66; 2011 Acts, ch 25, §143; 2014 Acts, ch 1032, §8, 9; 2015 Acts, ch 30, §129; 2019 Acts, ch 151, §11, 12, 17

For future text of subsection 1, paragraph a, subparagraph (5), effective July 1, 2023, see 2019 Acts, ch 151, §35, 46
For future amendment to subsection 1, paragraph b, effective July 1, 2023, see 2019 Acts, ch 151, §36, 46
2019 amendment to subsection 1, paragraph a, subparagraph (2) effective January 1, 2020; 2019 Acts, ch 151, §17
2019 amendment to subsection 1, paragraph b effective January 1, 2020; 2019 Acts, ch 151, §17
Subsection 1, paragraph a, subparagraph (2) amended
Subsection 1, paragraph b amended

452A.63 Information confidential.

1. All information obtained by the department of revenue or the state department of transportation from the examining of reports, returns, or records required to be filed or kept under this chapter shall be treated as confidential and shall not be divulged except to other state officers, a member or members of the general assembly, or any duly appointed committee of either or both houses of the general assembly, or to a representative of the state having some responsibility in connection with the collection of the taxes imposed or in proceedings brought under this chapter. The appropriate state agency may make available to the public on or before forty-five days following the last day of the month in which the tax is required to be paid, the names of suppliers, restrictive suppliers, and importers and

as to each of them the total gallons of motor fuel, undyed special fuel, and ethanol blended gasoline withdrawn from terminals or imported into the state during that month. The department of revenue or the state department of transportation, upon request of officials entrusted with enforcement of the motor fuel tax laws of the federal government or any other state, may forward to these officials any pertinent information which the appropriate state agency may have relative to motor fuel and special fuel, provided the officials of the other state furnish like information.

2. Any person violating this section, and disclosing the contents of any records, returns, or reports required to be kept or made under this chapter, except as otherwise provided, shall be guilty of a simple misdemeanor.

[C27, 31, §5093-a6; C35, §5093-f27; C39, §**5093.27;** C46, 50, 54, §324.48; C58, 62, 66, §324.62; C71, 73, 75, 77, 79, 81, §324.63]

C93, §452A.63

95 Acts, ch 155, §32, 44; 96 Acts, ch 1066, §13, 21; 99 Acts, ch 151, §69, 89; 2003 Acts, ch 145, §286; 2006 Acts, ch 1142, §83; 2018 Acts, ch 1041, §127

Referred to in §421.28, 422.20, 422.72, 452A.66

For future amendment to subsection 1, effective July 1, 2023, see 2019 Acts, ch 151, §37, 46

452A.64 Failure to file return — incorrect return.

If a return required by this chapter is not filed, or if a return when filed is incorrect or insufficient, the appropriate state agency shall determine the amount of tax due. The determination shall be made from all information that the appropriate state agency may be able to obtain and, if necessary, the agency may estimate the tax on the basis of external indices. The appropriate state agency shall give notice of the determination to the person liable for the tax. The determination shall fix the tax unless the person against whom it is assessed shall, within sixty days after the giving of notice of the determination, apply to the director of the appropriate state agency for a hearing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. At the hearing, evidence may be offered to support the determination or to prove that it is incorrect. After the hearing, the director shall give notice of the decision to the person liable for the tax. The findings of the appropriate state agency as to the amount of fuel taxes, penalties, and interest due from any person shall be presumed to be the correct amount and in any litigation which may follow, the certificate of the agency shall be admitted in evidence, shall constitute a prima facie case and shall impose upon the other party the burden of showing any error in the findings and the extent thereof or that the finding was contrary to law.

[C35, §5093-f11, -f12; C39, §**5093.11, 5093.12;** C46, 50, 54, §324.19, 324.20, 324.21; C58, 62, 66, §324.63; C71, 73, 75, 77, 79, 81, §324.64; 81 Acts, ch 131, §2]

C93, §452A.64

94 Acts, ch 1133, §12, 16; 2014 Acts, ch 1128, §5

Referred to in §421.10

452A.65 Failure to promptly pay fuel taxes — refunds — interest and penalties — successor liability.

1. In addition to the tax or additional tax, the taxpayer shall pay a penalty as provided in section 421.27. The taxpayer shall also pay interest on the tax or additional tax at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the return was required to be filed. If the amount of the tax as determined by the appropriate state agency is less than the amount paid, the excess shall be refunded with interest in accordance with section 421.60, subsection 2, paragraph "*e*". Claims for refund filed under sections 452A.17 and 452A.21 shall accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department.

2. A report required of licensees or persons operating under subchapter III, upon which no tax is due, is subject to a penalty of ten dollars if the report is not timely filed with the state department of transportation.

3. If a licensee or other person sells the licensee's or other person's business or stock of goods or quits the business, the licensee or other person shall prepare a final return and

pay all tax due within the time required by law. The immediate successor to the licensee or other person, if any, shall withhold sufficient of the purchase price, in money or money's worth, to pay the amount of any delinquent tax, interest, or penalty due and unpaid. If the immediate successor of the business or stock of goods intentionally fails to withhold any amount due from the purchase price as provided in this subsection, the immediate successor is personally liable for the payment of the taxes, interest, and penalty accrued and unpaid on account of the operation of the business by the immediate former licensee or other person, except when the purchase is made in good faith as provided in section 421.28. However, a person foreclosing on a valid security interest or retaking possession of premises under a valid lease is not an "immediate successor" for purposes of this subsection. The department may waive the liability of the immediate successor under this subsection if the immediate successor exercised good faith in establishing the amount of the previous liability.

[C27, 31, §5093-a5; C35, §5093-f9, -f11; C39, §**5093.09, 5093.11;** C46, 50, 54, §324.16, 324.19; C58, 62, 66, §324.64; C71, 73, 75, 77, 79, 81, §324.65; 81 Acts, ch 131, §3; 82 Acts, ch 1180, §1, 8]

84 Acts, ch 1173, §3; 86 Acts, ch 1246, §30; 86 Acts, ch 1007, §11 – 13; 89 Acts, ch 251, §7; 90 Acts, ch 1172, §3, 4; 91 Acts, ch 159, §2

C93, §452A.65

97 Acts, ch 158, §44; 2015 Acts, ch 29, §59; 2018 Acts, ch 1041, §127; 2018 Acts, ch 1161, §14 – 16

Referred to in §421.26, 421.28, 452A.56

Personal liability of officers and partners; see §421.26

2018 amendment to subsection 1 applies retroactively to January 1, 2018, for tax years beginning, and for refunds issued, on or after that date; 2018 Acts, ch 1161, §16

452A.66 Statutes applicable to motor fuel tax.

1. The appropriate state agency shall administer the taxes imposed by this chapter in the same manner as and subject to section 422.25, subsection 4, and section 423.35.

2. All the provisions of section 422.26 shall apply in respect to the taxes, penalties, interest, and costs imposed by this chapter excepting that as applied to any tax imposed by this chapter, the lien provided in section 422.26 shall be prior and paramount over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer without the necessity of recording as therein provided. The requirements for recording shall, as applied to the tax imposed by this chapter, apply only to the liens upon real property. When requested to do so by any person from whom a taxpayer is seeking credit, or with whom the taxpayer is negotiating the sale of any personal property, or by any other person having a legitimate interest in such information, the director shall, upon being satisfied that such a situation exists, inform such person as to the amount of unpaid taxes due by such taxpayer under the provisions of this chapter. The giving of such information under such circumstances shall not be deemed a violation of section 452A.63 as applied to this chapter.

[C35, §5093-f13; C39, §**5093.13;** C46, 50, 54, §324.22 – 324.24; C58, 62, 66, §324.65; C71, 73, 75, 77, 79, 81, §324.66]

86 Acts, ch 1007, §14; 87 Acts, ch 233, §132

C93, §452A.66

2003 Acts, 1st Ex, ch 2, §196, 205; 2006 Acts, ch 1142, §83; 2016 Acts, ch 1011, §73

Referred to in §602.8102(56)

452A.67 Limitation on collection proceedings.

1. The department shall examine the return and enforce collection of any amount of tax, penalty, fine, or interest over and above the amount shown to be due by the return filed by a licensee as soon as practicable but no later than three years after the return is filed. An assessment shall not be made covering a period beyond three years after the return is filed except that the period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax or in the case of a failure to file a return.

2. The three-year period of limitation may be extended by a taxpayer by signing a waiver

agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

[C58, 62, 66, §324.66; C71, 73, 75, 77, 79, 81, §324.67]
89 Acts, ch 251, §8
C93, §452A.67
96 Acts, ch 1066, §14, 21; 99 Acts, ch 151, §70, 89; 2018 Acts, ch 1041, §127
Referred to in §602.8102(56)

452A.68 Power of department of revenue or the state department of transportation to cancel licenses.

1. If a licensee files a false return of the data or information required by this chapter, or fails, refuses, or neglects to file a return required by this chapter, or to pay the full amount of fuel tax as required by this chapter, or is substantially delinquent in paying a tax due, owing, and administered by the department of revenue, and interest and penalty if appropriate, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the licensee corporation, or interest or penalty on the tax, administered by the department, then after ten days' written notice by mail directed to the last known address of the licensee setting a time and place at which the licensee may appear and show cause why the license should not be canceled, and if the licensee fails to appear or if upon the hearing it is shown that the licensee failed to correctly report or pay the tax, the appropriate state agency may cancel the license and shall notify the licensee of the cancellation by mail to the licensee's last known address.

2. If a licensee abuses the privileges for which the license was issued, fails to produce records reasonably requested, fails to extend reasonable cooperation to the appropriate state agency, or has been suspended for nonpayment of fees under chapter 326 and still owes fees to the department, the licensee shall be advised in writing of a hearing scheduled to determine if the license shall be canceled. The appropriate state agency upon the presentation of a preponderance of evidence may cancel a license for cause.

3. The director of the appropriate state agency may reissue a license which has been canceled for cause. As a condition of reissuance of a license, in addition to requirements for issuing a new license, the director may require a waiting period not to exceed ninety days before a license can be reissued or a new license issued. The director shall adopt rules specifying those instances for which a waiting period will be required.

4. Upon receipt of written request from any licensee the appropriate state agency shall cancel the license of the licensee effective on the date of receipt of the request. If, upon investigation, the appropriate state agency finds that a licensee is no longer engaged in the activities for which a license was issued and has not been so engaged for a period of six months, the state agency shall cancel the license and give thirty days' notice of the cancellation mailed to the last known address of the licensee.

[C27, 31, §5093-a5; C35, §5093-f10, -f18, -f37; C39, §**5093.10, 5093.18, 5093.37;** C46, 50, 54, §324.18, 324.32, 324.65; C58, 62, 66, §324.67; C71, 73, 75, 77, 79, 81, §324.68; 82 Acts, ch 1045, §1]
86 Acts, ch 1007, §15; 86 Acts, ch 1241, §8; 89 Acts, ch 251, §9
C93, §452A.68
99 Acts, ch 151, §71, 89; 2003 Acts, ch 145, §286; 2007 Acts, ch 143, §30
Referred to in §452A.56

452A.69 Hearings before state agency.

Hearings before a state agency authorized under the provisions of this chapter may be held at a site in the state as the state agency may direct. The state agency shall have the power to issue subpoenas including subpoenas duces tecum and to require the attendance of witnesses and the production of books, records and papers. In the event any person shall refuse to obey subpoena, or after appearing refuses to testify, the state agency shall certify the name of the

person to the district court of the county where the hearing is being held and the court shall proceed with the witness in the same manner as if the refusal had occurred in open court.

[C27, 31, §5093-a5; C35, §5093-f10, -f11, -f12; C39, §**5093.10, 5093.11, 5093.12;** C46, 50, 54, §324.18 – 324.21; C58, 62, 66, §324.68; C71, 73, 75, 77, 79, 81, §324.69]

C93, §452A.69

452A.70 Discontinuance of licensed activity — liability for taxes and penalties.

If a licensee ceases to engage in the state in activities for which the person's license was issued or discontinues, sells, or transfers the business in which the person has carried on that activity the licensee shall notify the department of revenue, which shall forward notice to the state department of transportation, in writing at least ten days prior to the time the cessation, discontinuance, sale or transfer takes effect. The notice shall give the date of proposed cessation or discontinuance, and, in the event of a proposed sale or transfer of the business, the date and the name and address of the purchaser or transferee. All fuel taxes, penalties and interest under this chapter not yet due and payable shall, together with any and all interest accruing or penalties imposed under this chapter shall become due and payable concurrently with the cessation, discontinuances, sale or transfer, and it shall be the duty of the licensee to make a report and pay all the fuel taxes, interest, and penalties within ten days.

[C27, 31, §5093-a5; C35, §5093-f10; C39, §**5093.10;** C46, 50, 54, §324.18; C58, 62, 66, §324.69; C71, 73, 75, 77, 79, 81, §324.70]

C93, §452A.70

2003 Acts, ch 145, §286

452A.71 Refund of tax on fuel lost as result of casualty.

Except as provided in section 452A.54, a person who has paid or has had charged to the person's account with a distributor, dealer, or user fuel taxes imposed under this chapter with respect to motor fuel or undyed special fuel in excess of one hundred gallons, which, while the person is the owner, is subsequently lost or destroyed through leakage, fire, explosion, lightning, flood, storm, or other casualty, except evaporation or unknown causes, shall be entitled to a refund of the tax so paid or charged. To qualify for the refund, the person shall notify the department of revenue in writing of the loss or destruction and the gallonage lost or destroyed within ten days from the date of discovery of the loss or destruction. Within sixty days after filing the notice, the person shall file with the department of revenue an affidavit sworn to by the person having immediate custody of the motor fuel or undyed special fuel at the time of the loss or destruction setting forth in full the circumstances and amount of the loss or destruction and such other information as the department of revenue may require. Any refund payable under this section may be applied by the department against any tax liability outstanding on the books of the department against the claimant.

[C27, 31, §5093-a5; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.14, 324.15; C58, 62, 66, §324.70; C71, 73, 75, 77, 79, 81, §324.71]

C93, §452A.71

95 Acts, ch 155, §33, 44; 96 Acts, ch 1034, §45; 96 Acts, ch 1066, §15, 21; 2003 Acts, ch 145, §286

452A.72 Refund for fuel taxes erroneously or illegally collected or paid.

1. If any fuel taxes, penalties, or interest have been erroneously or illegally collected by the appropriate state agency from a licensee, the appropriate state agency may apply the overpayment against any tax liability outstanding on the books of the department against the claimant, or shall certify the amount to the director of the department of administrative services, who shall draw a warrant for the certified amount on the treasurer of state payable to the licensee. The refund shall be paid to the licensee immediately.

2. A refund shall not be made under this section unless a written claim setting forth the circumstances for which the refund should be allowed is filed with the appropriate state agency within three years from the date of the payment of the taxes erroneously or illegally collected or paid.

3. However, if it is found during an examination by the appropriate state agency that a licensee paid, as a result of a mistake, an amount of tax, penalty, or interest which was not due, and the mistake is found within three years of the overpayment, the appropriate state agency shall credit the amount against any penalty, interest or taxes due or shall refund the amount to the person.

[C27, 31, §5093-a5, -b1; C35, §5093-f9; C39, §**5093.09;** C46, 50, 54, §324.13, 324.15; C58, 62, 66, §324.71; C71, 73, 75, 77, 79, 81, §324.72]

C93, §452A.72

96 Acts, ch 1066, §16, 21; 2002 Acts, ch 1150, §21; 2003 Acts, ch 145, §286; 2017 Acts, ch 54, §76

452A.73 Embezzlement of fuel tax money — penalty.

Every sale of motor fuel in this state and every sale of undyed special fuel dispensed by the seller into a fuel supply tank of a motor vehicle shall, unless otherwise provided, be presumed to include as a part of the purchase price the fuel tax due the state of Iowa under the provisions of this chapter. Every person collecting fuel tax money as part of the selling price of motor fuel or undyed special fuel, shall hold the tax money in trust for the state of Iowa unless the fuel tax on the fuel has been previously paid to the state of Iowa. Any person receiving fuel tax money in trust and failing to remit it to the department of revenue on or before time required shall be guilty of theft.

[C27, 31, §5093-a5; C35, §5093-f9, -f13; C39, §**5093.09 – 5093.13;** C46, 50, 54, §324.16 – 324.22; C58, 62, 66, §324.72; C71, 73, 75, 77, 79, 81, §324.73]

C93, §452A.73

95 Acts, ch 155, §34, 44; 2003 Acts, ch 145, §286

Theft, chapter 714

For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §38, 46

452A.74 Unlawful acts — penalty.

1. It shall be unlawful:

a. For any person to knowingly fail, neglect, or refuse to make any required return or statement or pay over fuel taxes required under this chapter.

b. For any person to knowingly make any false, incorrect, or materially incomplete record required to be kept or made under this chapter, to refuse to offer required books and records to the department of revenue or the state department of transportation for inspection on demand or to refuse to permit the department of revenue or the state department of transportation to examine the person's motor fuel or undyed special fuel storage tanks and handling or dispensing equipment.

c. For any seller to issue or any purchaser to receive and retain any incorrect or false invoice or sales ticket in connection with the sale or purchase of motor fuel or undyed special fuel.

d. For any claimant to alter any invoice or sales ticket, whether the invoice or sales ticket is to be used to support a claim for refund or income tax credit or not, provided, however, if a claimant's refund permit has been revoked for cause as provided in section 452A.19, the revocation shall serve as a bar to prosecution for violation of this paragraph.

e. For any person to act as a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user without the required license.

f. For any person to use motor fuel, undyed special fuel, or dyed special fuel in the fuel supply tank of a vehicle with respect to which the person knowingly has not paid or had charged to the person's account with a distributor or dealer, or with respect to which the person does not, within the time required in this chapter, report and pay the applicable fuel tax.

g. For any licensed compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user to dispense compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen into the fuel supply tank of any motor vehicle without collecting the fuel tax.

2. Any delivery of compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen to a compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user for the purpose of evading the state tax on compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen, into facilities other than those licensed under this chapter knowing that the fuel will be used for highway use shall constitute a violation of this section. Any compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user for purposes of evading the state tax on compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen, who allows a distributor to place compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen for highway use in facilities other than those licensed under this chapter, shall also be deemed in violation of this section.

3. A person found guilty of an offense specified in this section is guilty of a fraudulent practice. Prosecution for an offense specified in this section shall be commenced within six years following the date of commission of the offense.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §**5093.31;** C46, 50, 54, §324.58; C58, 62, 66, §324.73; C71, 73, 75, 77, 79, 81, §324.74]

83 Acts, ch 160, §1

C93, §452A.74

95 Acts, ch 155, §35, 44; 96 Acts, ch 1066, §17, 18, 21; 99 Acts, ch 152, §35, 40; 2003 Acts, ch 145, §286; 2011 Acts, ch 34, §102; 2014 Acts, ch 1032, §10, 11; 2015 Acts, ch 30, §130; 2019 Acts, ch 151, §13, 14, 17

Fraudulent practices, see §714.8 – 714.14

For future amendments to subsection 1, paragraphs c, e, and f, effective July 1, 2023, see 2019 Acts, ch 151, §39, 46

For future text of subsection 1, paragraph h, effective July 1, 2023, see 2019 Acts, ch 151, §40, 46

2019 amendment to subsection 1, paragraphs e and g effective January 1, 2020; 2019 Acts, ch 151, §17

2019 amendment to subsection 2 effective January 1, 2020; 2019 Acts, ch 151, §17

Subsection 1, paragraphs e and g amended

Subsection 2 amended

452A.74A Additional penalty and enforcement provisions.

In addition to the tax or additional tax, the following fines and penalties shall apply:

1. *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

a. A five hundred dollar penalty for the first violation.

b. A one thousand dollar penalty for a second violation within three years of the first violation.

c. A two thousand dollar penalty for third and subsequent violations within three years of the first violation.

2. *Illegal importation of untaxed fuel.* A person who imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as provided in this subsection. However, the owner or operator of the importing vehicle shall not be guilty of violating this subsection if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a penalty of four thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the penalty.

b. For a second violation, the importing vehicle shall be detained and a penalty of ten thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a penalty of twenty thousand dollars shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the penalty.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and penalty for a first or second offense, the importing vehicle and the fuel may be seized.

The department of revenue, the state department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "This vehicle cannot be moved until the tax, penalty, and interest have been paid to the Department of Revenue", an additional penalty of ten thousand dollars shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

f. For purposes of this subsection, "*vehicle*" means as defined in section 321.1.

3. *Improper receipt of refund.* If a person files an incorrect refund claim, in addition to the excess amount of the claim, a penalty of ten percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be seventy-five percent in lieu of the ten percent. The person shall also pay interest on the excess refunded at the rate per month specified in section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

4. *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

5. *Prevention of inspection.* The department of revenue or the state department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than two thousand dollars per occurrence. Any law enforcement officer or department of revenue or state department of transportation employee may physically inspect, examine, or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

6. *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a fuel pump or other delivery facility as required by the internal revenue service, that dispenses dyed diesel fuel so as to notify customers that it contains dyed diesel fuel, shall pay to the department a penalty of one hundred dollars per occurrence.

7. *False or fraudulent report or return.* Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report or return, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent report or return or false statement in any report or return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

95 Acts, ch 155, §36, 44; 96 Acts, ch 1066, §19 – 21; 99 Acts, ch 151, §72, 89; 2003 Acts, ch 145, §286; 2009 Acts, ch 179, §141

Referred to in §321.56, 452A.76

Fraudulent practices, see §714.8 – 714.14

452A.75 Penalty for false certificate.

1. Any person who makes a false certificate, false fuel invoice, false fuel receipt, or false fuel sales ticket in any report, return, application, claim, or evidence required or provided for by this chapter or under any rule or regulation shall be guilty of a fraudulent practice.

2. Prosecution for an offense specified in this section shall be commenced within six years following its commission.

[C27, 31, §5093-a4, -a6, -a7, -a8; C35, §5093-f31; C39, §**5093.31;** C46, 50, 54, §324.58, 324.59; C58, 62, 66, §324.74; C71, 73, 75, 77, 79, 81, §324.75]

83 Acts, ch 160, §2

C93, §452A.75

99 Acts, ch 152, §36, 40; 2018 Acts, ch 1041, §127

Fraudulent practices, see §714.8 – 714.14

452A.76 Enforcement authority.

1. Authority to enforce subchapter III is given to the state department of transportation. Employees of the state department of transportation designated enforcement employees have the power of peace officers in the performance of their duties; however, they shall not be considered members of the state patrol. The state department of transportation shall furnish enforcement employees with necessary equipment and supplies in the same manner as provided in section 80.18, including uniforms which are distinguishable in color and design from those of the state patrol. Enforcement employees shall be furnished and shall conspicuously display badges of authority.

2. Authority is given to the department of revenue, the state department of transportation, the department of public safety, and any peace officer as requested by such departments to enforce the provisions of subchapter I and this subchapter of this chapter. The department of revenue shall adopt rules providing for enforcement under subchapter I and this subchapter of this chapter regarding the use of motor fuel or special fuel in implements of husbandry. Enforcement personnel or requested peace officers are authorized to stop a conveyance suspected to be illegally transporting motor fuel or special fuel on the highways, to investigate the cargo, and also have the authority to inspect or test the fuel in the supply tank of a conveyance to determine if legal fuel is being used to power the conveyance. The operator of any vehicle transporting motor fuel or special fuel shall, upon request, produce and offer for inspection the manifest or loading and delivery invoices pertaining to the load and trip in question and shall permit the authority to inspect and measure the contents of the vehicle. If the vehicle operator fails to produce the evidence or if, when produced, the evidence fails to contain the required information and it appears that there is an attempt to evade payment of the fuel tax, the vehicle operator will be subject to the penalty provisions contained in section 452A.74A.

3. For purposes of this section, *"vehicle"* means as defined in section 321.1.

[C35, §5093-f18, -f32; C39, §**5093.18, 5093.32;** C46, 50, 54, §324.32, 324.60; C58, 62, 66, §324.75; C71, 73, 75, 77, 79, 81, §324.76]

84 Acts, ch 1174, §4

C93, §452A.76

95 Acts, ch 155, §37, 44; 98 Acts, ch 1074, §29; 2003 Acts, ch 145, §286; 2005 Acts, ch 35, §31; 2018 Acts, ch 1041, §125, 127

Referred to in §331.653

For future amendment to subsection 2, effective July 1, 2023, see 2019 Acts, ch 151, §41, 46

452A.77 Moneys deposited in treasury — refunds — administration.

1. All fees, taxes, interest, and penalties imposed under this chapter must be paid to the department of revenue or the state department of transportation, whichever is responsible for the collection. The appropriate state agency shall transmit each payment daily to the treasurer of state. Such payments shall be deposited by the treasurer of state in a fund, hereby created, within the state treasury which shall be known as the "motor fuel tax fund", the net proceeds of which fund, after deductions by lawful transfers and refunds, shall be known as the "motor vehicle fuel tax fund". The department of revenue and the state department of transportation shall certify monthly to the director of the department of administrative services amounts of refunds of tax approved during each month, and the director of the department of administrative services shall draw warrants in such amounts on the motor fuel tax fund and transmit them. There is hereby appropriated out of the money received under the provisions of this chapter and deposited in the motor fuel tax fund sufficient funds to pay such refunds as may be authorized in this chapter.

2. The general assembly may appropriate from the motor fuel tax fund such amounts as it determines are necessary for administrative expenses. Allocations and transfers of fees, taxes, interest, and penalties imposed under this chapter, pursuant to any provision of the Code, shall be made from the motor fuel tax fund.

[C27, 31, §5093-a11; C35, §5093-f33; C39, §**5093.33;** C46, 50, 54, §324.61; C58, 62, 66, §324.76; C71, 73, 75, 77, 79, 81, §324.77]

C93, §452A.77
2003 Acts, ch 145, §261; 2018 Acts, ch 1041, §127

452A.78 Other remedies available.

The special remedies provided under the provisions of this chapter to enable the state to collect motor fuel excise tax shall not be construed as depriving the state of any other remedy it might have either at law or in equity independent of this chapter. The state shall have the right to maintain an action at law for the collection of said taxes required to be paid herein and in connection therewith shall be entitled to a writ of attachment without bond.

[C35, §5093-f34; C39, §**5093.34;** C46, 50, 54, §324.62; C58, 62, 66, §324.77; C71, 73, 75, 77, 79, 81, §324.78]
C93, §452A.78
2006 Acts, ch 1142, §83
For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §42, 46

452A.79 Use of revenue.

Except as provided in sections 452A.79A, 452A.82, and 452A.84, the net proceeds of the excise tax on the diesel special fuel and the excise tax on motor fuel and other special fuel, and penalties collected under the provision of this chapter, shall be credited to the road use tax fund.

[C27, 31, §4755-b38, 5093-a9; C35, §5093-f35; C39, §**5093.35;** C46, 50, 54, §324.63; C58, 62, 66, §324.78; C71, 73, 75, 77, 79, 81, §324.79]
88 Acts, ch 1134, §69, 70; 91 Acts, ch 260, §1227
C93, §452A.79
93 Acts, ch 131, §17; 94 Acts, ch 1107, §68, 69; 98 Acts, ch 1219, §18; 99 Acts, ch 204, §37; 2005 Acts, ch 178, §12; 2006 Acts, ch 1179, §59, 66
Referred to in §24.14
For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §43, 46

452A.79A Marine fuel tax fund.

1. A marine fuel tax fund is created under the authority of the department of natural resources.

a. The fund shall consist of all revenues derived from the excise tax on the sale of motor fuel used in watercraft as provided in section 452A.84 and other moneys appropriated to the fund.

b. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund. Notwithstanding section 8.33, any moneys credited to the fund from another fund shall not revert to the fund from which appropriated at the close of a fiscal year.

2. Moneys in the marine fuel tax fund are appropriated to the department of natural resources for use by the department in its recreational boating program, which may include but is not limited to any of the following:

a. Dredging and renovation of lakes of this state.

b. Acquisition, development, and maintenance of access to public boating waters.

c. Development and maintenance of boating facilities and navigation aids.

d. Administration, operation, and maintenance of recreational boating activities of the department of natural resources.

e. Acquisition, development, and maintenance of recreation facilities associated with recreational boating.

2006 Acts, ch 1179, §60, 66; 2007 Acts, ch 211, §44, 45
Referred to in §452A.79

452A.80 Microfilm or photographic copies — originals destroyed.

The appropriate state agency shall have the power and authority to record, copy, or reproduce by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original of any forms or records pertaining to motor fuel tax or undyed special fuel tax,

or any paper or document with respect to refund of the tax. If the forms and records have been reproduced in accordance with this section, the state agency may destroy the originals and the reproductions shall be competent evidence in any court in accordance with the provision of section 622.30.

[C35, §5093-f36; C39, §**5093.36;** C46, 50, 54, §324.64; C58, 62, 66, §324.79; C71, 73, 75, 77, 79, 81, §324.80]

C93, §452A.80

95 Acts, ch 155, §38

For future amendment to this section, effective July 1, 2023, see 2019 Acts, ch 151, §44, 46

452A.81 Agreement for refund of federal tax.

1. The department of revenue is hereby authorized to enter into and empowered to carry out the provisions of agreements with any duly authorized agent or department of the United States government for joint or cooperative action by the state and the United States government in the making of refunds of the federal tax on gasoline. Such agreements may provide that the department of revenue may receive applications for and make refunds of the federal tax on gasoline as an agent of the United States. Such agreements shall provide that the United States shall provide the department of revenue with sufficient funds in advance to pay all costs to the state in the performance of such agreements and in the making of such refunds. In the event such an agreement is concluded, the director of revenue is hereby designated, appointed and empowered, through the motor vehicle fuel tax division of the department, to, as an agent of the United States government, accept applications for refunds of the federal tax on gasoline and to make such refunds from such moneys provided to the director in advance by the federal government.

2. All moneys that may be paid in advance by the United States to the state to pay the cost to the state of performing such agreements and the cost of making such refunds are hereby appropriated to the department of revenue for such purposes. Neither the state nor the department of revenue shall be liable in any manner for the actions of the department of revenue or employees of the department in the receipt, administration, and expenditure of such federal funds including the making of refunds.

[C58, 62, 66, §324.80; C71, 73, 75, 77, 79, 81, §324.81]

C93, §452A.81

2003 Acts, ch 145, §286

See refunds, §452A.17

452A.82 Aviation fuel tax fund.

The portion of the moneys collected under this chapter received on account of aviation gasoline and special fuel used in aircraft shall be deposited in a separate fund to be maintained by the treasurer. All moneys remaining in the separate fund after the cost of administering the fund has been paid shall be credited to the state aviation fund created in section 328.56.

[C71, 73, 75, 77, 79, 81, §324.82]

88 Acts, ch 1205, §17

C93, §452A.82

94 Acts, ch 1107, §70; 2006 Acts, ch 1179, §61, 66

Referred to in §328.56, 422.112, 452A.79

452A.83 Reserved.

452A.84 Transfer to marine fuel tax fund.

The treasurer of state shall transfer from the motor fuel tax fund to the marine fuel tax fund that portion of moneys collected under this chapter attributable to motor fuel used in watercraft computed as follows:

1. Determine monthly the total amount of motor fuel tax collected under this chapter and multiply the amount by nine-tenths of one percent.

2. Subtract from the figure computed pursuant to subsection 1 of this section three percent of the figure for administrative costs and further subtract from the figure the amounts refunded to commercial fishers pursuant to section 452A.17, subsection 1,

paragraph "*a*", subparagraph (7). All moneys remaining after claims for refund and the cost of administration have been made shall be transferred to the marine fuel tax fund.

[C73, 75, 77, 79, 81, §324.84]

84 Acts, ch 1012, §1

C93, §452A.84

94 Acts, ch 1107, §71; 95 Acts, ch 155, §39, 44; 2006 Acts, ch 1179, §62, 66

Referred to in §452A.79, 452A.79A

452A.85 Tax payment for stored motor fuel, ethanol blended gasoline, special fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, and hydrogen.

1. Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen in storage and held for sale on the effective date of an increase in the excise tax rate imposed on motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen under this chapter shall be subject to an inventory tax based upon the gallonage in storage as of the close of the business day preceding the effective date of the increased excise tax rate of motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen which will be subject to the increased excise tax rate.

2. Persons subject to the tax imposed under this section shall take an inventory to determine the gallonage in storage for purposes of determining the tax and shall report the gallonage and pay the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules pursuant to chapter 17A as are necessary to administer this section.

3. The amount of the inventory tax is equal to the inventory tax rate times the gallonage in storage as determined under subsection 1. The inventory tax rate is equal to the difference of the increased excise tax rate less the previous excise tax rate.

4. This section does not apply to an increase in the tax rate of a specified fuel, except for compressed natural gas, unless the increase in the tax rate of that fuel is in excess of one-half cent per gallon.

[C81, §324.85]

91 Acts, ch 87, §10

C93, §452A.85

95 Acts, ch 155, §40, 44; 2003 Acts, ch 145, §286; 2005 Acts, ch 140, §67; 2014 Acts, ch 1032, §12; 2019 Acts, ch 151, §15, 17

Persons having title to motor fuel, ethanol blended gasoline, undyed special fuel, compressed natural gas, liquefied natural gas, or liquefied petroleum gas in storage and held for sale on March 1, 2015, shall not be subject to an inventory tax on the gallonage in storage as a result of excise tax increases under 2015 Acts, ch 2; 2015 Acts, ch 2, §13, 15

2019 amendment to subsection 1 effective January 1, 2020; 2019 Acts, ch 151, §17

Subsection 1 amended

452A.86 Method of determining gallonage.

The exclusive method of determining gallonage of any purchases or sales of motor fuel, undyed special fuel, or liquefied petroleum gas as defined in this chapter and distillate fuels shall be on a gross volume basis, except for compressed natural gas, liquefied natural gas, and hydrogen. The exclusive method of determining gallonage of any purchases or sales of compressed natural gas is the gasoline gallon equivalent, as defined in section 452A.2, subsection 22. The exclusive method of determining gallonage of any purchase or sale of liquefied natural gas is the diesel gallon equivalent, as defined in section 452A.2, subsection 22. The exclusive method of determining gallonage of any purchases or sales of hydrogen is the diesel gallon equivalent, as defined in section 452A.2, subsection 22. A temperature-adjusted or other method shall not be used, except as it applies to liquefied petroleum gas and the sale or exchange of petroleum products between petroleum refiners. All invoices, bills of lading, or other records of sale or purchase and all returns or records required to be made, kept, and maintained by a supplier, restrictive supplier, importer, exporter, blender, or compressed natural gas, liquefied natural gas, liquefied petroleum gas, or hydrogen dealer or user shall be made, kept, and maintained on the gross volume basis. For purposes of this section, "*distillate fuels*" means any fuel oil, gas oil, topped crude oil,

or other petroleum oils derived by refining or processing crude oil or unfinished oils which have a boiling range at atmospheric pressure which falls completely or in part between 550 and 1,200 degrees Fahrenheit.

[81 Acts, 2nd Ex, ch 2, §16]

C83, §324.86

C93, §452A.86

95 Acts, ch 155, §41, 44; 99 Acts, ch 151, §73, 89; 2014 Acts, ch 1026, §98; 2014 Acts, ch 1032, §13; 2019 Acts, ch 151, §16, 17

2019 amendment effective January 1, 2020; 2019 Acts, ch 151, §17

Section amended

CHAPTER 453

RESERVED

CHAPTER 453A

CIGARETTE AND TOBACCO TAXES AND REGULATION OF ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS

Referred to in §232.8, 232C.4, 331.303, 453D.2, 453D.6, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 98 in Code 1993

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SUBCHAPTER I

CIGARETTES AND ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS

Referred to in §453A.43, 453A.44, 453A.47A

453A.1 Definitions.

The following words, terms, and phrases, when used in this chapter, shall, for the purpose of this chapter, have the meanings respectively ascribed to them.

1. *"Alternative nicotine product"* means a product, not consisting of or containing tobacco, that provides for the ingestion into the body of nicotine, whether by chewing, absorbing, dissolving, inhaling, snorting, or sniffing, or by any other means. *"Alternative nicotine product"* does not include cigarettes, tobacco products, or vapor products, or a product that is regulated as a drug or device by the United States food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

2. *"Attorney general"* shall mean the attorney general of the state or the attorney general's duly authorized assistants and employees.

3. *"Carton"* means a box or container of any kind in which ten or more packages or packs of cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

4. *"Cigarette"* means any roll for smoking made wholly or in part of tobacco, or any substitute for tobacco, irrespective of size or shape and irrespective of tobacco or any substitute for tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material. However, *"cigarette"* shall not be construed to include cigars.

5. *"Cigarette vending machine"* means any self-service device offered for public use which, upon payment or insertion of loose tobacco product, dispenses, or assembles and dispenses, cigarettes or tobacco products.

6. *"Cigarette vendor"* means any person who by contract, agreement, or ownership takes responsibility for furnishing, installing, servicing, operating, or maintaining one or more cigarette vending machines for the purpose of selling cigarettes at retail.

7. *"Counterfeit stamp"* shall mean any stamp, label, print, indicium, or character which evidences, or purports to evidence the payment of any tax levied by this chapter, and which stamp, label, print, indicium, or character has not been printed, manufactured or made by authority of the director as hereinafter provided, and issued, sold or circulated by the department.

8. *"Delivery sale"* means any sale of an alternative nicotine product or a vapor product to a purchaser in this state where the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, mail or any other delivery service, or the internet or other online service and the alternative nicotine product or vapor product is

delivered by use of mail or a delivery service. The sale of an alternative nicotine product or vapor product shall constitute a delivery sale regardless of whether the seller is located in this state. *"Delivery sale"* does not include a sale to a distributor or retailer of any alternative nicotine product or vapor product not for personal consumption.

9. *"Department"* means the department of revenue.

10. *"Director"* means the director of revenue or the director's duly authorized assistants and employees.

11. *"Distributing agent"* shall mean and include every person in this state who acts as an agent of any manufacturer outside of the state by storing cigarettes received in interstate commerce from such manufacturer subject to distribution or delivery to distributors upon orders received by said manufacturer in interstate commerce and transmitted to such distributing agent for fulfillment from such place of storage.

12. *"Distributing agent's permit"* shall mean and include permits issued by the department to distributing agents.

13. *"Distributor"* shall mean and include every person in this state who manufactures or produces cigarettes or who ships, transports, or imports into this state or in any manner acquires or possesses cigarettes without stamps affixed for the purpose of making a "first sale" of the same within the state.

14. *"Drop shipment"* shall mean and include any delivery of cigarettes received by any person within this state when payment for such cigarettes is made to the shipper or seller by or through a person other than the consignee.

15. *"First sale"* shall mean and include the first sale or distribution of cigarettes in intrastate commerce, or the first use or consumption of cigarettes within this state.

16. *"Individual packages of cigarettes"* shall mean and include every package of cigarettes or quantity of cigarettes assembled and ordinarily sold at retail.

17. *"Manufacturer"* shall mean and include every person who ships cigarettes into this state from outside the state.

18. *"Manufacturer's permit"* shall mean and include permits issued by the department to a manufacturer.

19. *"Package"* or *"pack"* means a container of any kind in which cigarettes or tobacco products are offered for sale, sold, or otherwise distributed to consumers.

20. *"Person"* shall mean and include every individual, firm, association, joint stock company, syndicate, partnership, corporation, trustee, agency or receiver, or respective legal representative.

21. *"Place of business"* is construed to mean and include any place where cigarettes are sold or where cigarettes are stored within or without the state of Iowa by the holder of an Iowa permit or kept for the purpose of sale or consumption; or if sold from any vehicle or train, the vehicle or train on which or from which such cigarettes are sold shall constitute a place of business; or for a business within or without the state that conducts delivery sales, any place where alternative nicotine products or vapor products are sold or where alternative nicotine products or vapor products are kept for the purpose of sale.

22. *"Previously used stamp"* shall mean and include any stamp which is used, sold, or possessed for the purpose of sale or use, to evidence the payment of the tax herein imposed on an individual package of cigarettes after said stamp has, anterior to such use, sale, or possession, been used on a previous or separate individual package of cigarettes to evidence the payment of tax as aforesaid.

23. *"Retailer"* shall mean and include every person in this state who shall sell, distribute, or offer for sale for consumption or possess for the purpose of sale for consumption, cigarettes, alternative nicotine products, or vapor products irrespective of quantity or amount or the number of sales.

24. *"Retail permit"* shall mean and include permits issued to retailers.

25. *"Self-service display"* means any manner of product display, placement, or storage from which a person purchasing the product may take possession of the product, prior to purchase, without assistance from the retailer or employee of the retailer, in removing the product from a restricted access location.

26. *"Stamps"* means the stamp or stamps printed, manufactured or made by authority of

the director and issued, sold or circulated by the department and by the use of which the tax levied is paid. It also means any impression, indicium, or character fixed upon packages of cigarettes by metered stamping machine or device which may be authorized by the director to the holder of state or manufacturers' permits and by the use of which the tax levied is paid.

27. *"State permit"* shall mean and include permits issued by the department to distributors, wholesalers, and retailers.

28. *"Tobacco products"* means cigars; little cigars as defined in section 453A.42, subsection 6; cheroots; stogies; periques; granulated; plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff, snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; or refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but does not mean cigarettes.

29. *"Vapor product"* means any noncombustible product, which may or may not contain nicotine, that employs a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, that can be used to produce vapor from a solution or other substance. *"Vapor product"* includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any cartridge or other container of a solution or other substance, which may or may not contain nicotine, that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. *"Vapor product"* does not include a product regulated as a drug or device by the United States food and drug administration under chapter V of the federal Food, Drug, and Cosmetic Act.

30. *"Wholesaler"* shall mean and include every person other than a distributor or distributing agent who engages in the business of selling or distributing cigarettes within the state, for the purpose of resale.

[C24, 27, 31, 35, 39, §**1552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.1]

86 Acts, ch 1245, §401; 91 Acts, ch 240, §1, 2

C93, §453A.1

98 Acts, ch 1129, §2; 2003 Acts, ch 145, §286; 2008 Acts, ch 1032, §106; 2012 Acts, ch 1110, §26; 2014 Acts, ch 1109, §1, 2; 2016 Acts, ch 1011, §74; 2017 Acts, ch 170, §61, 62

Referred to in §101B.2, 142A.2, 142A.6, 453A.3, 453A.5, 453A.22, 453A.36, 453A.42, 453A.47A

453A.2 Persons under legal age.

1. A person shall not sell, give, or otherwise supply any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen years of age.

2. A person under eighteen years of age shall not smoke, use, possess, purchase, or attempt to purchase any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes.

3. Possession of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by an individual under eighteen years of age does not constitute a violation under this section if the individual under eighteen years of age possesses the tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes as part of the individual's employment and the individual is employed by a person who holds a valid permit under this chapter or who lawfully offers for sale or sells cigarettes or tobacco products.

4. The alcoholic beverages division of the department of commerce, a county, or a city may directly enforce this section in district court and initiate proceedings pursuant to section 453A.22 before a permit-issuing authority which issued the permit against a permit holder violating this section.

5. Payment and distribution of court costs, fees, and fines in a prosecution initiated by a city or county shall be made as provided in chapter 602 for violation of a city or county ordinance.

6. If a county or a city has not assessed a penalty pursuant to section 453A.22, subsection 2, for a violation of subsection 1, within sixty days of the adjudication of the violation, the matter shall be transferred to and be the exclusive responsibility of the alcoholic beverages

division of the department of commerce. Following transfer of the matter, if the violation is contested, the alcoholic beverages division of the department of commerce shall request an administrative hearing before an administrative law judge, assigned by the division of administrative hearings of the department of inspections and appeals in accordance with the provisions of section 10A.801, to adjudicate the matter pursuant to chapter 17A.

7. A tobacco compliance employee training fund is created in the office of the treasurer of state. The fund shall consist of civil penalties assessed by the alcoholic beverages division of the department of commerce under section 453A.22 for violations of this section. Moneys in the fund are appropriated to the alcoholic beverages division of the department of commerce and shall be used to develop and administer the tobacco compliance employee training program under section 453A.5. Moneys deposited in the fund shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. Notwithstanding section 8.33, any unexpended balance in the fund at the end of the fiscal year shall be retained in the fund.

8. *a.* A person shall not be guilty of a violation of this section if conduct that would otherwise constitute a violation is performed to assess compliance with tobacco, tobacco products, alternative nicotine products, vapor products, or cigarette laws if any of the following applies:

(1) The compliance effort is conducted by or under the supervision of law enforcement officers.

(2) The compliance effort is conducted with the advance knowledge of law enforcement officers and reasonable measures are adopted by those conducting the effort to ensure that use of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes by individuals under eighteen years of age does not result from participation by any individual under eighteen years of age in the compliance effort.

b. For the purposes of this subsection, *"law enforcement officer"* means a peace officer as defined in section 801.4 and includes persons designated under subsection 4 to enforce this section.

[C97, §5005, 5006; C24, 27, 31, 35, 39, §**1553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.2]

87 Acts, ch 83, §1; 91 Acts, ch 240, §3

C93, §453A.2

94 Acts, ch 1172, §37; 2000 Acts, ch 1105, §2; 2001 Acts, ch 116, §25; 2003 Acts, ch 26, §1, 5, 7; 2003 Acts, ch 179, §130, 159; 2003 Acts, 1st Ex, ch 2, §29, 33; 2011 Acts, ch 25, §143; 2011 Acts, ch 63, §13; 2014 Acts, ch 1109, §3

Referred to in §321.216C, 453A.3, 453A.5, 453A.22, 602.6405, 805.6, 805.8C(3)(b), 805.8C(3)(c)

453A.3 Penalty.

1. *a.* A person, other than a retailer as defined in section 453A.1 or 453A.42, who violates section 453A.2, subsection 1, is guilty of a simple misdemeanor.

b. An employee of a retailer as defined in section 453A.1 or 453A.42, who violates section 453A.2, subsection 1, commits a simple misdemeanor punishable as a scheduled violation under section 805.8C, subsection 3, paragraph *"b"*.

2. A person who violates section 453A.2, subsection 2, is subject to the following, as applicable:

a. A civil penalty pursuant to section 805.8C, subsection 3, paragraph *"c"*. Notwithstanding section 602.8106 or any other provision to the contrary, any civil penalty paid under this subsection shall be retained by the city or county enforcing the violation.

b. For a first offense, performance of eight hours of community work requirements, unless waived by the court.

c. For a second offense, performance of twelve hours of community work requirements.

d. For a third or subsequent offense, performance of sixteen hours of community work requirements.

[C97, §5005, 5006; C24, 27, 31, 35, 39, §**1554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.3]

91 Acts, ch 240, §4

C93, §453A.3

94 Acts, ch 1172, §38; 97 Acts, ch 74, §3; 98 Acts, ch 1100, §63; 2000 Acts, ch 1105, §3; 2000 Acts, ch 1232, §70, 95; 2001 Acts, ch 137, §5; 2004 Acts, ch 1101, §59; 2005 Acts, ch 93, §1

453A.4 Seizure of false or altered driver's license or nonoperator's identification card.

1. If a person holding a permit under this chapter or an employee of such a permittee has a reasonable belief based on factual evidence that a driver's license as defined in section 321.1, subsection 20A, or nonoperator's identification card issued pursuant to section 321.190 offered by a person who wishes to purchase tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes is altered or falsified or belongs to another person, the permittee or employee may retain the driver's license or nonoperator's identification card. Within twenty-four hours, the card shall be delivered to the appropriate city or county law enforcement agency of the jurisdiction in which the permittee's premises are located, and the permittee shall file a written report of the circumstances under which the card was retained. The local law enforcement agency may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. If an investigation is not initiated or probable cause is not established by the local law enforcement agency, the driver's license or nonoperator's identification card shall be delivered to the person to whom it was issued. The local law enforcement agency may forward the card with the report to the state department of transportation for investigation, in which case, the state department of transportation may investigate whether a violation of section 321.216, 321.216A, or 321.216C has occurred. The state department of transportation shall return the card to the person to whom it was issued if an investigation is not initiated or probable cause is not established.

2. Upon taking possession of an identification card as provided in subsection 1, a receipt for the card with the date and hour of seizure noted shall be provided to the person from whom the card is seized.

3. A person holding a permit under this chapter or an employee of such a permittee is not subject to criminal prosecution for, or to civil liability for damages alleged to have resulted from, the retention and delivery of a driver's license or a nonoperator's identification card which is taken pursuant to subsections 1 and 2. This section shall not be construed to relieve a permittee or an employee of such a permittee from civil liability for damages resulting from the use of unreasonable force in obtaining the alleged altered or falsified driver's license or identification card or the driver's license or identification card believed to belong to another person.

2000 Acts, ch 1105, §4; 2014 Acts, ch 1109, §4

453A.5 Tobacco compliance employee training program.

1. The alcoholic beverages division of the department of commerce shall develop a tobacco compliance employee training program not to exceed two hours in length for employees and prospective employees of retailers, as defined in sections 453A.1 and 453A.42, to inform the employees about state and federal laws and regulations regarding the sale of tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes to persons under eighteen years of age and compliance with and the importance of laws regarding the sale of tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes to persons under eighteen years of age.

2. The tobacco compliance employee training program shall be made available to employees and prospective employees of retailers, as defined in sections 453A.1 and 453A.42, at no cost to the employee, the prospective employee, or the retailer, and in a manner which is as convenient and accessible to the extent practicable throughout the state so as to encourage attendance. Contingent upon the availability of specified funds for provision of the program, the division shall schedule the program on at least a monthly basis and the program shall be available at a location in at least a majority of counties.

3. Upon completion of the tobacco compliance employee training program, an employee or prospective employee shall receive a certificate of completion, which shall be valid for a period of two years, unless the employee or prospective employee is convicted of a violation of section 453A.2, subsection 1, in which case the certificate shall be void.

4. The tobacco compliance employee training program shall also offer periodic continuing employee training and recertification for employees who have completed initial training and received certificates of completion.

2003 Acts, ch 26, §2, 7; 2005 Acts, ch 93, §2; 2014 Acts, ch 1109, §5

Referred to in §453A.2, 453A.22

453A.6 Tax imposed.

1. There is imposed, and shall be collected and paid to the department, a tax on all cigarettes used or otherwise disposed of in this state for any purpose equal to six and eight-tenths cents on each cigarette.

2. The said tax shall be paid only once by the person making the "first sale" in this state, and shall become due and payable as soon as such cigarettes are subject to a "first sale" in Iowa, it being intended to impose the tax as soon as such cigarettes are received by any person in Iowa for the purpose of making a "first sale" of same. If the person making the "first sale" did not pay such tax, it shall be paid by any person into whose possession such cigarettes come until said tax has been paid in full. No person, however, shall be required to pay a tax on cigarettes brought into this state on or about the person in quantities of forty cigarettes or less, when such cigarettes have had the individual packages or seals thereof broken and when such cigarettes are actually used by said person and not sold or offered for sale.

3. Payment of the tax shall be evidenced by stamps purchased from the department by a distributor or manufacturer and securely affixed to each individual package of cigarettes in amounts equal to the tax as imposed by this chapter, or by the impressing of an indicium upon individual packages of cigarettes, under regulations prescribed by the director.

4. Any other person who purchases or is in possession of unstamped cigarettes shall pay the tax directly to the department.

5. The per cigarette amount of the tax shall be added to the selling price of every package of cigarettes sold in this state and shall be collected from the purchaser so that the ultimate consumer bears the burden of the tax.

6. All excise taxes collected under this subchapter by a distributor, manufacturer, or any individual are deemed to be held in trust for the state of Iowa.

7. Cigarettes shall be sold or dispensed only in packages or quantities of twenty or more cigarettes.

8. Any permit holder owning, renting, leasing, or otherwise operating a cigarette vending machine into which loose tobacco products are inserted and from which assembled cigarettes are dispensed shall do all the following:

a. Pay directly to the department, in lieu of the tax under subsection 1, a tax equal to three and six hundredths cents on each cigarette dispensed from such machine.

b. Allow to be inserted into such machine only loose tobacco products whose manufacturer and brand family are then currently listed on the directory maintained by the director under chapter 453D.

c. On or after January 1, 2014, allow to be dispensed from such machine only cigarettes which are in compliance with the requirements of chapter 101B.

d. Maintain in good working order on such machine a secure meter that counts the number of cigarettes dispensed by the machine, which meter cannot be accessed except for the sole purpose of taking meter readings, and cannot be reset or otherwise altered by the permit holder.

[C24, 27, 31, 35, §1570; C39, §**1556.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.6]

83 Acts, ch 165, §1; 85 Acts, ch 32, §1; 88 Acts, ch 1005, §1; 88 Acts, ch 1153, §1; 91 Acts, ch 267, §509, 510

C93, §453A.6

99 Acts, ch 151, §74, 75, 89; 2004 Acts, ch 1073, §36; 2007 Acts, ch 17, §3, 4, 12; 2012 Acts, ch 1110, §27; 2018 Acts, ch 1041, §127

Referred to in §453A.35, 453A.35A, 453A.40, 453A.43

Inventory tax, §453A.40

453A.7 Printing and custody of stamps.

1. The director of the department of administrative services shall have printed or

manufactured, cigarette and little cigar tax stamps of such design, size, denomination, and type and in such quantities as may be determined by the director of revenue. The stamps shall be so manufactured as to render them easy to be securely attached to each individual package of cigarettes and little cigars or cigarette papers. The cigarette and little cigar tax stamps shall be in the possession of and under the control of the director of revenue and the director shall keep accurate records of all cigarette and little cigar tax stamps.

2. There is appropriated annually from the state treasury from funds not otherwise appropriated an amount sufficient to carry out the provisions of this section.

[C24, 27, 31, 35, §1574; C39, §**1556.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.7]

C93, §453A.7

93 Acts, ch 180, §13; 2003 Acts, ch 145, §286; 2007 Acts, ch 186, §33

See annual Iowa Acts for temporary exceptions, changes, or other noncodified enactments modifying the funding provided under this section

453A.8 Sale and exchange of stamps.

1. Stamps shall be sold by and purchased from the department. The department shall sell stamps to the holder of a state distributor's or manufacturer's permit which has not been revoked and to no other person. Stamps shall be sold to the permit holders at a discount of two percent of the face value. Stamps shall be sold in unbroken rolls of thirty thousand stamps or unbroken lots of any other form authorized by the director.

2. Orders for cigarette tax stamps, including the payment for such stamps, shall be sent direct to the department on a form to be prescribed by the director, except as provided in subsection 6.

3. *a.* The department may make refunds on unused stamps to the person who purchased the stamps at a price equal to the amount paid for the stamps when proof satisfactory to the department is furnished that any stamps upon which a refund is requested were properly purchased from the department and paid for by the person requesting the refund. In making the refund, the department shall prepare a voucher showing the amount of refund due and to whom payable and shall authorize the department of administrative services to issue a warrant upon order of the director to pay the refund out of any funds in the state treasury not otherwise appropriated.

b. The director may promulgate rules providing for refunds of the face value of stamps, less any discount, affixed to any cigarettes which have become unfit for use and consumption, unsalable, or for any other legitimate loss which may occur, upon proof of such loss. Refund shall be made in the same manner as provided for unused stamps.

4. The department may in the enforcement of this subchapter recall any stamps which have been sold by the department and which have not been used, and the department shall, upon receipt of recalled stamps, issue a refund for tax stamps surrendered for the face value of the stamps less the amount of the discount. The purchaser of stamps shall surrender any unused stamps for refund upon demand of the department.

5. The department shall keep a record of all stamps sold by the department and of all refunds made by the department.

6. The director may authorize a bank as defined by section 524.103, subsection 8, to sell stamps. A bank authorized to sell stamps shall comply with all of the requirements governing the sale of stamps by the department. Section 453A.12 shall apply to any bank authorized to sell stamps.

[C24, §1574, 1575; C27, 31, 35, §1574-al, 1575; C39, **§1556.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.8; 81 Acts, ch 43, §2]

83 Acts, ch 165, §2; 92 Acts, ch 1163, §22

C93, §453A.8

99 Acts, ch 151, §76, 89; 2004 Acts, ch 1101, §60; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127

Referred to in §453A.40

Inventory tax, §453A.40

453A.9 Change of design.

The design of the stamps used may be changed as often as the director deems necessary for the best enforcement of the provisions of this subchapter.

[C39, §**1556.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.9]
C93, §453A.9
2018 Acts, ch 1041, §127

453A.10 Affixing of stamps by distributors.

Except as provided in section 453A.17, every distributor holding an Iowa permit shall cause to be affixed, within or without the state of Iowa, upon every individual package of cigarettes received by the distributor in this state or for distribution in this state, upon which no sufficient tax stamp is already affixed, a stamp or stamps of an amount equal to the tax due thereon. Such stamps shall be affixed within forty-eight hours, exclusive of Sundays and legal holidays, from the hour the cigarettes were received, and shall be affixed before such distributor sells, offers for sale, consumes, or otherwise distributes or transports the same. It shall be unlawful for any person, other than a distributing agent or distributor, bonded pursuant to section 453A.14, or common carrier to receive or accept delivery of any cigarettes without stamps affixed to evidence the payment of the tax, or without having in possession the requisite amount or number of stamps necessary to stamp such cigarettes, and the possession of any unstamped cigarettes, without the possession of the requisite amount or number of stamps, shall be prima facie evidence of the violation of this provision.

[C24, 27, 31, 35, §1571; C39, §**1556.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.10]
C93, §453A.10
Referred to in §101B.2, 101B.3

453A.11 Cancellation of stamps.

Stamps affixed to a package of cigarettes shall not be canceled by any letter, numeral, or other mark of identification or otherwise mutilated in any manner that will prevent or hinder the department in making an examination as to the genuineness of the stamp. However, the director may require such cancellation of the tax stamps affixed to packages of cigarettes which is necessary to carry out properly the provisions of this subchapter. A person who cancels or causes the cancellation of stamps in violation of this section shall be considered in possession of unstamped cigarettes and is subject to the penalty provided in section 453A.31, subsection 1, paragraph *"a"*.

[C39, §**1556.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.11]
C93, §453A.11
2004 Acts, ch 1073, §37; 2018 Acts, ch 1041, §127

453A.12 Use of stamping machines.

1. The department may purchase and supply suitable machines or devices to the holders of a state or manufacturer's permit, or authorize the leasing by the permit holder of such machines or the metering device or both, and provide under proper regulation and direction for the impression of a distinctive imprint, indicium or character upon individual packages of cigarettes, as evidence of the payment of the tax imposed by this subchapter, in lieu of the purchase and affixation of stamps.

2. If the director decides to purchase the machines they shall be paid for upon order of the director out of any funds in the general fund of the state not otherwise appropriated.

3. The machines or devices shall be so constructed as to record or meter the number of impressions or indicia made and shall at all times be open for inspection by the department.

4. All of the provisions of this subchapter relating to the collection of the tax by means of the sale and affixation of stamps shall apply in the use of the stamping machines or devices, including the right of refund.

[C39, §**1556.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.12]
C93, §453A.12
2018 Acts, ch 1041, §127
Referred to in §453A.8, 453A.40
Inventory tax, §453A.40

453A.13 Distributor's, wholesaler's, and retailer's permits.

1. *Permits required.* Every distributor, wholesaler, cigarette vendor, and retailer, now engaged or who desires to become engaged in the sale or use of cigarettes, upon which a tax is required to be paid, and every retailer now engaged or who desires to become engaged in selling, offering for sale, or distributing alternative nicotine products or vapor products, including through delivery sales, shall obtain a state or retail permit as a distributor, wholesaler, cigarette vendor, or retailer, as the case may be.

2. *Issuance or denial.*

a. The department shall issue state permits to distributors, wholesalers, and cigarette vendors, and retailers that make delivery sales of alternative nicotine products and vapor products, subject to the conditions provided in this subchapter. If an out-of-state retailer makes delivery sales of alternative nicotine products or vapor products, an application shall be filed with the department and a permit shall be issued for the out-of-state retailer's principal place of business. Cities may issue retail permits to retailers with a place of business located within their respective limits. County boards of supervisors may issue retail permits to retailers with a place of business in their respective counties, outside of the corporate limits of cities.

b. The department may deny the issuance of a permit to a distributor, wholesaler, vendor or retailer who is substantially delinquent in the payment of a tax due, or the interest or penalty on the tax, administered by the department at the time of application. If the applicant is a partnership, a permit may be denied if a partner is substantially delinquent on any delinquent tax, penalty or interest. If the applicant is a corporation, a permit may be denied if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, interest or penalty of the applicant corporation.

c. The department, or a city or county, shall submit a duplicate of any application for a retail permit to the alcoholic beverages division of the department of commerce within thirty days of the issuance. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the last day of each quarter of a state fiscal year.

3. *Fees — expiration.*

a. All permits provided for in this subchapter shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid for the period ending June 30 next, to the department or the city or county granting the permit, the fees provided for in this subchapter. The annual state permit fee for a distributor, cigarette vendor, and wholesaler is one hundred dollars when the permit is granted during the months of July, August, or September. However, whenever a state permit holder operates more than one place of business, a duplicate state permit shall be issued for each additional place of business on payment of five dollars for each duplicate state permit, but refunds as provided in this subchapter do not apply to any duplicate permit issued.

b. The fee for retail permits is as follows when the permit is granted during the months of July, August, or September:

(1) In places outside any city, fifty dollars.

(2) In cities of less than fifteen thousand population, seventy-five dollars.

(3) In cities of fifteen thousand or more population, one hundred dollars.

c. If any permit is granted during the months of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the months of January, February, or March, one-half of the maximum schedule, and if granted during the months of April, May, or June, one-fourth of the maximum schedule.

4. *Refunds.*

a. An unrevoked permit for which the holder has paid the full annual fee may be surrendered during the first nine months of said year to the officer issuing it, and the department, or the city or county granting the permit shall make refunds to the holder as follows:

(1) Three-fourths of the annual fee if the surrender is made during July, August, or September.

(2) One-half of the annual fee if the surrender is made during October, November, or December.

(3) One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the holder has paid three-fourths of a full annual fee may be so surrendered during the first six months of the period covered by said payment and the department, city, or county shall make refunds to the holder as follows:

(1) A sum equal to one-half of an annual fee if the surrender is made during October, November, or December.

(2) A sum equal to one-fourth of an annual fee if the surrender is made during January, February, or March.

c. An unrevoked permit for which the holder has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by that payment, and the department, city, or county shall refund to the holder a sum equal to one-fourth of an annual fee.

5. *Application — bond.* Permits shall be issued only upon applications accompanied by the fee indicated above, and by an adequate bond as provided in section 453A.14, and upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the forms unless absolute refusal is shown. The forms shall set forth all of the following:

a. The manner under which the distributor, wholesaler, or retailer, transacts or intends to transact such business as a distributor, wholesaler, or retailer.

b. The principal office, residence, and place of business where the permit is to apply.

c. If the applicant is not an individual, the principal officers or members and their addresses.

d. Any other information as the director shall by rules prescribe.

6. *No sales without permit.* A distributor, wholesaler, cigarette vendor, or retailer shall not sell any cigarettes, alternative nicotine products, or vapor products until such application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is unrevoked and unexpired.

7. *Number of permits — trucks.* An application shall be filed and a permit obtained for each place of business owned or operated by a distributor, wholesaler, or retailer, excepting that no permit need be obtained for a delivery or sales truck of a distributor or wholesaler holding a permit, provided that the director may by regulation require that said truck bear the distributor's or wholesaler's name, and that the permit number of the place of business for and from which it operates be conspicuously displayed on the outside of the body of the truck, immediately under the name.

8. *Group business.* Any person who operates both as a distributor and wholesaler in the same place of business shall only be required to obtain a state permit for the particular place of business where such operation of said business is conducted. A separate retail permit, however, shall be required if any distributor or wholesaler sells cigarettes at both retail and wholesale.

9. *Permit — form and contents.* Each permit issued shall describe clearly the place of business for which it is issued, shall be nonassignable, consecutively numbered, designating the kind of permit, and shall authorize the sale of cigarettes, alternative nicotine products, or vapor products in this state subject to the limitations and restrictions herein contained. The retail permits shall be upon forms furnished by the department or on forms made available or approved by the department.

10. *Permit displayed.* The permit shall, at all times, be publicly displayed by the distributor, wholesaler, or retailer at the place of business so as to be easily seen by the public and the persons authorized to inspect the place of business. The proprietor or keeper of any building or place where cigarettes, alternative nicotine products, vapor products, or tobacco products are kept for sale, or with intent to sell, shall upon request of any agent of the department or any peace officer exhibit the permit. A refusal or failure to exhibit the permit is prima facie evidence that the cigarettes, alternative nicotine products, vapor

products, tobacco, or tobacco products are kept for sale or with intent to sell in violation of this subchapter.

[S13, §5007-a; C24, 27, §1557, 1558, 1560, 1563, 1564, 1584; C31, 35, §1557, 1558, 1560, 1563, 1563-d1, 1564, 1584; C39, §**1556.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.13]

86 Acts, ch 1007, §5; 86 Acts, ch 1241, §1

C93, §453A.13

94 Acts, ch 1165, §38; 2000 Acts, ch 1105, §5; 2007 Acts, ch 186, §34, 35; 2011 Acts, ch 25, §48; 2011 Acts, ch 63, §14; 2012 Acts, ch 1023, §54, 55; 2014 Acts, ch 1109, §6, 7; 2017 Acts, ch 170, §63, 64; 2017 Acts, ch 171, §60; 2018 Acts, ch 1041, §126, 127

Referred to in §421.26, 453A.36, 453A.40, 453A.47C

453A.14 Bonds.

1. No state or manufacturer's permit shall be issued until the applicant files a bond, with good and sufficient surety, to be approved by the director, which bond shall be in favor of the state and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the permit holder for violation of any of the provisions of this subchapter. The bonds shall be on forms prescribed by the director and in the following amounts:

a. State permit, not less than five hundred dollars.

b. Manufacturer's permit, not less than five thousand dollars.

2. A person shall not engage in interstate business unless the person files a bond, with good and sufficient surety in an amount of not less than one thousand dollars. The amount of the bond required of the person shall be fixed by the director, subject to the minimum limitation provided in this section. The bond is subject to approval by the director and shall be payable to the state in Des Moines, Polk county, and conditioned upon the payment of taxes, damages, fines, penalties, and costs adjudged against the person for violation of any of the requirements of this subchapter affecting the person, on a form prescribed by the director.

3. An additional bond or a new bond may be required by the director at any time an existing bond becomes insufficient or the surety thereon becomes unsatisfactory, which additional bond, or new bond, shall be supplied within ten days after demand. On failure to supply a new bond or additional bond within ten days after demand, the director may cancel any existing bond made and secured by and for the person. If the bond is canceled the person shall within forty-eight hours after receiving cigarettes or forty-eight hours after the cancellation, excluding Sundays and legal holidays, cause any cigarettes in the person's possession to have the requisite amount of stamps affixed to represent the tax.

[C24, 27, 31, 35, §1561, 1562; C39, §**1556.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.14]

C93, §453A.14

2011 Acts, ch 25, §100; 2018 Acts, ch 1041, §127

Referred to in §453A.10, 453A.13, 453A.15, 453A.17

453A.15 Records and reports of permit holders.

1. The director may prescribe the forms necessary for the efficient administration of this subchapter and may require uniform books and records to be used and kept by each permit holder or other person as deemed necessary. The director may also require each permit holder or other person to keep and retain in the director's possession evidence on prescribed forms of all transactions involving the purchase and sale of cigarettes or the purchase and use of stamps. The evidence shall be kept for a period of three years from the date of each transaction, for the inspection at all times by the department.

2. Where a state permit holder sells cigarettes at retail, the holder shall be required to maintain detailed records for sales of cigarettes to be sold at retail and the cigarette sales records shall be kept separate and apart.

3. The director may by regulation require every holder of a manufacturer's or state permit or other person to make and deliver to the department on or before the tenth day of each month a report or reports for the preceding calendar month, upon a form or forms prescribed by the director, and may require that the reports shall be properly sworn to and executed by the permit holder or the holder's duly authorized representative or other person.

4. Every permit holder or other person shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the permit holder or other person involving the purchase or sale or use of cigarettes or purchase of cigarette stamps.

5. Every person engaged in the business of selling cigarettes in interstate commerce only, who has, by furnishing the bond required in section 453A.14, been permitted to set aside or store cigarettes in this state for the conduct of such interstate business without the stamps affixed thereto, shall be required to keep such records and make such reports to the department as are required by the department.

6. If any distributor, manufacturer, or other person fails or refuses to pay any tax, penalties, or cost of audit hereinafter provided, and it becomes necessary to bring suit or to intervene in any manner for the establishment or collection of said claims, in any judicial proceedings, any report filed in the office of the director by the distributor, manufacturer, or other person, or the distributor's, manufacturer's, or other person's representative, or a copy thereof, certified to by the director, showing the number of cigarettes sold by the distributor, the distributor's representative, the manufacturer, or the other person, upon which a tax, penalty, or cost of audit has not been paid, or any audit made by the department from the books or records of the distributor, manufacturer, or other person when signed and sworn to by the agent of the department making the audit as being made from the records of the distributor, manufacturer, or other person from or to whom the distributor, manufacturer, or other person has bought, received, or delivered cigarettes, whether from a transportation company or otherwise, such report or audit shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof. However, the incorrectness of the report or audit may be shown.

7. The director may require by rule that reports required to be made under this subchapter be filed by electronic transmission.

[C27, 31, 35, §1570-b1, -b2; C39, §**1556.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.15]

C93, §453A.15

99 Acts, ch 151, §77, 89; 2004 Acts, ch 1073, §38; 2007 Acts, ch 186, §36, 37; 2018 Acts, ch 1041, §127

453A.16 Manufacturer's permit.

The department may, upon application of any manufacturer, issue without charge to the manufacturer a manufacturer's permit. The application shall contain information as the director shall prescribe. The holder of a manufacturer's permit is authorized to purchase stamps from the department, and must affix stamps to individual packages of cigarettes outside of this state, prior to their shipment into the state unless the cigarettes are shipped to an Iowa permitted distributor or an Iowa permitted distributor's agent.

[C39, §**1556.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.16]

C93, §453A.16

99 Acts, ch 151, §78, 89

Referred to in §421.26

453A.17 Distributing agent's permit.

1. Every distributing agent in the state, now engaged, or who desires to become engaged, in the business of storing unstamped cigarettes which are received in interstate commerce for distribution or delivery only upon order received from without the state or to be sold outside the state, shall file with the department, an application for a distributing agent's permit, on a form prescribed by the director, to be furnished upon written request. The failure to furnish shall be no excuse for the failure to file the same unless an absolute refusal is shown. Said form shall set forth the name under which such distributing agent transacts or intends to transact such business as a distributing agent, the principal office and place of business in Iowa to which the permit is to apply, and if other than an individual, the principal officers or members thereof and their addresses. The director may require any

other information in said application. No distributing agent shall engage in such business until such application has been filed and fee in the sum of one hundred dollars paid for the permit and until the permit has been obtained. Such permit shall expire on June 30 following the date of issuance. All of the provisions of the last two paragraphs of section 453A.14, relative to bonds, are incorporated herein and by this reference made applicable to distributing agents. Upon failure to furnish adequate bond as required, the permit shall be revoked without hearing. An application shall be filed and a permit obtained for each place of business owned or operated by a distributing agent.

2. Upon receipt of the application, bond and permit fee, the department may issue to every distributing agent for the place of business designated a nonassignable consecutively numbered permit, authorizing the storing, and distribution of unstamped cigarettes within this state when the distribution is made upon interstate orders only. A distributing agent may also transport unstamped cigarettes in the agent's own conveyances to the state boundary for distribution outside the state, and any nonresident customer of the distributor may purchase and convey unstamped cigarettes to the state line for distribution outside the state. The nonresident purchaser shall have in possession an invoice evidencing the purchase of the unstamped cigarettes, which must be exhibited upon request to any peace officer or agent charged with the enforcement of this subchapter.

3. Cigarettes set aside for interstate business must be kept separate from intrastate stock and those not so kept shall be considered as intrastate stock and subject to the same requirements as cigarettes possessed for the purpose of a "first sale".

4. It is unlawful for any distributing agent to sell at retail cigarettes from automobiles, trucks, or any similar conveyances.

[C39, §**1556.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.17]
C93, §453A.17
2018 Acts, ch 1041, §127
Referred to in §453A.10

453A.18 Forms for records and reports.

The department shall furnish or make available in electronic form, without charge, to holders of the various permits, forms in sufficient quantities to enable permit holders to make the reports required to be made under this subchapter. The permit holders shall furnish at their own expense the books, records, and invoices, required to be used and kept, but the books, records, and invoices shall be in exact conformity to the forms prescribed for that purpose by the director, and shall be kept and used in the manner prescribed by the director. However, the director may, by express order in certain cases, authorize permit holders to keep their records in a manner and upon forms other than those prescribed. The authorization may be revoked at any time.

[C39, §**1556.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.18]
C93, §453A.18
2007 Acts, ch 186, §38; 2018 Acts, ch 1041, §127

453A.19 Examination of records and premises.

1. For the purpose of enabling the department to determine the tax liability of permit holders or any other person dealing in cigarettes or to determine whether a tax liability has been incurred, the department shall have the right to inspect any premises of the holder of an Iowa permit located within or without the state of Iowa where cigarettes are manufactured, produced, made, stored, transported, sold, or offered for sale or exchange, and to examine all of the records required to be kept or any other records that may be kept incident to the conduct of the cigarette business of said permit holder or any other person dealing in cigarettes.

2. The said authorized officers shall also have the right as an incident to determining the said tax liability, or whether a tax liability has been incurred, to examine all stocks of cigarettes and cigarette stamps and for the foregoing purpose said authorized officers shall also have the right to remain upon said premises for such length of time as may be necessary to fully determine said tax liability, or whether a tax liability has been incurred.

3. It shall be unlawful for any of the foregoing permit holders to fail to produce upon

demand of the department any records required herein to be kept or to hinder or prevent in any manner the inspection of said records or the examination of said premises.

4. In the case of any departmental inspection conducted under this section requiring department personnel to travel outside the state of Iowa, any additional costs incurred by the department for out-of-state travel expenses shall be borne by the permittee. These additional costs shall be those costs in excess of the costs of a similar inspection conducted at the geographical point located within the state of Iowa nearest to the out-of-state inspection point. In lieu of conducting an on premises out-of-state inspection, the department shall have the authority to direct the permittee to assemble and transport all records described in subsection 1, to the nearest practical and convenient geographical location in Iowa for inspection by the department.

[C39, §**1556.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.19]
C93, §453A.19

453A.20 Subpoena for witnesses and papers.

For the purpose of enforcing the provisions of this chapter and of detecting violations thereof, the director shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of all relevant books, papers, and records. Such attendance and production may be required at the statehouse at Des Moines, or at any place convenient for such investigation. In case any person fails or refuses to obey a subpoena so issued, the director may procure an order from the district court in the county where such person resides, or where such person is found, requiring such person to appear for examination and/or to produce such books, papers, and records as are required in the subpoena. Failure to obey such order shall be punished by such court as contempt thereof.

[C39, §**1556.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.20]
C93, §453A.20

453A.21 Cigarettes retailer may not sell.

Unless a retail permit holder shall also hold a state permit, it shall be unlawful for a retailer to sell or have in the retailer's possession cigarettes upon which the stamp tax has not been affixed.

[C39, §**1556.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.21]
C93, §453A.21

453A.22 Revocation — suspension — civil penalty.

1. If a person holding a permit issued by the department under this subchapter, including a retailer permit for railway car, has willfully violated section 453A.2, the department shall revoke the permit upon notice and hearing. If the person violates any other provision of this subchapter, or a rule adopted under this subchapter, or is substantially delinquent in the payment of a tax administered by the department or the interest or penalty on the tax, or if the person is a corporation and if any officer having a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax of the permit-holding corporation, or interest or penalty on the tax, administered by the department, the department may revoke the permit issued to the person, after giving the permit holder an opportunity to be heard upon ten days' written notice stating the reason for the contemplated revocation and the time and place at which the person may appear and be heard. The hearing before the department may be held at a site in the state as the department may direct. The notice shall be given by mailing a copy to the permit holder's place of business as it appears on the application for a permit. If, upon hearing, the department finds that the violation has occurred, the department may revoke the permit.

2. If a retailer or employee of a retailer has violated section 453A.2 or section 453A.36, subsection 6, the department or local authority, or the alcoholic beverages division of the department of commerce following transfer of the matter to the alcoholic beverages division of the department of commerce pursuant to section 453A.2, subsection 6, in addition to the other penalties fixed for such violations in this section, shall assess a penalty upon the same hearing and notice as prescribed in subsection 1 as follows:

a. For a first violation, the retailer shall be assessed a civil penalty in the amount of three hundred dollars. Failure to pay the civil penalty as ordered under this subsection shall result in automatic suspension of the permit for a period of fourteen days.

b. For a second violation within a period of two years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars or the retailer's permit shall be suspended for a period of thirty days. The retailer may select its preference in the penalty to be applied under this paragraph.

c. For a third violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of thirty days.

d. For a fourth violation within a period of three years, the retailer shall be assessed a civil penalty in the amount of one thousand five hundred dollars and the retailer's permit shall be suspended for a period of sixty days.

e. For a fifth violation within a period of four years, the retailer's permit shall be revoked.

3. If an employee of a retailer violates section 453A.2, subsection 1, the retailer shall not be assessed a penalty under subsection 2, and the violation shall be deemed not to be a violation of section 453A.2, subsection 1, for the purpose of determining the number of violations for which a penalty may be assessed pursuant to subsection 2, if the employee holds a valid certificate of completion of the tobacco compliance employee training program pursuant to section 453A.5 at the time of the violation. A retailer may assert only once in a four-year period the bar under this subsection against assessment of a penalty pursuant to subsection 2, for a violation of section 453A.2, that takes place at the same place of business location.

4. Reserved.

5. If a permit is revoked a new permit shall not be issued to the permit holder for any place of business, or to any other person for the place of business at which the violation occurred, until one year has expired from the date of revocation, unless good cause to the contrary is shown to the issuing authority.

6. Notwithstanding subsection 5, if a retail permit is suspended or revoked under this section, the suspension or revocation shall only apply to the place of business at which the violation occurred and shall not apply to any other place of business to which the retail permit applies but at which the violation did not occur.

7. The department or local authority shall report the suspension or revocation of a retail permit under this section to the alcoholic beverages division of the department of commerce within thirty days of the suspension or revocation of the retail permit.

8. For the purposes of this section, *"retailer"* means retailer as defined in sections 453A.1 and 453A.42 and *"retail permit"* includes permits issued to retailers under subchapter I or subchapter II of this chapter.

[C24, 27, 31, 35, §1559; C39, §**1556.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.22]

86 Acts, ch 1007, §6; 86 Acts, ch 1241, §2; 89 Acts, ch 251, §1; 91 Acts, ch 240, §5

C93, §453A.22

2000 Acts, ch 1105, §6, 7; 2000 Acts, ch 1232, §71, 95; 2003 Acts, ch 26, §3 – 7; 2005 Acts, ch 93, §3; 2006 Acts, ch 1030, §41; 2011 Acts, ch 63, §15, 16; 2018 Acts, ch 1041, §127

Referred to in §453A.2, 453A.23, 453A.47A

453A.23 Retailer's permit for railway car.

1. Subject to this subchapter, a retailer's permit may be issued by the department to any dining car company, sleeping car company, railroad or railway company. The permit shall authorize the holder to keep for sale, and sell, cigarettes at retail on any dining car, sleeping car, or passenger car operated by the applicant in, through, or across the state of Iowa, subject to all of the restrictions imposed upon retailers under this subchapter. The application for the permit shall be in the form and contain the information required by the director. Each permit is good throughout the state. Only one permit is required for all cars operated in this state by the applicant, but a duplicate of the permit shall be posted in each car in which cigarettes are sold and no further permit shall be required or tax levied for the privilege of selling cigarettes in the cars. No cigarettes shall be sold in the cars without having affixed thereto stamps evidencing the payment of the tax as provided in this subchapter.

2. As a condition precedent to the issuing of a retailer's permit for railway car, the applicant shall file with the department a bond in favor of the state for the benefit of all parties interested in the amount of five hundred dollars conditioned upon the payment of all taxes, fines and penalties and costs in this subchapter.

3. The annual fee for a retailer's permit for railway cars shall be twenty-five dollars and two dollars for each duplicate thereof, which fee shall be paid to the department. The department shall issue duplicates of such permits from time to time as applied for by such companies.

4. The provisions of subsections 1 and 5 of section 453A.22 shall apply to the revocation of such permit and the issuance of a new one.

[C39, §**1556.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.23]
C93, §453A.23
2018 Acts, ch 1041, §127

453A.24 Carrier to permit access to records.

1. Every common carrier or person in this state having custody of books or records showing the transportation of cigarettes both interstate and intrastate shall give and allow the department free access to those books and records.

2. The director may require by rule that common carriers or the appropriate persons provide monthly reports to the department detailing all information the department deems necessary on shipments into and out of Iowa of cigarettes and tobacco products as set forth in this subchapter I and subchapter II of this chapter. The director may require by rule that the reports be filed by electronic transmission.

[C39, §**1556.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.24]
C93, §453A.24
2007 Acts, ch 186, §39; 2018 Acts, ch 1041, §127

453A.25 Administration.

1. The director shall administer the provisions of this chapter, and shall collect, supervise, and enforce the collection of all taxes and penalties that may be due under the provisions of this chapter.

2. The director may make and publish rules, not inconsistent with this chapter, necessary and advisable for its detailed administration, enforce the provisions thereof, and collect the taxes and fees herein imposed. The director may promulgate rules hereunder providing for the refund on stamps which by reason of damage become unfit for sale or use.

3. The director may designate employees to administer and enforce the provisions of this chapter, including the collection of all taxes provided for in this chapter. In the enforcement, the director may request aid from the attorney general, the special agents of the state, any county attorney, or any peace officer. The director may appoint clerks and additional help as may be needed to administer this chapter.

[C24, 27, 31, 35, §1576; C39, §**1556.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.25]
C93, §453A.25
2007 Acts, ch 186, §40

453A.26 Liens and actions.

All of the provisions for the lien of the tax, its collection, and all actions as provided in the uniform sales and use tax administration Act, chapter 423, shall apply to the tax imposed by this chapter, except that where the sales tax and the cigarette tax may become conflicting liens, they shall be of equal priority.

[C24, 27, 31, 35, §1565; C39, §**1556.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.26]
C93, §453A.26
2005 Acts, ch 3, §74

453A.27 Venue of actions to collect.

Venue of any civil proceedings filed under the provisions of this chapter to collect the taxes, fees, and penalties levied herein shall be in a court of competent jurisdiction in Polk county, or in any court having jurisdiction.

[C39, §**1556.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.27]

C93, §453A.27

453A.28 Assessment of tax by department — interest — penalty.

1. If after any audit, examination of records, or other investigation the department finds that any person has sold cigarettes without stamps affixed or that any person responsible for paying the tax has not done so as required by this subchapter, the department shall fix and determine the amount of tax due, and shall assess the tax against the person, together with a penalty as provided in section 421.27. The taxpayer shall pay interest on the tax or additional tax at the rate determined under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due. If any person fails to furnish evidence satisfactory to the director showing purchases of sufficient stamps to stamp unstamped cigarettes purchased by the person, the presumption shall be that the cigarettes were sold without the proper stamps affixed. Within three years after the report is filed or within three years after the report became due, whichever is later, the department shall examine the report and determine the correct amount of tax. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent report made with the intent to evade tax, or in the case of a failure to file a report, or if a person purchases or is in possession of unstamped cigarettes.

2. The three-year period of limitation may be extended by a taxpayer by signing a waiver agreement form to be provided by the department. The agreement must stipulate the period of extension and the tax period to which the extension applies. The agreement must also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

[C24, 27, 31, 35, §1568; C39, §**1556.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.28]

84 Acts, ch 1173, §1; 86 Acts, ch 1007, §7; 90 Acts, ch 1172, §1

C93, §453A.28

99 Acts, ch 151, §79, 89; 2004 Acts, ch 1073, §39; 2018 Acts, ch 1041, §127

Referred to in §453A.29, 453A.31

453A.29 Notice and appeal.

The department shall notify any person assessed pursuant to section 453A.28 by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty, and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with the Iowa administrative procedure Act, chapter 17A, and section 422.29.

[C39, §**1556.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.29]

86 Acts, ch 1007, §8; 86 Acts, ch 1241, §3, 4

C93, §453A.29

94 Acts, ch 1133, §13, 16; 99 Acts, ch 151, §80, 89; 2003 Acts, ch 44, §114

Referred to in §421.10

453A.30 Assessment of cost of audit.

The department may employ auditors or other persons to audit and examine the books and records of any permit holder or other person dealing in cigarettes to ascertain whether

the permit holder or other person has paid the amount of the taxes required to be paid by the holder or person or filed all reports containing all required information as specified by the department under the provisions of this chapter. If such taxes have not been paid or such reports not filed, as required, the department shall assess against the permit holder or other person, as additional penalty, the reasonable expenses and costs of the investigation and audit.

[C39, §**1556.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.30]
C93, §453A.30
2007 Acts, ch 186, §41

453A.31 Civil penalty for certain violations.

1. If a permit holder fails to keep any of the records required to be kept by the provisions of this subchapter, or sells cigarettes upon which a tax is required to be paid by this subchapter without at the time having a valid permit, or if a distributor, wholesaler, manufacturer, or distributing agent fails to make reports to the department as required, or makes a false or incomplete report to the department, or if a distributing agent stores unstamped cigarettes in the state or distributes or delivers unstamped cigarettes within this state without at the time of storage or delivery having a valid permit, or if a person purchases or is in possession of unstamped cigarettes, or if a person affected by this subchapter fails or refuses to abide by any of its provisions or the rules adopted under this subchapter, the person is civilly liable to the state for a penalty as follows:

a. For possession of unstamped cigarettes:

(1) A two hundred dollar penalty for the first violation if a person is in possession of more than forty but not more than four hundred unstamped cigarettes.

(2) A five hundred dollar penalty for the first violation if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes.

(3) A twenty-five dollar per pack penalty for the first violation if a person is in possession of more than two thousand unstamped cigarettes.

(4) For a second violation within three years of the first violation, the penalty is four hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and thirty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

(5) For a third or subsequent violation within three years of the first violation, the penalty is six hundred dollars if a person is in possession of more than forty but not more than four hundred unstamped cigarettes; one thousand five hundred dollars if a person is in possession of more than four hundred but not more than two thousand unstamped cigarettes; and forty-five dollars per pack if a person is in possession of more than two thousand unstamped cigarettes.

b. For all other violations of this section:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A one thousand dollar penalty for a third or subsequent violation within three years of the first violation.

2. The penalty imposed under this section shall be assessed and collected pursuant to section 453A.28 and is in addition to the tax, penalty, and interest imposed in that section.

3. If a cigarette distributor fails to file a return or to report timely, stamps shall not be provided to that cigarette distributor until all returns and reports are filed properly and all tax, penalties, and interest are paid.

[C24, 27, 31, 35, §1572; C39, §**1556.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.31]
C93, §453A.31
99 Acts, ch 151, §81, 89; 2004 Acts, ch 1073, §40, 41; 2007 Acts, ch 186, §42; 2008 Acts, ch 1032, §55; 2018 Acts, ch 1041, §127
Referred to in §453A.11, 453A.46, 453D.5

453A.32 Seizure and forfeiture — procedure.

1. All cigarettes on which taxes are imposed or required to be imposed by this subchapter, which are found in the possession or custody, or within the control of any person, for the purpose of being sold, distributed, or removed by the person in violation of this subchapter, and all cigarettes which are removed, stored, transported, deposited, or concealed in any place without the proper taxes paid, and any automobile, truck, boat, conveyance, or other vehicle whatsoever, used in the removal, storage, deposit, concealment, or transportation of cigarettes for the purpose of avoiding the payment of the proper tax, and all equipment or other tangible personal property incident to and used for the purpose of avoiding the payment of the proper tax, found in the place, building, or vehicle where cigarettes are found, and all counterfeit cigarettes may be seized by the department, with or without process and shall be from the time of the seizure forfeited to the state of Iowa. A proceeding in the nature of a proceeding in rem shall be filed in a court of competent jurisdiction in the county of seizure to maintain the seizure and declare and perfect the forfeiture. All cigarettes, counterfeit cigarettes, vehicles, and property seized, remaining in the possession or custody of the department, sheriff or other officer for forfeiture or other disposition as provided by law, are not subject to replevin.

2. The department, when taking the seizure aforesaid, shall immediately make a written report thereof showing the name of the agent or representative making the seizure, the place and person where and from whom such property was seized and an inventory of same and appraisement thereof at the reasonable value of the article seized, which report shall be prepared in duplicate, signed by the agent or representative so seizing, the original of which shall be given to the person from whom said property is taken, and a duplicate copy of which shall be filed in the office of the director and shall be open to public inspection.

3. The county attorney of the county of seizure, shall, at the request of the director, file in the county and court aforesaid forfeiture proceeding in the name of the state as plaintiff, and in the name of the owner or person in possession as defendant, if known, and if unknown, then in the name of said property seized and sought to be forfeited. Upon the filing of said proceeding, the clerk of said court shall issue notice to the owner or person in possession of such property to appear before such court upon the date named therein, which shall not be less than two days from service of such notice, to show cause why the forfeiture aforesaid should not be declared, which notice shall be served by the sheriff of said county. In the event the defendant in said proceeding is a nonresident of the state or the defendant's residence is unknown, or in the event the name of such defendant is unknown, upon affidavit by the director to this effect, notice shall be given as ordered by the court.

4. In the event final judgment is rendered in the forfeiture proceedings aforesaid, maintaining the seizure, and declaring and perfecting the forfeiture of said seized property, the court shall order and decree the sale of the seized property, other than the counterfeit cigarettes, to the highest bidder, by the sheriff at public auction in the county of seizure after notice is given in the manner provided in the case of the sale of personal property under execution, and the proceeds of such sale, less expense of seizure and court costs, shall be paid into the state treasury. Counterfeit cigarettes shall be destroyed or disposed of in a manner determined by the director.

5. In the event the cigarettes seized and sought to be sold upon forfeiture are unstamped, the cigarettes shall be sold by the director or the director's designee to the highest bidder among the permitted distributors in this state after written notice has been mailed to all distributors. If there is no bidder, or in the opinion of the director the quantity of cigarettes to be sold is insufficient or for any other reason such disposition of the cigarettes is impractical, the cigarettes shall be destroyed or disposed of in a manner as determined by the director. The proceeds from the sales shall be paid into the state treasury.

6. The provisions of this section applying to cigarettes shall also apply to tobacco products taxed under subchapter II of this chapter.

[C39, §**1556.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.32]

C93, §453A.32
2004 Acts, ch 1073, §42; 2007 Acts, ch 186, §43; 2018 Acts, ch 1041, §127
Referred to in §331.653, 331.756(19), 453A.36, 453D.6
Inventory tax, §453A.40

453A.33 Seizure not to affect criminal prosecution.

The seizure, forfeiture, and sale of cigarettes, tobacco products, and other property under the terms and conditions hereinabove set out, shall not constitute any defense to the person owning or having control or possession of the property from criminal prosecution for any act or omission made or offense committed under this chapter or from liability to pay penalties provided by this chapter.

[C39, §**1556.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.33]
C93, §453A.33

453A.34 Restrictions on injunction.

Any person who shall invoke the power and remedies of injunction against the department to restrain or enjoin the department from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued shall file such proceedings in a court of competent jurisdiction in Polk county, and venue for such injunction is hereby declared to be in Polk county.

[C39, §**1556.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.34]
C93, §453A.34

453A.35 Proceeds paid to general fund — health care trust fund.

1. *a.* With the exception of revenues credited to the health care trust fund pursuant to paragraph "*b*", the proceeds derived from the sale of stamps and the payment of fees and penalties provided for under this chapter, and the permit fees received from all permits issued by the department, shall be credited to the general fund of the state.

b. The revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, shall be credited to the health care trust fund created in section 453A.35A.

2. All permit fees provided for in this chapter and collected by cities in the issuance of permits granted by the cities shall be paid to the treasurer of the city where the permit is effective, or to another city officer as designated by the council, and credited to the general fund of the city. Permit fees so collected by counties shall be paid to the county treasurer.

[C24, 27, 31, 35, §1569; C39, §**1556.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.35]
83 Acts, ch 123, §51, 209
C93, §453A.35
2007 Acts, ch 17, §5, 12; 2009 Acts, ch 182, §62; 2010 Acts, ch 1192, §82; 2011 Acts, ch 131, §96, 158; 2013 Acts, ch 138, §130
Referred to in §331.427, 453A.35A

453A.35A Health care trust fund.

1. A health care trust fund is created in the office of the treasurer of state. The fund consists of the revenues generated from the tax on cigarettes pursuant to section 453A.6, subsection 1, and from the tax on tobacco products as specified in section 453A.43, subsections 1, 2, 3, and 4, that are credited to the health care trust fund, annually, pursuant to section 453A.35. Moneys in the fund shall be separate from the general fund of the state and shall not be considered part of the general fund of the state. However, the fund shall be considered a special account for the purposes of section 8.53 relating to generally accepted accounting principles. Moneys in the fund shall be used only as specified in this section and shall be appropriated only for the uses specified. Moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered, except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2. Moneys in the fund shall be used only for purposes related to health care, substance abuse treatment and prevention, and tobacco use prevention, cessation, and control.

2007 Acts, ch 17, §6, 12; 2011 Acts, ch 131, §97, 158

Referred to in §453A.35

453A.36 Unlawful acts.

1. Except as otherwise provided in this subchapter, it is unlawful for any person to have in the person's possession for sale, distribution, or use, or for any other purpose, in excess of forty cigarettes, or to sell, distribute, use, or present as a gift or prize cigarettes upon which a tax is required to be paid by this subchapter, without having affixed to each individual package of cigarettes, the proper stamp evidencing the payment of the tax and the absence of the stamp on the individual package of cigarettes is notice to all persons that the tax has not been paid and is prima facie evidence of the nonpayment of the tax.

2. No person, other than a common carrier and a distributor's truck bearing the distributor's name and permit number in plain view on the outside of such truck, shall transport within this state cigarettes upon which a tax is required to be paid, without having stamps affixed to each individual package of said cigarettes; and no person shall fail or refuse, upon demand of agent of the department, or any peace officer to stop any vehicle transporting cigarettes for a full and complete inspection of the cargo carried.

3. No person shall use, sell, offer for sale, or possess for the purpose of use or sale, within this state, any previously used stamp or stamps, or attach any such previously used stamps to an individual package of cigarettes, nor shall any person purchase stamps from any person other than the department or sell stamps purchased from the department.

4. No person shall knowingly use, consume, or smoke, within this state, cigarettes upon which a tax is required to be paid, without said tax having been paid.

5. No person, unless the person be the holder of a permit, or the holder's representative, shall solicit the sale of cigarettes, provided that this section shall not prevent solicitation by a nonpermit holder for the sale of cigarettes to any state permit holder.

6. Any sales of tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes made through a cigarette vending machine are subject to rules and penalties relative to retail sales of tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes provided for in this chapter. Cigarettes shall not be sold through any cigarette vending machine unless the cigarettes have been properly stamped or metered as provided by this subchapter, and in case of violation of this provision, the permit of the dealer authorizing retail sales of cigarettes shall be revoked. Payment of the permit fee as provided in section 453A.13 authorizes a cigarette vendor to sell tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes through vending machines. However, tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes shall not be sold through a vending machine unless the vending machine is located in a place where the retailer ensures that no person younger than eighteen years of age is present or permitted to enter at any time. Tobacco, tobacco products, alternative nicotine products, vapor products, and cigarettes shall not be sold through any cigarette vending machine if such products are placed together with any nontobacco product, other than matches, in the cigarette vending machine. This section does not require a retail permit holder to buy a cigarette vendor's permit if the retail permit holder is in fact the owner of the cigarette vending machines and the machines are operated in the location described in the retail permit.

7. *a.* It shall be unlawful for a person other than a retailer as defined in section 453A.1 or 453A.42 who holds a valid retail permit, as applicable, to sell tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes at retail.

b. A state permit holder shall not sell or distribute cigarettes at wholesale to any person in the state of Iowa who does not hold a permit authorizing the retail sale of cigarettes or who does not hold a state permit as a manufacturer, distributing agent, wholesaler, or distributor.

8. It shall be unlawful for a holder of a retail permit to sell or distribute any cigarettes or tobacco products, including but not limited to a single or loose cigarette, that are not

contained within a sealed carton, pack, or package as provided by the manufacturer, which carton, pack, or package bears the health warning that is required by federal law.

9. It is unlawful for a person to ship or import into the state, or to offer for sale, sell, distribute, transport, or possess within this state, cigarettes or tobacco products previously exported from or manufactured for use outside the United States.

10. *a.* It is unlawful for a person to ship or import into this state or to offer for sale, sell, distribute, transport, or possess counterfeit cigarettes, knowing such cigarettes are counterfeit cigarettes or having reasonable cause to believe that such cigarettes are counterfeit cigarettes.

b. For purposes of this subsection and section 453A.32, *"counterfeit cigarettes"* means cigarettes, packages of cigarettes, cartons of cigarettes or other containers of cigarettes with a label, trademark, service mark, trade name, device, design, or word adopted or used by a cigarette manufacturer to identify its product that is false or used without authority of the cigarette manufacturer.

11. Violation of this section by the holder of a retailer's, distributor's, wholesaler's, or manufacturer's permit shall be grounds for the revocation of such permit.

[C24, §1573; C27, 31, 35, §1573, 1575-a2; C39, §**1556.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.36]

91 Acts, ch 240, §6

C93, §453A.36

97 Acts, ch 136, §1; 2000 Acts, ch 1104, §1, 2; 2004 Acts, ch 1073, §43; 2007 Acts, ch 186, §44, 45; 2014 Acts, ch 1109, §8; 2018 Acts, ch 1041, §127

Referred to in §453A.22, 453A.36A

453A.36A Self-service sales prohibited.

1. Except as provided in section 453A.36, subsection 6, a retailer shall not sell or offer for sale tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes through the use of a self-service display.

2. Violation of this section by a holder of a retail permit is grounds for revocation of such permit.

98 Acts, ch 1129, §3; 2014 Acts, ch 1109, §9

Legislative intent to restrict access of minors to cigarettes and tobacco products; 98 Acts, ch 1129, §1

453A.37 Violation as fraudulent practice.

A person who violates a provision of this subchapter is guilty of a fraudulent practice unless otherwise provided in this subchapter.

[C39, §**1556.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.37]

89 Acts, ch 251, §2

C93, §453A.37

2018 Acts, ch 1041, §127

Fraudulent practices, see §714.8 – 714.14

453A.38 Counterfeiting and previously used stamps.

Any person who shall print, engrave, make, issue, sell, or circulate, or shall possess or have in the person's possession with intent to use, sell, circulate, or pass, any counterfeit stamp or previously used stamp, or who shall use, or consent to the use of, any counterfeit stamp or previously used stamp in connection with the sale, or offering for sale, of any cigarettes, or who shall place, or cause to be placed, on any individual package of cigarettes, any counterfeit stamp or previously used stamp, shall be guilty of an aggravated misdemeanor.

[C24, 27, 31, 35, §1573; C39, §**1556.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §98.38]

C93, §453A.38

453A.39 Tobacco, tobacco products, alternative nicotine products, vapor products, and cigarette samples — restrictions — administration.

1. A manufacturer, distributor, wholesaler, retailer, or distributing agent, or agent thereof, shall not give away cigarettes or tobacco products at any time in connection with the

manufacturer's, distributor's, wholesaler's, retailer's, or distributing agent's business or for promotion of the business or product, except as provided in subsection 2.

2. *a.* All cigarette samples shall be shipped only to a distributor that has a permit to stamp cigarettes or little cigars with Iowa tax. All cigarette samples must have a cigarette stamp. The manufacturer shipping samples under this section shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and to whom the samples were shipped. The distributor receiving the shipment shall send an affidavit to the director stating the shipment information, including the date shipped, quantity, and from whom the samples were shipped. These affidavits shall be duly notarized and submitted to the director at the time of shipment and receipt of the samples. The distributor shall pay the tax on samples by separate remittance along with the affidavit.

b. A manufacturer, distributor, wholesaler, retailer, or distributing agent or agent thereof shall not give away any tobacco, tobacco products, alternative nicotine products, vapor products, or cigarettes to any person under eighteen years of age, or within five hundred feet of any playground, school, high school, or other facility when such facility is being used primarily by persons under age eighteen for recreational, educational, or other purposes.

c. Proof of age shall be required if a reasonable person could conclude on the basis of outward appearance that a prospective recipient of a sample may be under eighteen years of age.

2004 Acts, ch 1073, §44; 2014 Acts, ch 1109, §10

See also §142A.6

453A.40 Inventory tax.

1. All persons required to obtain a permit or to be licensed under section 453A.13 or section 453A.44 having in their possession and held for resale on the effective date of an increase in the tax rate cigarettes, little cigars, or tobacco products upon which the tax under section 453A.6 or 453A.43 has been paid, unused cigarette tax stamps which have been paid for under section 453A.8, unused metered imprints which have been paid for under section 453A.12, or tobacco products for which the tax has not been paid under section 453A.46 shall be subject to an inventory tax on the items as provided in this section.

2. Persons subject to the inventory tax imposed under this section shall take an inventory as of the close of the business day next preceding the effective date of the increased tax rate of those items subject to the inventory tax for the purpose of determining the tax due. These persons shall report the tax on forms provided by the department of revenue and remit the tax due within thirty days of the prescribed inventory date. The department of revenue shall adopt rules as are necessary to carry out this section.

3. The rate of the inventory tax on each item subject to the tax as specified in subsection 1 is equal to the difference between the amount paid on each item under section 453A.6, 453A.8, 453A.12, or 453A.43 prior to the tax increase and the amount that is to be paid on each similar item under section 453A.6, 453A.8, 453A.12, or 453A.43 after the tax increase except that in computing the rate of the inventory tax any discount allowed or allowable under section 453A.8 shall not be considered.

88 Acts, ch 1005, §2

C89, §98.40

C93, §453A.40

2003 Acts, ch 145, §286; 2007 Acts, ch 17, §7, 11, 12

Referred to in §453A.43

453A.41 Reserved.

SUBCHAPTER II

CIGARS, OTHER TOBACCO PRODUCTS, AND ALTERNATIVE NICOTINE AND VAPOR PRODUCTS

Referred to in §453A.22, 453A.24, 453A.32

453A.42 Definitions.

When used in this subchapter, unless the context clearly indicates otherwise, the following terms shall have the meanings, respectively, ascribed to them in this section:

1. *"Business"* means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

2. *"Consumer"* means any person who has title to or possession of tobacco products in storage, for use or other consumption in this state.

3. *"Delivery sale"* means any sale of an alternative nicotine product or a vapor product to a purchaser in this state where the purchaser submits the order for such sale by means of a telephonic or other method of voice transmission, mail or any other delivery service, or the internet or other online service and the alternative nicotine product or vapor product is delivered by use of mail or a delivery service. The sale of an alternative nicotine product or vapor product shall constitute a delivery sale regardless of whether the seller is located in this state. *"Delivery sale"* does not include a sale to a distributor or retailer of any alternative nicotine product or vapor product not for personal consumption.

4. *"Director"* means the director of the department of revenue.

5. *"Distributor"* means any and each of the following:

a. Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

b. Any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state;

c. Any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers.

6. *"Little cigar"* means any roll for smoking which:

a. Is made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient;

b. Is not a cigarette as defined in section 453A.1, subsection 4; and

c. Either weighs not more than three pounds per thousand, irrespective of retail price, or weighs more than three pounds per thousand and has a retail price of not more than two and one-half cents per little cigar. For purposes of this subsection, the retail price is the ordinary retail price in this state, not including retail sales tax, use tax, or the tax on little cigars imposed by section 453A.43.

7. *"Manufacturer"* means a person who manufactures and sells tobacco products.

8. *"Person"* means any individual, firm, association, partnership, joint stock company, joint adventure, corporation, trustee, agency, or receiver, or any legal representative of any of the foregoing.

9. *"Place of business"* means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale or consumption, including any vessel, vehicle, airplane, train, or vending machine; or for a business within or without the state that conducts delivery sales, any place where alternative nicotine products or vapor products are sold or where alternative nicotine products or vapor products are kept for the purpose of sale, including delivery sales.

10. *"Retail outlet"* means each place of business from which tobacco products are sold to consumers.

11. *"Retailer"* means any person engaged in the business of selling tobacco, tobacco products, alternative nicotine products, or vapor products to ultimate consumers.

12. *"Sale"* means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling tobacco products, for

advertising, as a means of evading the provisions of this subchapter, or for any other purposes whatsoever.

13. *"Snuff"* means any finely cut, ground, or powdered tobacco that is not intended to be smoked.

14. *"Storage"* means any keeping or retention of tobacco products for use or consumption in this state.

15. *"Subjobber"* means any person, other than a manufacturer or distributor, who buys tobacco products from a distributor and sells them to persons other than the ultimate consumers.

16. *"Tobacco products"* means cigars; little cigars as defined herein; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes as defined in section 453A.1, subsection 4.

17. *"Use"* means the exercise of any right or power incidental to the ownership of tobacco products.

18. *"Wholesale sales price"* means the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any discount or other reduction.

[C71, 73, 75, 77, 79, 81, §98.42]

86 Acts, ch 1245, §402

C93, §453A.42

2002 Acts, ch 1119, §59; 2003 Acts, ch 145, §286; 2007 Acts, ch 17, §8, 9, 12; 2014 Acts, ch 1109, §11; 2017 Acts, ch 170, §65, 66; 2018 Acts, ch 1041, §127

Referred to in §453A.1, 453A.3, 453A.5, 453A.22, 453A.36, 453A.43

453A.43 Tax on tobacco products.

1. *a.* A tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-two percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

b. In addition to the tax imposed under paragraph *"a"*, a tax is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor of tobacco products, at the rate of twenty-eight percent of the wholesale sales price of the tobacco products, except little cigars and snuff as defined in section 453A.42.

c. Notwithstanding the rate of tax imposed pursuant to paragraphs *"a"* and *"b"*, if the tobacco product is a cigar, the total amount of the tax imposed pursuant to paragraphs *"a"* and *"b"* combined shall not exceed fifty cents per cigar.

d. Little cigars shall be subject to the same rate of tax imposed upon cigarettes in section 453A.6, payable at the time and in the manner provided in section 453A.6; and stamps shall be affixed as provided in subchapter I of this chapter. Snuff shall be subject to the tax as provided in subsections 3 and 4.

e. The taxes on tobacco products, excluding little cigars and snuff, shall be imposed at the time the distributor does any of the following:

(1) Brings, or causes to be brought, into this state from outside the state tobacco products for sale.

(2) Makes, manufactures, or fabricates tobacco products in this state for sale in this state.

(3) Ships or transports tobacco products to retailers in this state, to be sold by those retailers.

2. *a.* A tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at the rate of twenty-two percent of the cost of the tobacco products.

b. In addition to the tax imposed in paragraph *"a"*, a tax is imposed upon the use or storage by consumers of tobacco products in this state, and upon the consumers, at a rate of twenty-eight percent of the cost of the tobacco products.

c. Notwithstanding the rate of tax imposed pursuant to paragraphs "*a*" and "*b*", if the tobacco product is a cigar, the total amount of the tax imposed pursuant to paragraphs "*a*" and "*b*" combined shall not exceed fifty cents per cigar.

d. The taxes imposed by this subsection shall not apply if the taxes imposed by subsection 1 on the tobacco products have been paid.

e. The taxes imposed under this subsection shall not apply to the use or storage of tobacco products in quantities of:

(1) Less than twenty-five cigars.

(2) Less than one pound smoking or chewing tobacco or other tobacco products not specifically mentioned herein, in the possession of any one consumer.

3. A tax is imposed upon all snuff in this state and upon any person engaged in business as a distributor of snuff at the rate of one dollar and nineteen cents per ounce, with a proportionate tax at the same rate on all fractional parts of an ounce of snuff. The tax shall be computed based on the net weight listed by the manufacturer. The tax on snuff shall be imposed at the time the distributor does any of the following:

a. Brings or causes to be brought into this state from outside the state, snuff for sale.

b. Makes, manufactures, or fabricates snuff in this state for sale in this state.

c. Ships or transports snuff to retailers in this state, to be sold by those retailers.

4. *a.* A tax is imposed upon the use or storage by consumers of snuff in this state, and upon the consumers, at the rate of one dollar and nineteen cents per ounce with a proportionate tax at the same rate on all fractional parts of an ounce of snuff. The tax shall be computed based on the net weight as listed by the manufacturer.

b. The tax imposed by this subsection shall not apply if the tax imposed by subsection 3 on snuff has been paid.

c. The tax shall not apply to the use or storage of snuff in quantities of less than ten ounces.

5. Any tobacco product with respect to which a tax has once been imposed under this subchapter shall not again be subject to tax under this subchapter, except as provided in section 453A.40.

6. The tax imposed by this section shall not apply with respect to any tobacco product which under the Constitution and laws of the United States may not be made the subject of taxation by this state.

7. The tax imposed by this section shall be in addition to all other occupation or privilege taxes or license fees now or hereafter imposed by any city or county.

8. All excise taxes collected under this chapter by a distributor or any individual are deemed to be held in trust for the state of Iowa.

[C71, 73, 75, 77, 79, 81, §98.43]

85 Acts, ch 32, §2; 88 Acts, ch 1005, §3; 91 Acts, ch 267, §511, 512

C93, §453A.43

2004 Acts, ch 1073, §45; 2007 Acts, ch 17, §10, 12; 2007 Acts, ch 186, §46, 55; 2018 Acts, ch 1041, §127

Referred to in §453A.35, 453A.35A, 453A.40, 453A.42, 453A.46, 453A.47, 453A.48

Inventory tax, §453A.40

453A.44 Licenses — distributors, subjobbers.

1. No person shall engage in the business of a distributor or subjobber of tobacco products at any place of business without first having received a license from the director to engage in that business at that place of business.

2. Every application for such a license shall be made on a form prescribed by the director and shall state the name and address of the applicant; if the applicant is a firm, partnership, or association, the name and address of each of its members; if the applicant is a corporation, the name and address of each of its officers; the address of its principal place of business; the place where the business to be licensed is to be conducted; and such other information as the director may require for the purpose of the administration of this subchapter.

3. A person without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, may make application for a license as a distributor,

be granted a license by the director, and thereafter be subject to all the provisions of this subchapter and entitled to act as a licensed distributor.

4. *a.* Each application for a distributor's license shall be accompanied by a fee of one hundred dollars, except that an applicant holding a permit pursuant to subchapter I of this chapter shall not be required to pay an additional fee. The application shall be accompanied by a corporate surety bond issued by a surety licensed to do business in this state, in the sum of one thousand dollars, conditioned upon the true and faithful compliance by the distributor with all the provisions of this subchapter and the payment when due of all taxes, penalties and accrued interest arising in the ordinary course of business or by reason of any delinquent money which may be due the state of Iowa. This bond shall be in a form to be fixed by the director and approved by the attorney general. Whenever it is the opinion of the director that the bond given by a licensee is inadequate in amount to fully protect the state, the director shall require either an increase in the amount of said bond or additional bond, in such amount as the director deems sufficient. Any bond required by this subchapter, or a reissue thereof, or a substitute therefor, shall be kept in full force and effect during the entire period covered by the license.

b. A separate application for license shall be made for each place of business where a distributor proposes to engage in business as such under this subchapter.

5. Each application for a subjobber's license shall be accompanied by a fee of ten dollars, except that no applicant holding a permit pursuant to subchapter I of this chapter shall be required to pay an additional fee.

6. A distributor or subjobber applying for a license between January 1 and June 30 of any year shall be required to pay only one-half of the license fee provided for herein.

7. The director, upon receipt of the application, and bond in the case of the distributor, in proper form, and payment of the license fee required by subsection 4 or subsection 5, shall unless otherwise provided by this subchapter, issue the applicant a license in form as prescribed by the director, which license shall permit the applicant to whom it is issued to engage in business as a distributor or subjobber at the place of business shown in the application. The director shall assign a permit number to each person licensed as a distributor at the time of issuance of the person's first license, which shall be inscribed upon all licenses issued to that distributor.

8. Each license shall expire on June 30 following its date of issue unless sooner revoked by the director or unless the business with respect to which the license was issued is transferred. In either case the holder of the license shall immediately surrender it to the director.

9. No license shall be transferable to any other person.

10. The director may revoke, cancel, or suspend the license or licenses of any distributor or subjobber for violation of any of the provisions of this subchapter, or any other act applicable to the sale of tobacco products, or any rule or regulations promulgated by the director in furtherance of this subchapter. No license shall be revoked, canceled, or suspended except after notice and a hearing by the director as provided in section 453A.48.

11. No license shall be issued under this subchapter to any person within one year of the date of final determination of a revocation of any previous license held by the person.

12. When the surety upon any bond issued pursuant to the provisions of this subchapter shall have fulfilled the conditions of such bond and compensated the state for any loss occasioned by any act or omission of the person bonded under this subchapter, such surety shall be subrogated to all the rights of the state in connection with the transaction wherein such loss occurred.

[C71, 73, 75, 77, 79, 81, §98.44]

89 Acts, ch 251, §3; 90 Acts, ch 1232, §1

C93, §453A.44

94 Acts, ch 1165, §39; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127; 2019 Acts, ch 24, §56

Referred to in §421.26, 453A.40, 453A.45, 453A.50

Subsection 7 amended

453A.45 Licensees, duties.

1. *a.* Every distributor shall keep at each licensed place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to the ultimate consumer.

b. When a licensed distributor sells tobacco products exclusively to the ultimate consumer at the address given in the license, an invoice of those sales is not required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records, and other papers and documents required by this subsection to be kept shall be preserved for a period of at least three years after the date of the documents or the date of the entries appearing in the records, unless the director, in writing, authorized their destruction or disposal at an earlier date. At any time during usual business hours, the director, or the director's duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this subsection, and the tobacco products contained therein, to determine if all the provisions of this subchapter are being fully complied with. If the director, or any such agent or employee, is denied free access or is hindered or interfered with in making the examination, the license of the distributor at that premises is subject to revocation by the director.

2. Every person who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The person shall preserve legible copies of all these invoices for three years from the date of sale.

3. Every retailer and subjobber shall procure itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer and subjobber shall preserve a legible copy of each invoice for three years from the date of purchase. Invoices shall be available for inspection by the director or the director's authorized agents or employees at the retailer's or subjobber's place of business.

4. Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state which is subject to the provisions of and licensed under chapter 554 shall be kept by the warehouse and be available to the director for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the commissioner may require. These records shall be preserved for three years from the date of delivery of the tobacco products.

5. *a.* The transportation of tobacco products into this state by means other than common carrier must be reported to the director within thirty days with the following exceptions:

(1) The transportation of not more than fifty cigars, not more than ten ounces of snuff or snuff powder, or not more than one pound of smoking or chewing tobacco or other tobacco products not specifically mentioned herein;

(2) Transportation by a person with a place of business outside the state, who is licensed as a distributor under section 453A.44, or tobacco products sold by such person to a retailer in this state.

b. The report shall be made on forms provided by the director. The director may require by rule that the report be filed by electronic transmission.

c. Common carriers transporting tobacco products into this state shall file with the director reports of all such shipments other than those which are delivered to public warehouses of first destination in this state which are licensed under the provisions of chapter 554. Such reports shall be filed on or before the tenth day of each month and shall show with respect to deliveries made in the preceding month all of the following:

(1) The date.

(2) The point of origin.

(3) The point of delivery.

(4) The name of the consignee.

(5) A description and the quantity of tobacco products delivered.

(6) Such other information as the director may require.

d. Any person who fails or refuses to transmit to the director the required reports or whoever refuses to permit the examination of the records by the director shall be guilty of a serious misdemeanor.

[C71, 73, 75, 77, 79, 81, §98.45]

87 Acts, ch 199, §1

C93, §453A.45

99 Acts, ch 151, §82, 89; 2004 Acts, ch 1073, §46, 47; 2007 Acts, ch 186, §47; 2011 Acts, ch 25, §143; 2013 Acts, ch 70, §22; 2016 Acts, ch 1073, §123; 2018 Acts, ch 1041, §127; 2019 Acts, ch 24, §57

Subsection 5, paragraph c amended

453A.46 Distributors, monthly returns — interest, penalties.

1. *a.* On or before the twentieth day of each calendar month every distributor with a place of business in this state shall file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product brought, or caused to be brought, into this state for sale; made, manufactured, or fabricated in this state for sale in this state; and any other information the director may require. Every licensed distributor outside this state shall in like manner file a return with the director showing for the preceding calendar month the quantity and wholesale sales price of each tobacco product shipped or transported to retailers in this state to be sold by those retailers and any other information the director may require. Returns shall be made upon forms furnished or made available in electronic form and prescribed by the director and shall contain other information as the director may require. Each return shall be accompanied by a remittance for the full tax liability shown on the return, less a discount as fixed by the director not to exceed five percent of the tax. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

b. The three-year limitation period may be extended by a taxpayer by signing a waiver agreement form provided by the department. The agreement must stipulate the extension period and the tax period to which the extension applies. The agreement must also stipulate that a claim for refund may be filed by the taxpayer at any time during the extension period.

2. *a.* All taxes shall be due and payable not later than the twentieth day of the month following the calendar month in which they were incurred, and shall bear interest at the rate in effect under section 421.7 counting each fraction of a month as an entire month, computed from the date the tax was due.

b. The director may reduce or abate interest when in the director's opinion the facts warrant the reduction or abatement. The exercise of this power shall be subject to the approval of the attorney general.

3. In addition to the tax or additional tax, the taxpayer shall also pay a penalty as provided in section 421.27 and be subject to the civil penalties set forth in sections 421.27; 453A.31, subsection 1, paragraph "*b*"; and 453A.50, subsection 3, as applicable.

4. The department shall notify any person assessed pursuant to this section by sending a written notice of the determination by mail to the principal place of business of the person as shown on the person's application for permit, and if an application was not filed by the person, to the person's last known address. A determination by the department of the amount of tax, penalty, and interest due, or the amount of refund for excess tax paid, is final, unless the person aggrieved by the determination appeals to the director for a revision of the determination within sixty days from the date of the notice of determination of tax, penalty, and interest or refund owing or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. The director shall grant a hearing and upon the hearing, the director shall determine the correct tax, penalty,

and interest or refund due and notify the appellant of the decision by mail. Judicial review of action of the director may be sought in accordance with chapter 17A and section 422.29.

5. The director may recover the amount of any tax due and unpaid, interest, and any penalty in a civil action. The collection of such a tax, interest, or penalty shall not be a bar to any prosecution under this subchapter.

6. On or before the twentieth day of each calendar month, every consumer who, during the preceding calendar month, has acquired title to or possession of tobacco products for use or storage in this state, upon which tobacco products the tax imposed by section 453A.43 has not been paid, shall file a return with the director showing the quantity of tobacco products so acquired. The return shall be made upon a form furnished and prescribed by the director, and shall contain other information as the director may require. The return shall be accompanied by a remittance for the full unpaid tax liability shown by it. Within three years after the return is filed or within three years after the return became due, whichever is later, the department shall examine it, determine the correct amount of tax, and assess the tax against the taxpayer for any deficiency. The period for examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade tax, or in the case of a failure to file a return.

7. The director may require by rule that returns be filed by electronic transmission.

[C71, 73, 75, 77, 79, 81, §98.46]

84 Acts, ch 1173, §2; 86 Acts, ch 1007, §9; 87 Acts, ch 199, §2, 3; 90 Acts, ch 1172, §2

C93, §453A.46

94 Acts, ch 1133, §14, 16; 99 Acts, ch 151, §83, 89; 2004 Acts, ch 1073, §48; 2007 Acts, ch 186, §48, 49; 2008 Acts, ch 1184, §65; 2011 Acts, ch 25, §143; 2018 Acts, ch 1041, §127

Referred to in §421.10, 453A.40

453A.47 Refunds, credits.

Where tobacco products upon which the tax imposed by this subchapter has been reported and paid are shipped or transported by the distributor to consumers to be consumed without the state or to retailers or subjobbers without the state to be sold by those retailers or subjobbers without the state or are returned to the manufacturer by the distributor or destroyed by the distributor, refund of such tax or credit may be made to the distributor in accordance with regulations prescribed by the director. Any overpayment of the tax imposed under section 453A.43 may be made to the taxpayer in accordance with regulations prescribed by the director. The director shall cause any such refund of tax to be paid out of the general fund of the state, and so much of said fund as may be necessary is hereby appropriated for that purpose.

[C71, 73, 75, 77, 79, 81, §98.47]

C93, §453A.47

2013 Acts, ch 70, §23; 2018 Acts, ch 1041, §127

453A.47A Retailers — permits — fees — penalties.

1. *Permits required.* A person shall not engage in the business of a retailer of tobacco, tobacco products, alternative nicotine products, or vapor products at any place of business, or through delivery sales, without first having received a permit as a retailer.

2. *No sales without permit.* A retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products until an application has been filed and the fee prescribed paid for a permit and until such permit is obtained and only while such permit is not suspended, unrevoked, or unexpired.

3. *Number of permits.* An application shall be filed and a permit obtained for each place of business owned or operated by a retailer located in the state. If an out-of-state retailer makes delivery sales of alternative nicotine products or vapor products, an application shall be filed with the department and a permit shall be issued for the out-of-state retailer's principal place of business.

4. *Retailer — multiple permits not required — effect of suspension.* A retailer, as defined in section 453A.1, who holds a permit under subchapter I of this chapter is not required to also obtain a retail permit under this subchapter. However, if a retailer, as defined in section

453A.1, only holds a permit under subchapter I of this chapter and that permit is suspended, revoked, or expired, the retailer shall not sell any tobacco, tobacco products, alternative nicotine products, or vapor products during the time which the permit is suspended, revoked, or expired.

5. *Separate permit.* A separate retail permit shall be required of a distributor or subjobber if the distributor or subjobber sells tobacco, tobacco products, alternative nicotine products, or vapor products at retail.

6. *Issuance.* Cities may issue retail permits to retailers located within their respective limits. County boards of supervisors may issue retail permits to retailers located in their respective counties, outside of the corporate limits of cities. The city or county shall submit a duplicate of any application for a retail permit to the alcoholic beverages division of the department of commerce within thirty days of issuance of a permit. The alcoholic beverages division of the department of commerce shall submit the current list of all retail permits issued to the Iowa department of public health by the last day of each quarter of a state fiscal year.

7. *Fees — expiration.*

a. All permits provided for in this subchapter shall expire on June 30 of each year. A permit shall not be granted or issued until the applicant has paid the fees provided for in this section for the period ending June 30 next, to the city or county granting the permit. The fee for retail permits is as follows when the permit is granted during the month of July, August, or September:

(1) In places outside any city, fifty dollars.

(2) In cities of less than fifteen thousand population, seventy-five dollars.

(3) In cities of fifteen thousand or more population, one hundred dollars.

b. If any permit is granted during the month of October, November, or December, the fee shall be three-fourths of the above maximum schedule; if granted during the month of January, February, or March, one-half of the maximum schedule; and if granted during the month of April, May, or June, one-fourth of the maximum schedule.

8. *Refunds.*

a. An unrevoked permit for which the retailer paid the full annual fee may be surrendered during the first nine months of the year to the officer issuing it, and the city or county granting the permit shall make refunds to the retailer as follows:

(1) Three-fourths of the annual fee if the surrender is made during July, August, or September.

(2) One-half of the annual fee if the surrender is made during October, November, or December.

(3) One-fourth of the annual fee if the surrender is made during January, February, or March.

b. An unrevoked permit for which the retailer has paid three-fourths of a full annual fee may be surrendered during the first six months of the period covered by the payment, and the city or county shall make refunds to the retailer as follows:

(1) A sum equal to one-half of an annual fee if the surrender is made during October, November, or December.

(2) A sum equal to one-fourth of an annual fee if the surrender is made during January, February, or March.

c. An unrevoked permit for which the retailer has paid one-half of a full annual fee may be surrendered during the first three months of the period covered by the payment, and the city or county shall refund to the retailer a sum equal to one-fourth of an annual fee.

9. *Application.* Retail permits shall be issued only upon applications, accompanied by the fee indicated above, made upon forms furnished by the department upon written request. The failure to furnish such forms shall be no excuse for the failure to file the form unless absolute refusal is shown. The forms shall specify:

a. The manner under which the retailer transacts or intends to transact business as a retailer.

b. The principal office, residence, and place of business, for which the permit is to apply.

c. If the applicant is not an individual, the principal officers or members of the applicant, not to exceed three, and their addresses.

d. Such other information as the director shall by rules prescribe.

10. *Records and reports of retailers.*

a. The director shall prescribe the forms necessary for the efficient administration of this section and may require uniform books and records to be used and kept by each retailer or other person as deemed necessary.

b. Every retailer shall, when requested by the department, make additional reports as the department deems necessary and proper and shall at the request of the department furnish full and complete information pertaining to any transaction of the retailer involving the purchase or sale or use of tobacco, tobacco products, alternative nicotine products, or vapor products.

11. *Penalties.* The permit suspension and revocation provisions and the civil penalties established in section 453A.22 shall apply to retailers under this subchapter, in addition to any other penalties imposed under this subchapter.

2005 Acts, ch 93, §4; 2005 Acts, ch 179, §131; 2011 Acts, ch 63, §17; 2013 Acts, ch 70, §24; 2014 Acts, ch 1109, §12; 2017 Acts, ch 170, §67; 2017 Acts, ch 171, §61; 2018 Acts, ch 1026, §140; 2018 Acts, ch 1041, §127

Referred to in §453A.47C

453A.47B Requirements for mailing or shipping — alternative nicotine products or vapor products.

A retailer shall not mail, ship, or otherwise cause to be delivered any alternative nicotine product or vapor product in connection with a delivery sale unless all of the following apply:

1. Prior to sale to the purchaser, the retailer verifies that the purchaser is at least eighteen years of age through or by one of the following:

a. A commercially available database, or aggregate of databases, that is regularly used by government and businesses for the purpose of age and identity verification.

b. Obtaining a copy of a valid government-issued document that provides the name, address, and date of birth of the purchaser.

2. The retailer uses a method of mailing, shipping, or delivery that requires the signature of a person who is at least eighteen years of age before the shipping package is released to the purchaser.

2017 Acts, ch 170, §68

453A.47C Sales and use tax on delivery sales — alternative nicotine products or vapor products.

1. A delivery sale of alternative nicotine products or vapor products within this state shall be subject to the sales tax provided in chapter 423, subchapter II.

2. The use in this state of alternative nicotine products or vapor products purchased for use in this state through a delivery sale shall be subject to the use tax provided in chapter 423, subchapter III.

3. A retailer required to possess or possessing a permit under section 453A.13 or 453A.47A to make delivery sales of alternative nicotine products or vapor products within this state shall be deemed to have waived all claims that such retailer lacks physical presence within this state for purposes of collecting and remitting sales and use tax.

4. A retailer making taxable delivery sales of alternative nicotine products or vapor products within this state shall remit to the department all sales and use tax due on such sales at the times and in the manner provided by chapter 423.

5. The director shall adopt rules pursuant to chapter 17A to administer this section.

2017 Acts, ch 170, §69

453A.48 Investigations and hearings, testimonial powers.

1. The director, or the director's duly authorized agents, may conduct investigations, inquiries, and hearings for the purpose of enforcing the provisions of this subchapter, and, in connection with such investigations, inquiries, and hearings, the director and the director's duly authorized agents shall have all the powers conferred upon the director and

the director's examiners by Iowa statutes, and the provisions of such shall apply to all such investigations, inquiries and hearings.

2. A hearing conducted under this subchapter shall be preceded by ten days' notice in writing of the subject of the hearing, including, in the case of suspension or revocation of a license, a statement of the nature of the charges against the licensee. The notice shall be sent by mail to the last known address of the licensee or other person involved in the hearing, and the service shall be complete upon mailing. After every hearing the director shall make the director's findings and order in writing. The findings and order shall be filed in the office of the director, and a copy sent by mail or otherwise to the person to whom the notice was directed.

3. The director may exchange information with the officers and agencies of other states administering laws relating to the taxation of tobacco products.

4. No person shall be excused from testifying or from producing, pursuant to a subpoena, any books, papers, records or memoranda in any investigation or upon any hearing, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate the person or subject the person to a criminal penalty, but no person shall be prosecuted or subjected to any criminal penalty for or on account of any transaction made or thing concerning which the person may testify or produce evidence, documentary or otherwise, before the director or an employee or agent thereof; provided that such immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, pursuant to a subpoena. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

5. Any person aggrieved by an order of the director fixing a tax, penalty, or interest under section 453A.43 may, within sixty days from the date of notice of the order, appeal to the board of review in the manner provided by law or unless the taxpayer contests the determination by paying the tax, interest, and penalty and timely filing a claim for refund. Judicial review of any other action of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, 77, 79, 81, §98.48]
86 Acts, ch 1241, §5
C93, §453A.48
94 Acts, ch 1133, §15, 16; 2003 Acts, ch 44, §114; 2018 Acts, ch 1041, §127
Referred to in §453A.44

453A.49 Enforcement.

The director shall enforce the provisions of this subchapter. The director may prescribe rules not inconsistent with the provisions of this subchapter for its detailed and efficient administration. In the enforcement of this subchapter the director may call upon any county attorney or the attorney general for assistance. The director may bring injunction proceedings to restrain any person from acting as a distributor or subjobber without complying with the provisions of this subchapter.

[C71, 73, 75, 77, 79, 81, §98.49]
C93, §453A.49
2018 Acts, ch 1041, §127
Referred to in §331.756(19)

453A.50 Violations, penalties.

1. Any person who in any manner knowingly attempts to evade the tax imposed by this subchapter or who knowingly aids or abets in the evasion or attempted evasion of the tax or who knowingly violates the provisions of section 453A.44, subsection 1, of this subchapter, shall be guilty of a serious misdemeanor.

2. Except as otherwise provided, any person who violates any provisions of this subchapter shall be guilty of a simple misdemeanor.

3. *a.* The following civil penalties shall be imposed for a violation of this subchapter:

(1) A two hundred dollar penalty for the first violation.

(2) A five hundred dollar penalty for a second violation within three years of the first violation.

(3) A one thousand dollar penalty for a third or subsequent violation within three years of the first violation.

b. The penalty imposed in this subsection is in addition to the tax, penalty, and interest imposed in other sections of this subchapter. Each day a violation occurs counts as a new violation for purposes of this subsection.

[C71, 73, 75, 77, 79, 81, §98.50]

C93, §453A.50

2007 Acts, ch 186, §50, 51; 2008 Acts, ch 1032, §56; 2018 Acts, ch 1041, §127

Referred to in §453A.46

Seizure and forfeiture of tobacco products, see §453A.32

453A.51 Assessment of cost of audit.

The department may employ auditors or other persons to audit and examine the books and records of a permit holder or other person dealing in tobacco products to ascertain whether the permit holder or other person has paid the amount of the taxes required to be paid by the permit holder or other person under the provisions of this chapter. If the taxes have not been paid, as required, the department shall assess against the permit holder or other person, as additional penalty, the reasonable expenses and costs of the investigation and audit.

2007 Acts, ch 186, §52

453A.52 through 453A.55 Reserved.

SUBCHAPTER III

UNIFORM APPLICATION OF CHAPTER

453A.56 Uniform application.

Enforcement of this chapter shall be implemented in an equitable manner throughout the state. For the purpose of equitable and uniform implementation, application, and enforcement of state and local laws and regulations, the provisions of this chapter shall supersede any local law or regulation which is inconsistent with or conflicts with the provisions of this chapter.

91 Acts, ch 240, §8

CS91, §98.56

C93, §453A.56

CHAPTER 453B

EXCISE TAX ON UNLAWFUL DEALING IN CERTAIN SUBSTANCES

Referred to in §124.401, 124E.12, 124E.16, 204.7, 204.8, 204.14, 204.15, 232.52, 321.215, 421.60, 911.3

453B.1 Definitions.
453B.2 Administration — rules.
453B.3 Tax payment required for possession — payment due.
453B.4 Measurements.
453B.5 Defense or immunity.
453B.6 Chapter not applicable to lawful possession.
453B.7 Tax imposed — rate of tax.
453B.8 Price of stamps, labels, or other indicia.
453B.9 Assessments are jeopardy assessments.
453B.10 Confidential nature of information.
453B.11 Examination of records by director — subpoenas.
453B.12 Civil and criminal penalties for violation of chapter — interest.
453B.13 Credit for previously paid taxes.
453B.14 Revision of tax — refunds.
453B.15 Availability of records and information.
453B.16 Notice of conviction. Repealed by 2019 Acts, ch 59, §238.
453B.17 Reserved.
453B.18 Reserved.

453B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Controlled substance"* means controlled substance as defined in section 124.101.

2. *"Counterfeit substance"* means a counterfeit substance as defined in section 124.101.

3. *a.* *"Dealer"* means any person who ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces in this state any of the following:

(1) Seven or more grams of a taxable substance other than marijuana, but including a taxable substance that is a mixture of marijuana and other taxable substances.

(2) Forty-two and one-half grams or more of processed marijuana or of a substance consisting of or containing marijuana.

(3) One or more unprocessed marijuana plants.

(4) Ten or more dosage units of a taxable substance which is not sold by weight.

b. However, a person who lawfully ships, transports, or imports into this state or acquires, purchases, possesses, manufactures, or produces a taxable substance in this state is not considered a dealer.

4. *"Department"* means the department of revenue.

5. *"Director"* means the director of revenue.

6. *"Dosage unit"* means the unit of measurement in which a substance is dispensed to the ultimate user. Dosage unit includes, but is not limited to, one pill, one capsule, or one microdot.

7. *"Marijuana"* means marijuana as defined in section 124.101.

8. *"Processed marijuana"* means all marijuana except unprocessed marijuana plants.

9. *"Simulated controlled substance"* means a simulated controlled substance as defined in section 124.101.

10. *"Taxable substance"* means a controlled substance, a counterfeit substance, a simulated controlled substance, or marijuana, or a mixture of materials that contains a controlled substance, counterfeit substance, simulated controlled substance, or marijuana.

11. *"Unprocessed marijuana plant"* means any cannabis plant at any level of growth, whether wet, dry, harvested, or growing.

90 Acts, ch 1251, §37
C91, §421A.1
C93, §453B.1
95 Acts, ch 83, §29 – 31; 2003 Acts, ch 145, §286; 2011 Acts, ch 25, §143
Referred to in §453B.4

453B.2 Administration — rules.

1. The director shall administer this chapter. The director shall collect all taxes, interest, and civil penalties imposed under this chapter and deposit them in the general fund of the state.

2. The director may adopt rules under chapter 17A that are necessary to enforce this chapter. The director shall adopt a uniform system of providing, affixing, and displaying official stamps, labels, or other official indicia for taxable substances.

90 Acts, ch 1251, §38
C91, §421A.2
C93, §453B.2
2018 Acts, ch 1041, §127

453B.3 Tax payment required for possession — payment due.

1. A dealer shall not possess, distribute, or offer to sell a taxable substance unless the tax imposed under this chapter has been paid as evidenced by a stamp, label, or other official indicia permanently affixed to the taxable substance.

2. Taxes imposed on taxable substances by this chapter are due and payable immediately upon manufacture, production, acquisition, purchase, or possession by a dealer.

3. If the indicia evidencing the payment of the tax imposed on taxable substances under this chapter have not been affixed, the dealer shall have the indicia permanently affixed on the taxable substance immediately after receiving the taxable substance. A stamp, label, or other official indicia shall be used only once and shall not be used after the date of expiration.

4. All excise taxes collected under this chapter by a dealer or any individual are deemed to be held in trust for the state of Iowa.

90 Acts, ch 1251, §39
C91, §421A.3
C93, §453B.3
2004 Acts, ch 1073, §49; 2018 Acts, ch 1041, §127

453B.4 Measurements.

For purposes of measurements under this chapter, the weight of a taxable substance shall be measured by its weight in metric grams in the dealer's possession. If a taxable substance consists of a mixture containing both marijuana and another substance or combination of substances listed in the definition of taxable substance in section 453B.1, the taxable substance shall be taxed under section 453B.7, subsection 2.

90 Acts, ch 1251, §40
C91, §421A.4
C93, §453B.4

453B.5 Defense or immunity.

This chapter does not provide in any manner a defense or affirmative defense to or immunity for a dealer from criminal prosecution pursuant to Iowa law.

90 Acts, ch 1251, §41
C91, §421A.5
C93, §453B.5

453B.6 Chapter not applicable to lawful possession.

This chapter does not require persons lawfully in possession of a taxable substance to pay the tax required under this chapter or to purchase, acquire, or affix the stamps, labels, or other official indicia otherwise required by this chapter.

90 Acts, ch 1251, §42
C91, §421A.6
C93, §453B.6

453B.7 Tax imposed — rate of tax.

An excise tax is imposed on dealers at the following rates:

1. On each gram of processed marijuana, or each portion of a gram, five dollars.

2. On each gram or portion of a gram of any taxable substance, other than marijuana, sold by weight, two hundred fifty dollars.

3. On each unprocessed marijuana plant, seven hundred fifty dollars.

4. On each ten dosage units of any taxable substance, other than unprocessed marijuana plants, that is not sold by weight, or portion thereof, four hundred dollars.

90 Acts, ch 1251, §43
C91, §421A.7
C93, §453B.7
95 Acts, ch 83, §32; 2013 Acts, ch 90, §108
Referred to in §453B.4, 453B.8, 453B.12

453B.8 Price of stamps, labels, or other indicia.

Stamps, labels, or other official indicia to be affixed to a taxable substance indicating the payment of the excise tax shall be obtained and purchased from the department. The dealer shall pay the entire excise tax listed in section 453B.7 at the time of purchase, except as provided in section 453B.13, and receive stamps, labels, or other official indicia for the amount paid. However, the minimum purchase price to be paid for any stamps, labels, or indicia shall be two hundred fifteen dollars.

90 Acts, ch 1251, §44
C91, §421A.8
C93, §453B.8

453B.9 Assessments are jeopardy assessments.

1. All assessments of taxes made pursuant to this chapter shall be considered jeopardy assessments or collections as provided in section 422.30. The director shall assess a tax, interest, and applicable penalties based on knowledge or information available to the director; serve the taxpayer by regular mail at the taxpayer's last known address or in person, a written notice of the amount of tax, interest, and penalty due, which notice may include a demand for immediate payment; and immediately proceed to collect the tax, interest, and penalty by any method prescribed in section 422.30. The period for examination, determination of amount of tax owed, and assessment is unlimited. Service of the notice by regular mail is complete upon mailing.

2. A person shall not bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

3. The tax, interest, and penalties assessed by the director are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show any incorrectness or invalidity of an assessment. The burden is upon the taxpayer to prove that the shipment, transportation, importation, acquisition, purchase, possession, manufacture, or production of a taxable substance was lawful if a taxpayer's status as a dealer is disputed. Any statement filed by the director with the clerk of the district court, or any other certificate by the director of the amount of tax, interest, and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts contained in the statement.

90 Acts, ch 1251, §45
C91, §421A.9
C93, §453B.9
94 Acts, ch 1165, §40; 2018 Acts, ch 1041, §127

453B.10 Confidential nature of information.

1. Notwithstanding any law to the contrary, the director or an employee of the department shall not reveal any information obtained from a dealer; nor shall information obtained from a dealer be used against the dealer in any criminal proceeding, unless the information is independently obtained, except in connection with a proceeding involving taxes due under this chapter from the dealer against whom the tax was assessed.

2. A person who violates this section is guilty of a simple misdemeanor.

3. This section does not prohibit the director from publishing statistics that do not disclose the identity of the dealers.

4. A stamp, label, or other official indicia denoting payment of the tax imposed under this chapter shall not be used against a taxpayer in a criminal proceeding, except that such information may be used against the taxpayer in connection with the administration or civil

or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.

90 Acts, ch 1251, §46
C91, §421A.10
C93, §453B.10
2015 Acts, ch 29, §114

453B.11 Examination of records by director — subpoenas.

1. For the purpose of determining whether or not the dealer should have paid taxes, determining the amount of tax that should have been paid, or collecting any taxes under this chapter, the director may examine, or cause to be examined, any books, papers, records, or memoranda that may be relevant to making such determinations, whether the books, papers, records, or memoranda are the property of or in the possession of the dealer or another person. The director may require the attendance of any person having knowledge or information that may be relevant, compel the production of books, papers, records, or memoranda by persons required to attend, take testimony on matters material to the determination, and administer oaths or affirmations. Upon demand of the director or an examiner or investigator, the court shall issue a subpoena for the attendance of a witness or the production of books, papers, records, or memoranda. The director may also issue subpoenas. Disobedience of subpoenas issued under this chapter is punishable by the district court of the county in which the subpoena is issued, or if the subpoena is issued by the director, by the district court of the county in which the party served with the subpoena is located, in the same manner as a contempt of court.

2. The director may petition the district court or a magistrate for an administrative search warrant as authorized by section 808.14 to execute a distress warrant authorized by section 422.26.

90 Acts, ch 1251, §47
C91, §421A.11
C93, §453B.11
2018 Acts, ch 1041, §127

453B.12 Civil and criminal penalties for violation of chapter — interest.

1. A dealer who violates this chapter is subject to a penalty equal to the amount of the tax imposed by section 453B.7, in addition to the tax imposed by that section. The dealer shall pay interest on the tax and penalty at the rate in effect under section 421.7, counting each fraction of a month as an entire month, computed from the date of assessment through the date of payment. The penalty and interest shall be collected as part of the tax.

2. In addition to the civil tax penalty and interest imposed by this section, a dealer distributing, offering to sell, or possessing taxable substances without affixing the appropriate stamps, labels, or other official indicia is guilty of a class "D" felony.

3. A person who possesses, prints, engraves, makes, issues, sells, or circulates a counterfeit taxable substance tax stamp, label, or other official indicia, or places or causes to be placed a counterfeit taxable substance tax stamp, label, or other official indicia on a taxable substance, is guilty of a class "D" felony.

4. A person who uses, sells, offers for sale, or possesses for use or sale a previously used or expired taxable substance tax stamp, label, or other official indicia, or attaches or causes to be attached a previously used or expired taxable substance tax stamp, label, or other official indicia to a taxable substance, is guilty of a class "D" felony.

5. Notwithstanding section 802.3, an indictment may be found or information filed upon any criminal offense specified in this chapter, in the proper court, within six years after the commission of the offense.

90 Acts, ch 1251, §48
C91, §421A.12
C93, §453B.12
2015 Acts, ch 29, §114
Referred to in §803.3

453B.13 Credit for previously paid taxes.

If another state or local unit of government has previously assessed an excise tax on a taxable substance, the taxpayer shall pay the difference between the tax imposed under this chapter and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax imposed under this chapter, no tax is due. The burden is on the taxpayer to show that an excise tax on the taxable substances has been paid to another state or local unit of government.

90 Acts, ch 1251, §49
C91, §421A.13
C93, §453B.13
Referred to in §453B.8

453B.14 Revision of tax — refunds.

Sections 421.5, 422.26, 422.28, 422.29, 422.73, and 422.74 shall apply to this chapter, except that a refund claim filed later than thirty days from the expiration date of the stamps for which the refund is requested shall not be allowed by the director.

90 Acts, ch 1251, §50
C91, §421A.14
C93, §453B.14

453B.15 Availability of records and information.

The director may request from state, county, and local agencies, information and assistance deemed necessary to administer this chapter. State, county, and local agencies, officers, and employees shall cooperate with the director in identifying dealers and shall, on request, supply the department with available information and assistance which the director deems necessary to administer this chapter, notwithstanding any provisions of law making such information confidential.

90 Acts, ch 1251, §51
C91, §421A.15
C93, §453B.15

453B.16 Notice of conviction. Repealed by 2019 Acts, ch 59, §238.

453B.17 Reserved.

For future text of this section effective upon approval of a state plan described in section 204.3 pursuant to 2019 Acts, ch 130, §18, see 2019 Acts, ch 130, §31, 33

453B.18 Reserved.

For future text of this section effective upon approval of a state plan described in section 204.3 pursuant to 2019 Acts, ch 130, §18, see 2019 Acts, ch 130, §32, 33

CHAPTER 453C

TOBACCO PRODUCT MANUFACTURERS — FINANCIAL OBLIGATIONS

Referred to in §453D.1, 453D.3, 453D.4, 453D.5, 453D.9

453C.1 Definitions.
453C.2 Requirements.

453C.1 Definitions.

1. *"Adjusted for inflation"* means increased in accordance with the formula for inflation adjustment set forth in exhibit "C" to the master settlement agreement.

2. *"Affiliate"* means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms *"owns"*, *"is owned"*, and *"ownership"* mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term

"person" means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

3. *"Allocable share"* means allocable share as defined in the master settlement agreement.

4. *a.* *"Cigarette"* means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains any of the following:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco.

(2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette.

(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (1).

b. The term *"cigarette"* includes "roll-your-own" tobacco, meaning tobacco which, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of *"cigarette"*, 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

5. *"Master settlement agreement"* means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

6. *"Qualified escrow fund"* means an escrow arrangement with a federally or state-chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds' principal except as consistent with section 453C.2, subsection 2, paragraph *"b"*.

7. *"Released claims"* means released claims as that term is defined in the master settlement agreement.

8. *"Releasing parties"* means releasing parties as that term is defined in the master settlement agreement.

9. *a.* *"Tobacco product manufacturer"* means an entity that on or after May 20, 1999, directly and not exclusively through any affiliate does any of the following:

(1) Manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer, as that term is defined in the master settlement agreement, that will be responsible for the payments under the master settlement agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the master settlement agreement and that pays the taxes specified in subsection II(z) of the master settlement agreement and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States).

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States.

(3) Becomes a successor of an entity described in subparagraph (1) or (2).

b. The term *"tobacco product manufacturer"* shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraph *"a"*, subparagraphs (1) through (3).

10. *"Units sold"* means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs bearing the excise stamp of the state or on roll-your-own tobacco containers. The department of revenue shall adopt rules as are

necessary to ascertain the amount of state excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

99 Acts, ch 157, §1, 3; 2000 Acts, ch 1058, §42; 2001 Acts, ch 18, §1, 2, 4; 2003 Acts, ch 145, §286; 2003 Acts, ch 179, §131, 159; 2007 Acts, ch 186, §53; 2011 Acts, ch 25, §101

Referred to in §12E.2, 453D.2

453C.2 Requirements.

Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, on or after May 20, 1999, shall do one of the following:

1. Become a participating manufacturer as that term is defined in section II(jj) of the master settlement agreement and generally perform its financial obligations under the master settlement agreement.

2. *a.* Place into a qualified escrow fund by April 15 of the year following the year in question, the following amounts, as such amounts are adjusted for inflation:

(1) For 1999: $.0094241 per unit sold on or after May 20, 1999.

(2) For 2000: $.0104712 per unit sold.

(3) For each of 2001 and 2002: $.0136125 per unit sold.

(4) For each of 2003 through 2006: $.0167539 per unit sold.

(5) For 2007 and each year thereafter: $.0188482 per unit sold.

b. A tobacco product manufacturer that places funds into escrow pursuant to paragraph "*a*" shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under any of the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow, under this subparagraph (1), (a) in the order in which they were placed into escrow and (b) only to the extent and at the time necessary to make payments required under such judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount the manufacturer was required to place into escrow on account of units sold in the state in a particular year was greater than the master settlement agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had such manufacturer been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer.

(3) To the extent not released from escrow under subparagraph (1) or (2), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

c. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the attorney general that the manufacturer is in compliance with this subsection. The attorney general may bring a civil action on behalf of the state against any tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement and fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this subsection shall be subject to all of the following:

(1) Be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed five percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed one hundred percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within fifteen days to place such funds into escrow as shall bring the manufacturer into compliance with this subsection. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty, to be paid to the general fund of the state, in an amount not to exceed fifteen percent of the amount

improperly withheld from escrow per day of the violation and in a total amount not to exceed three hundred percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

d. Each failure to make an annual deposit required under this subsection shall constitute a separate violation.

99 Acts, ch 157, §2, 3; 2001 Acts, ch 18, §3, 4; 2003 Acts, ch 179, §132, 159
Referred to in §453C.1

CHAPTER 453D

TOBACCO PRODUCT MANUFACTURERS — ENFORCEMENT OF FINANCIAL OBLIGATIONS

Referred to in §453A.6

453D.1 Findings and purpose.
453D.2 Definitions.
453D.3 Certifications, directory, tax stamps.
453D.4 Agent for service of process.
453D.5 Reporting of information — escrow installments.
453D.6 Penalties and other remedies.
453D.7 Miscellaneous provisions.
453D.8 Standing appropriation.
453D.9 Construction and severability.

453D.1 Findings and purpose.

The general assembly finds that violations of chapter 453C threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health and that establishing procedural enforcement enhancements will aid in the enforcement of chapter 453C and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health.

2003 Acts, ch 97, §1, 13

453D.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Brand family"* means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including but not limited to "menthol", "lights", "kings", and "100s", and including any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

2. *"Cigarette"* means cigarette as defined in section 453C.1.

3. *"Department"* means the department of revenue.

4. *"Director"* means the director of revenue.

5. *"Distributor"* means a person, notwithstanding established residency or location, who purchases non-tax-paid cigarettes and stores, sells, or otherwise disposes of the cigarettes.

6. *"Master settlement agreement"* means master settlement agreement as defined in section 453C.1.

7. *"Nonparticipating manufacturer"* means any tobacco product manufacturer that is not a participating manufacturer.

8. *"Participating manufacturer"* means participating manufacturer as defined in section II(jj) of the master settlement agreement and all amendments to the master settlement agreement.

9. *"Qualified escrow fund"* means qualified escrow fund as defined in section 453C.1.

10. *"Stamping agent"* means a person authorized to affix tax stamps to packages or other containers of cigarettes pursuant to chapter 453A or any person that is required to pay the tax imposed pursuant to chapter 453A on cigarettes.

11. *"Tobacco product manufacturer"* means tobacco product manufacturer as defined in section 453C.1.

12. *"Units sold"* means units sold as defined in section 453C.1.

2003 Acts, ch 97, §2, 13; 2003 Acts, ch 145, §286

453D.3 Certifications, directory, tax stamps.

1. *Certification.* A tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a stamping agent, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the attorney general, a certification to the director and the attorney general, no later than April 30 of each year, certifying under penalty of perjury that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer or is in full compliance with chapter 453C, including all quarterly installment payments required by rule.

a. A participating manufacturer shall include in the participating manufacturer's certification a list of the participating manufacturer's brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the participating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

b. (1) A nonparticipating manufacturer shall include in its certification all of the following:

(a) A list of all of the nonparticipating manufacturer's brand families and the number of units sold for each brand family that was sold in the state during the preceding calendar year.

(b) A list of all of the nonparticipating manufacturer's brand families that have been sold in the state at any time during the current calendar year.

(c) An indication, by an asterisk, of any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification.

(d) Identification by name and address of any other manufacturer of such brand families in the preceding or current calendar year.

(2) The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of the nonparticipating manufacturer's brand families by executing and delivering a supplemental certification to the attorney general and the director.

c. A nonparticipating manufacturer shall also certify all of the following:

(1) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required in section 453D.4.

(2) That the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund and has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund.

(3) That the nonparticipating manufacturer is in full compliance with chapter 453C and this chapter and any rules adopted pursuant to chapter 453C or this chapter.

(4) All of the following:

(a) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to chapter 453C and all rules adopted pursuant to chapter 453C.

(b) The account number of the qualified escrow fund and any subaccount number for Iowa.

(c) The amount the nonparticipating manufacturer deposited in the qualified escrow fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any evidence or verification deemed necessary by the attorney general to confirm this information.

(d) The amount and date of any withdrawal or transfer made at any time by the nonparticipating manufacturer from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments at any time pursuant to chapter 453C and any rules adopted pursuant to chapter 453C.

d. (1) A tobacco product manufacturer shall not include a brand family in the tobacco product manufacturer's certification unless one of the following applies, as applicable:

(a) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be the participating manufacturer's cigarettes for purposes of calculating the participating manufacturer's payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement.

(b) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be the nonparticipating manufacturer's cigarettes for the purposes of chapter 453C.

(2) This section shall not be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of chapter 453C.

e. Tobacco product manufacturers shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of five years, unless otherwise required by law to maintain invoices and documentation for a greater period of time.

2. *Directory of cigarettes approved for stamping and sale.* The director shall develop and publish on the department's internet site a directory listing all tobacco product manufacturers that have provided current and accurate certification conforming to the requirements of subsection 1 and all brand families that are listed in the certification, with the following exceptions:

a. The director shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection 1, paragraphs "*b*" and "*c*", unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

b. A tobacco product manufacturer and a brand family shall not be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that either of the following applies:

(1) Any escrow payment required pursuant to chapter 453C for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general.

(2) Any outstanding final judgment, including interest on the judgment, for a violation of chapter 453C has not been fully satisfied for the brand family or the nonparticipating manufacturer.

c. The director shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

d. Stamping agents and distributors shall provide and update as necessary an electronic mail address to the director for the purpose of receiving any notifications as may be required by this chapter.

3. *Prohibition against stamping, sale, or import of cigarettes not included in the directory.* It shall be unlawful for any person to do any of the following:

a. Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory.

b. Sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

2003 Acts, ch 97, §3, 13; 2011 Acts, ch 25, §143; 2013 Acts, ch 90, §257
Referred to in §453D.5, 453D.6

453D.4 Agent for service of process.

1. A nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having the nonparticipating manufacturer's brand family included or retained in the directory, appoint and continually engage without interruption the services of an

agent in this state to act as agent for service of process on whom all process, and any action or proceeding against the nonparticipating manufacturer concerning or arising out of the enforcement of this chapter or chapter 453C, may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to, and to the satisfaction of, the director and the attorney general.

2. The nonparticipating manufacturer shall provide notice to the director and the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent at least five calendar days prior to the termination of the existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the director and the attorney general of the termination within five calendar days and shall include proof to the satisfaction of the attorney general of the appointment of a new agent.

3. A nonparticipating manufacturer whose products are sold in this state, who has not appointed or designated an agent as required, shall be deemed to have appointed the secretary of state as agent and may be proceeded against in the courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory.

2003 Acts, ch 97, §4, 13

Referred to in §453D.3

453D.5 Reporting of information — escrow installments.

1. No later than twenty calendar days after the end of each calendar quarter, and more frequently if so directed by the director, each stamping agent and distributor shall submit information as the director requires to facilitate compliance with this chapter, including but not limited to a list by brand family of the total number of cigarettes, or, in the case of roll-your-own tobacco, the equivalent stick count, for which the stamping agent or distributor affixed stamps during the previous calendar quarter or otherwise paid the tax due for the cigarettes. The stamping agent and distributor shall maintain, and make available to the director, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the director for a period of five years. Violations of this subsection are subject to civil penalties as established in section 453A.31, subsection 1, paragraph *"b"*.

2. The director may disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing this chapter. The director and attorney general shall share with each other the information received under this chapter, and may share the information with other federal, state, or local agencies only for purposes of enforcement of this chapter, chapter 453C, or corresponding laws of other states.

3. The attorney general may require at any time from a nonparticipating manufacturer proof from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with chapter 453C, of the amount of money in the qualified escrow fund, exclusive of interest, the amount and date of each deposit into the qualified escrow fund, and the amount and date of each withdrawal from the qualified escrow fund.

4. In addition to the information required to be submitted pursuant to chapter 453C or this chapter, the director or the attorney general may require a stamping agent, distributor, or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, as necessary to enable the attorney general to determine compliance by the tobacco product manufacturer with this chapter.

5. To promote compliance with this chapter, the attorney general may adopt rules requiring a tobacco product manufacturer subject to the requirements of section 453D.3,

subsection 1, paragraph *"b"*, to make the escrow deposits required in quarterly installments during the year in which the sales covered by the deposits are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit.

2003 Acts, ch 97, §5, 13; 2004 Acts, ch 1086, §73

Referred to in §453D.6

453D.6 Penalties and other remedies.

1. In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that any person has violated section 453D.3, subsection 3, or any rule adopted pursuant to that subsection, the director may revoke or suspend the permit or license of any stamping agent or distributor in the manner provided in chapter 453A. Each stamp affixed and each sale or offer to sell cigarettes in violation of section 453D.3, subsection 3, shall constitute a separate violation. For each violation, the director may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of section 453D.3, subsection 3, or any rules adopted pursuant to section 453D.3, subsection 3. A penalty shall be imposed in the manner provided in chapter 453A.

2. Cigarettes that have been sold, offered for sale, or possessed for sale in this state, or imported for personal consumption in this state in violation of section 453D.3, subsection 3, shall be deemed contraband under section 453A.32 and the cigarettes shall be subject to seizure and forfeiture as provided in that section, and all cigarettes so seized and forfeited shall be destroyed and not resold.

3. The attorney general, on behalf of the director, may seek an injunction to restrain a threatened or actual violation of section 453D.3, subsection 3, or section 453D.5, subsection 1 or 4, by a stamping agent or distributor and to compel the stamping agent or distributor to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

4. It shall be unlawful for a person to sell or distribute cigarettes or acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended for distribution or sale in the state in violation of section 453D.3, subsection 3. A violation of this subsection is a serious misdemeanor.

2003 Acts, ch 97, §6, 13

453D.7 Miscellaneous provisions.

1. A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be subject to review in a manner prescribed in rules adopted by the director.

2. A person shall not be issued a permit or license or be granted a renewal of a permit or license to act as a stamping agent or distributor unless the person has certified in writing, under penalty of perjury, that the person will comply fully with this chapter.

3. The director and the attorney general shall adopt rules as necessary to effect the purposes of this chapter.

4. In any action brought by the state to enforce this chapter, the state shall be entitled to recover the costs of the investigation, expert witness fees, costs of the action, and reasonable attorney fees.

5. If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the treasurer of state.

6. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative relative to each other and relative to any other remedies or penalties available under any other law of this state.

2003 Acts, ch 97, §7, 13

453D.8 Standing appropriation.

There is appropriated from the general fund of the state to the department of revenue each fiscal year beginning July 1, 2004, and thereafter, the sum of twenty-five thousand dollars for enforcement of this chapter.

2003 Acts, ch 97, §8, 13; 2003 Acts, ch 145, §286

See Iowa Acts for special provisions relating to appropriations in a given year

453D.9 Construction and severability.

1. If a court of competent jurisdiction finds that the provisions of this chapter and of chapter 453C conflict and cannot be harmonized, the provisions of chapter 453C shall prevail.

2. If any portion of this chapter causes chapter 453C to no longer constitute a qualifying or model statute, as defined in the master settlement agreement, that portion of this chapter shall be void.

3. If any portion of this chapter is for any reason held to be invalid, unlawful, or unconstitutional, the determination shall not affect the validity of the remaining provisions of this chapter or any part of this chapter.

2003 Acts, ch 97, §9, 13

CHAPTER 454

RESERVED

TITLE XI

NATURAL RESOURCES

SUBTITLE 1

CONTROL OF ENVIRONMENT

CHAPTER 455

RESERVED

CHAPTER 455A

DEPARTMENT OF NATURAL RESOURCES

Referred to in §455H.303

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SUBCHAPTER I

GENERAL PROVISIONS

455A.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2.
2. *"Director"* means the director of the department of natural resources.
3. *"Environmental protection commission"* means the environmental protection commission created under section 455A.6.
4. *"Fund"* means the Iowa resources enhancement and protection fund created under section 455A.18.
5. *"Natural resource commission"* means the natural resource commission created under section 455A.5.

86 Acts, ch 1245, §1801; 89 Acts, ch 236, §1; 2015 Acts, ch 103, §42

455A.2 Department of natural resources.

A department of natural resources is created, which has the primary responsibility for state parks and forests, protecting the environment, and managing fish, wildlife, and land and water resources in this state.

86 Acts, ch 1245, §1802; 2009 Acts, ch 108, §17, 41

Referred to in §7E.5, 16.131A, 455A.1, 455B.101, 455C.1, 455D.1, 455E.2, 455H.103, 455I.2, 455K.2, 456A.1, 456B.1, 458A.2, 459.102, 461A.1, 464A.1A, 465C.1, 483A.1A, 484C.1

455A.3 Director — qualifications.

The chief administrative officer of the department is the director who shall be appointed by the governor, subject to confirmation of the senate, and serve at the governor's pleasure. The governor shall make the appointment based on the appointee's training, experience, and capabilities. The director shall be knowledgeable in the general field of natural resource management and environmental protection. The salary of the director shall be fixed by the governor within salary guidelines or a range established by the general assembly.

86 Acts, ch 1245, §1803

Referred to in §455H.103

Confirmation, see §2.32

455A.4 General powers and duties of the director.

1. Except as otherwise provided by law and subject to rules adopted by the natural resource commission and the environmental protection commission, the director shall:

a. Plan, direct, coordinate, and execute the functions vested in the department.

b. Provide overall supervision, direction, and coordination of functions to be administered by the administrators under chapters 321G, 321I, 455B, 455C, 456A, 456B, 457A, 458A, 459, 459A, 459B, 461A, 462A, 462B, 464A, 465C, 473, 481A, 481B, 483A, 484A, and 484B.

c. Annually compile a comprehensive program budget which reflects all fiscal matters related to the operation of the department and each program, subprogram, and activity in the department in accordance with section 8.23.

d. Submit a biennial or an annual report to the governor and the general assembly, in accordance with chapter 7A.

e. Employ personnel as necessary to carry out the functions vested in the department consistent with chapter 8A, subchapter IV, unless the positions are exempt from that subchapter.

f. Devote full time to the duties of the director's office.

g. Not be a candidate for nor hold any other public office or trust, nor be a member of a political committee.

h. Maintain an office at the state capitol complex, which is open at all reasonable times for the conduct of public business.

i. Adopt rules in accordance with chapter 17A as necessary or desirable for the organization or reorganization of the department.

j. In the administration of programs relating to water quality improvement and watershed improvements, cooperate with the department of agriculture and land stewardship in order to maximize the receipt of federal funds.

2. All powers and duties vested in the director may be delegated by the director to an employee of the department, but the director retains the responsibility for an employee's acts within the scope of the delegation.

3. The director and other officers and employees of the department are entitled to receive, in addition to salary, their actual and necessary travel and related expenses incurred in the performance of official business.

4. The director shall obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

5. The department may accept payment of any fees, interest, penalties, subscriptions, or other payments due or collected by the department, or any portion of such payments, by credit card. The department may adjust the amount of the payment to reflect the costs of processing the payment as determined by the treasurer of state and the payment by credit card shall include, in addition to all other charges, any discount charged by the credit card issuer.

6. The department is, except as otherwise provided by law, empowered to make and execute agreements, contracts, grants, and other instruments necessary to carry out the department's obligations. The department's obligations shall not be expanded or enlarged by this authority beyond the powers specifically delegated to or conferred upon the department.

86 Acts, ch 1245, §1804; 90 Acts, ch 1105, §1; 90 Acts, ch 1108, §2; 91 Acts, ch 154, §1; 92 Acts, ch 1160, §22; 2003 Acts, ch 145, §262; 2004 Acts, ch 1132, §89; 2005 Acts, ch 137, §1; 2006 Acts, ch 1010, §117; 2007 Acts, ch 211, §37; 2009 Acts, ch 155, §19, 34; 2018 Acts, ch 1023, §1; 2018 Acts, ch 1044, §1

Referred to in §455B.298, 455E.11, 465A.4

455A.5 Natural resource commission — appointment and duties.

1. A natural resource commission is created, which consists of seven members appointed by the governor for staggered terms of six years beginning and ending as provided in section 69.19. The appointees are subject to senate confirmation. The members shall be citizens of the state who have a substantial knowledge of the subjects embraced by chapter 456A. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69.16. A member of the commission shall not hold any other state or federal office.

2. A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

4. The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year.

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6. Except as otherwise provided by law, the commission shall:

a. Establish policy and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 465C, 481A, 481B, 483A, 484A, or 484B.

c. Approve or disapprove proposals for the acquisition or disposal of state lands and waters relating to state parks, recreational facilities, and wildlife programs, submitted by the director.

d. Approve the budget request prepared by the director for the programs authorized by chapters 321G, 321I, 456A, 456B, 457A, 461A, 462A, 462B, 464A, 481A, 481B, 483A, 484A, and 484B. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

e. Adopt, by rule, a schedule of fees for permits, including conditional permits, and a schedule of fees for administration of the permits. The fees shall be collected by the department and used to offset costs incurred in administrating a program for which the issuance of the permit is made or under which enforcement is carried out. In determining the fee schedule, the commission shall consider all of the following:

(1) The reasonable costs associated with reviewing applications, issuing permits, and monitoring compliance with the terms of issued permits.

(2) The relative benefits to the applicant and to the public of a permit review, permit issuance, and monitoring compliance with the terms of the permit.

(3) The typical costs associated with a type of project or activity for which a permit is required. However, a fee shall not exceed the actual costs incurred by the department.

f. Approve or disapprove proposals involving the dredging or renovation of lakes; the acquisition, development, and maintenance of boating facilities; and the acquisition, development, and maintenance of recreational facilities associated with recreational boating.

86 Acts, ch 1245, §1805; 89 Acts, ch 72, §1; 91 Acts, ch 268, §230; 92 Acts, ch 1160, §23; 92 Acts, ch 1239, §42; 2004 Acts, ch 1132, §90

Referred to in §455A.1, 461.11

Confirmation, see §2.32

455A.6 Environmental protection commission — appointment and duties.

1. An environmental protection commission is created, which consists of nine members appointed by the governor for staggered terms of four years beginning and ending as provided in section 69.19. Commission appointees are subject to senate confirmation. The members shall be electors of the state and have knowledge of the subjects embraced in chapters 455B and 459, subchapters II and III. The appointments shall be based upon the training, experience, and capacity of the appointees, and not based upon political considerations, other than as provided in section 69.16. The membership of the commission shall be as follows:

a. Three members actively engaged in livestock and grain farming.

b. A member actively engaged in the business of finance or commerce.

c. A member actively engaged in the management of a manufacturing company.

d. Four members who are electors of the state.

2. A vacancy on the commission shall be filled for the unexpired term in the same manner as the original appointment was made.

3. The members of the commission shall be reimbursed for actual and necessary travel and related expenses incurred in the discharge of official duties. Each member of the commission may also be eligible to receive compensation as provided in section 7E.6.

4. The commission shall hold an organizational meeting within thirty days of the beginning of a new regular term for one or more of its members. The commission shall organize by electing a chairperson, vice chairperson, secretary, and any other officers deemed necessary or desirable. The commission shall meet at least quarterly throughout the year.

5. A majority of the members of the commission is a quorum, and a majority of a quorum may act in any matter within the jurisdiction of the commission, unless a more restrictive rule is adopted by the commission.

6. Except as otherwise provided by law, the commission shall:

a. Establish policy for the department and adopt rules, pursuant to chapter 17A, necessary to provide for the effective administration of chapter 455B, 455C, or 459.

b. Hear appeals in contested cases pursuant to chapter 17A on matters relating to actions taken by the director under chapter 455C, 458A, 464B, or 473.

c. Approve or disapprove the issuance of hazardous waste disposal site licenses under chapter 455B.

d. Approve the budget request prepared by the director for the programs authorized by chapters 455B, 455C, 455E, 455F, 455H, and 459, subchapters II and III. The commission shall approve the budget request prepared by the director for programs subject to the rulemaking

authority of the commission. The commission may increase, decrease, or strike any item within the department budget request for the specified programs before granting approval.

86 Acts, ch 1245, §1806; 87 Acts, ch 115, §59; 89 Acts, ch 72, §2; 89 Acts, ch 296, §69; 90 Acts, ch 1108, §3; 91 Acts, ch 268, §231; 92 Acts, ch 1239, §43; 2002 Acts, ch 1162, §41

Referred to in §16.131A, 307.21, 455A.1, 455B.101, 455B.103, 455E.2, 455H.103, 459.102, 459A.102, 484C.1

Confirmation, see §2.32

455A.7 Creation of divisions, bureaus, and other administrative entities — deputy director — administrators.

1. The director may establish administrative divisions, bureaus, or other administrative entities within the department in order to most efficiently and effectively carry out the department's responsibilities. The creation or modification of departmental divisions, bureaus, or other administrative entities shall be implemented only after consultation with the natural resource commission or the environmental protection commission as applicable.

2. The director shall appoint a deputy director who shall be in charge of the department in the absence of the director. The appointment shall be based on the appointee's training, experience, and capabilities.

3. The director shall appoint an administrator for each division created under subsection 1. The director shall make the appointment based on the appointee's training, experience, and capabilities. Each administrator has the responsibility of administering the programs assigned the division under subsection 1 and other programs assigned by the director. Each administrator shall carry out the duties and responsibilities of office under the general direction and supervision of the director.

86 Acts, ch 1245, §1807; 91 Acts, ch 268, §233; 92 Acts, ch 1239, §21, 44, 45; 2000 Acts, ch 1160, §1; 2001 Acts, ch 7, §3; 2002 Acts, ch 1162, §42

455A.8 Brushy creek recreation trails advisory board. Repealed by 2018 Acts, ch 1044, §3.

455A.8A Brushy creek recreation area — trail improvements. Repealed by 2018 Acts, ch 1044, §3.

455A.9 Fees — publications.

1. The department may establish a schedule of fees for subscriptions to publications produced by the department, including periodicals. However, this section does not apply to application forms and materials intended for general distribution which explain departmental programs or duties.

2. Fees shall be based on the amount required to recover the reasonable costs of producing a publication, including costs relating to preparing, printing, publishing, and distributing the publication.

91 Acts, ch 268, §235; 2018 Acts, ch 1026, §141

455A.10 State fish and game protection fund — capital projects and contingencies.

Funds remaining in the state fish and game protection fund during a fiscal year which are not specifically appropriated by the general assembly are appropriated and may be used for capital projects and contingencies under the jurisdiction of the department relating to fish and wildlife arising during the fiscal year. A contingency shall not include any purpose or project which was presented to the general assembly by way of a bill or a proposed bill and which failed to be enacted into law. For the purpose of this section, a necessity of additional operating funds may be construed as a contingency. Before any of the funds authorized to be expended by this section are allocated for contingencies, it shall be determined by the executive council that a contingency exists and that the contingency was not existent while the general assembly was in session and that the proposed allocation shall be for the best interests of the state. If a contingency arises or could reasonably be foreseen during the time the general assembly is in session, expenditures for the contingency must be authorized by the general assembly.

91 Acts, ch 268, §610; 2002 Acts, ch 1162, §44

455A.11 Preferences in temporary employment.

In its employment of persons in temporary positions in conservation and outdoor recreation, the department of natural resources shall give preference to persons meeting eligibility requirements for the green thumb program and to persons working toward an advanced education in natural resources and conservation.

96 Acts, ch 1214, §32; 98 Acts, ch 1100, §64

455A.12 Gift certificates for special privilege fees at state parks and recreation areas. Repealed by 2018 Acts, ch 1129, §2.

455A.13 State nurseries.

1. The department of natural resources shall annually review market conditions and the expenditures and revenues of the state forest nurseries, and establish minimum ordering quantities and a range of prices for plant material grown at the state forest nurseries to cover all expenses related to the growing of the plants. The department is authorized to sell plant material in other states. The department is authorized to sell barerooted plants to private nurseries for resale.

2. The department shall develop programs to encourage the wise management and preservation of existing woodlands and shall continue its efforts to encourage forestation and reforestation on private and public lands in the state.

3. The department shall encourage a cooperative relationship between the state forest nurseries and private nurseries in the state in order to achieve these goals.

97 Acts, ch 213, §27; 2010 Acts, ch 1193, §126; 2017 Acts, ch 55, §1

455A.14 Camping and rental facilities and other privileges — fees.

1. Notwithstanding any provision of law to the contrary, the department is authorized to establish fees for camping and use of rental facilities and other special privileges at state parks and recreation areas under the jurisdiction of the department.

2. The fees established by the department pursuant to this section shall be in such amounts as may be determined by the department to be reasonably competitive with fees established in other public parks or recreation areas that provide the same or similar privileges and are located within sixty miles of the perimeter of the state park or recreation area for which the department is establishing fees. Such fees may be increased, reduced, or waived by the department on a statewide basis or on the basis of an individual state park or recreation area for special promotional events or efforts or on the basis of special seasonal or holiday rates.

3. Fees established pursuant to this section shall be considered a specification of prices to be charged for goods or services as provided in section 17A.2, subsection 11, paragraph "*g*".

4. The department shall adopt rules pursuant to chapter 17A for the purpose of setting forth the methodology to be used in establishing fees pursuant to this section.

5. The department shall prepare an annual report reviewing the fees established pursuant to this section. The report shall include information about fees and occupancy rates at each camping and rental facility in the state under the jurisdiction of the department, special promotional events or holiday rates for which fees were increased, reduced, or waived at those camping and rental facilities, and any recommendations for changes in fees or rules adopted pursuant to this section. The report shall be submitted to the senate standing committee on natural resources and environment and the house standing committee on natural resources by December 31 of each year.

2018 Acts, ch 1129, §1; 2019 Acts, ch 24, §58

Subsection 2 amended

455A.14A Lake Manawa state park user fee pilot program.

1. A lake Manawa state park user fee pilot program is established within the department. Notwithstanding section 461A.35A, the department shall develop and administer the pilot program at lake Manawa state park as follows:

a. The department shall charge an entrance fee of five dollars per vehicle for a nonresident of the state.

b. A nonresident may pay a fee of forty dollars for an annual pass that grants daily entrance into the state park through one year after the date of purchase. The nonresident may purchase a second annual pass for use for a different vehicle for fifteen dollars.

c. The department has the authority to charge separate fees to a resident and nonresident for campsite and shelter reservations and for beach access.

d. The department shall determine the most effective and efficient way to collect fees and provide proof of payment.

2. This section is repealed July 1, 2022.

2019 Acts, ch 95, §1
NEW section

455A.14B Waubonsie state park user fee pilot program.

1. A Waubonsie state park user fee pilot program is established within the department. Notwithstanding section 461A.35A, the department shall develop and administer the pilot program at Waubonsie state park as follows:

a. The department shall charge an entrance fee of five dollars per vehicle for a nonresident of the state.

b. A nonresident may pay a fee of forty dollars for an annual pass that grants daily entrance into the state park through one year after the date of purchase. The nonresident may purchase a second annual pass for use for a different vehicle for fifteen dollars.

c. The department has the authority to charge separate fees to a resident and nonresident for campsite and shelter reservations and for beach access.

d. The department shall determine the most effective and efficient way to collect fees and provide proof of payment.

2. This section is repealed July 1, 2022.

2019 Acts, ch 95, §2
NEW section

SUBCHAPTER II

RESOURCES ENHANCEMENT AND PROTECTION

455A.15 Legislative findings.

The general assembly finds that:

1. The citizens of Iowa have built and sustained their society on Iowa's air, soils, waters, and rich diversity of life. The well-being and future of Iowa depend on these natural resources.

2. Many human activities have endangered Iowa's natural resources. The state of Iowa has lost ninety-nine and nine-tenths percent of its prairies, ninety-eight percent of its wetlands, eighty percent of its woodlands, fifty percent of its topsoils, and more than one hundred species of wildlife since settlement in the early 1800's. There has been a significant deterioration in the quality of Iowa's surface waters and groundwaters.

3. The long-term effects of Iowa's natural resource losses are not completely known or understood, but detrimental effects are already apparent. Prevention of further loss is therefore imperative.

4. The air, waters, soils, and biota of Iowa are interdependent and form a complex ecosystem. Iowans have the right to inherit this ecosystem in a sustainable condition, without severe or irreparable damage caused by human activities.

89 Acts, ch 236, §2

455A.16 State resource enhancement policy.

It is the policy of the state of Iowa to protect its natural resource heritage of air, soils, waters, and wildlife for the benefit of present and future citizens with the establishment of a resource enhancement program. The program shall be a long-term integrated effort to wisely use and protect Iowa's natural resources through the acquisition and management of public lands; the upgrading of public park and preserve facilities; environmental education, monitoring, and

research; and other environmentally sound means. The resource enhancement program shall strongly encourage Iowans to develop a conservation ethic, and to make necessary changes in our activities to develop and preserve a rich and diverse natural environment.

89 Acts, ch 236, §3

455A.17 Iowa congress on resources enhancement and protection.

1. Biennially, during even-numbered years, the director shall schedule and make the necessary arrangements for an Iowa congress on resources enhancement and protection. The congress shall be held within the state capitol complex.

2. Prior to each congress, the director shall make arrangements to hold an assembly in each council of governments area of persons having an interest in resources enhancement and protection. The department shall promote attendance of interested persons at each assembly. The director shall call each assembly and serve as temporary chairperson. The department shall provide those attending with information regarding resource enhancement and protection expenditures. The assemblies shall identify opportunities for regional resource enhancement and protection and review and recommend changes in resource enhancement and protection policies, programs, and funding. The persons meeting at each assembly shall elect five persons as delegates to the congress on resources enhancement and protection.

3. The delegates to the congress on resources enhancement and protection shall organize, discuss, and make recommendations to the governor, the general assembly, and the natural resource commission regarding issues concerning resources enhancement and protection. The director shall call the congress and serve as temporary chairperson. The delegates are entitled to a per diem as specified in section 7E.6 for expenses of office while attending the congress.

4. The expenses of the department in making the arrangements for and the conducting of the council of governments area assemblies and the congress on resources enhancement and protection and the per diem for expenses of the delegates at the congress shall be paid from the funds appropriated for this purpose.

89 Acts, ch 236, §4; 91 Acts, ch 258, §53; 2007 Acts, ch 28, §1

455A.17A Review of allocation of REAP moneys — congress on resources enhancement and protection. Repealed by 95 Acts, ch 216, §41.

455A.18 Iowa resources enhancement and protection fund — audits.

1. An Iowa resources enhancement and protection fund is created in the office of the treasurer of state. The fund consists of all revenues and all other moneys lawfully credited or transferred to the fund. The director shall certify monthly the portions of the fund that are allocated to the various accounts as provided under section 455A.19. The director shall certify before the twentieth of each month the portions of the fund resulting from the previous month's receipts to be allocated to the various accounts.

2. The auditor of state or a certified public accountant firm appointed by the auditor of state shall conduct annual audits of all accounts and transactions of the fund.

3. *a.* For each fiscal year of the fiscal period beginning July 1, 1997, and ending June 30, 2021, there is appropriated from the general fund, to the Iowa resources enhancement and protection fund, the amount of twenty million dollars, to be used as provided in this chapter. However, in any fiscal year of the fiscal period, if moneys from the lottery are appropriated by the state to the fund, the amount appropriated under this subsection shall be reduced by the amount appropriated from the lottery.

b. Section 8.33 does not apply to moneys appropriated under this subsection.

4. Notwithstanding section 12C.7, interest or earnings on investments or time deposits of

the moneys in the Iowa resources enhancement and protection fund or any of its accounts shall be credited to the Iowa resources enhancement and protection fund.

89 Acts, ch 236, §5; 89 Acts, ch 311, §9; 90 Acts, ch 1255, §22; 91 Acts, ch 260, §1232, 1233; 94 Acts, ch 1198, §46; 96 Acts, ch 1214, §31; 2011 Acts, ch 25, §143

Referred to in §12.61, 321.34, 455A.1, 455A.19, 461.35

Special fees from natural resources vehicle registration plates; see §321.34

See Iowa Acts for special provisions relating to appropriation of funds in a given fiscal year

455A.19 Allocation of fund proceeds.

1. Upon receipt of any revenue, the director shall deposit the moneys in the Iowa resources enhancement and protection fund created pursuant to section 455A.18. The first three hundred fifty thousand dollars of the funds received for deposit in the fund annually shall be allocated to the conservation education program board for the purposes specified in section 455A.21. One percent of the revenue receipts shall be deducted and transferred to the administration fund provided for in section 456A.17. All of the remaining receipts shall be allocated to the following accounts:

a. (1) Twenty-eight percent shall be allocated to the open spaces account. At least ten percent of the allocations to the account shall be made available to match private funds for open space projects on the cost-share basis of not less than twenty-five percent private funds pursuant to the rules adopted by the natural resource commission. Five percent of the funds allocated to the open spaces account shall be used to fund the protected waters program. This account shall be used by the department to implement the statewide open space acquisition, protection, and development programs.

(2) The department shall give priority to acquisition and control of open spaces of statewide significance. The department shall also use these funds for developments on state property. The total cost of an open spaces project funded under this paragraph *"a"* shall not exceed two million dollars unless a public hearing is held on the project in the area of the state affected by the project. However, on and after July 1, 1994, the following shall apply:

(a) If the total amount appropriated by the general assembly to the Iowa resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is seven million dollars or more, not more than seventy-five percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(b) If the total amount appropriated by the general assembly to the Iowa resources enhancement and protection fund, in any fiscal year as defined in section 8.36, is less than seven million dollars, not more than fifty percent of moneys in the open spaces account shall be allocated or obligated during that fiscal year to support a single project.

(3) Political subdivisions of the state shall be reimbursed for property tax dollars lost to open space acquisitions based on the reimbursement formula provided for in section 465A.4. There is appropriated from the open spaces account to the department the amount in that account, or so much thereof as is necessary, to carry out the open spaces program as specified in this paragraph *"a"*. An appropriation made under this paragraph *"a"* shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is completed or at the close of the final fiscal year, whichever date is earlier, shall revert to the open spaces account.

b. Twenty percent shall be allocated to the county conservation account.

(1) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county equally.

(2) Thirty percent of the allocation to the county conservation account annually shall be allocated to each county on a per capita basis.

(3) Forty percent of the allocation to the county conservation account annually shall be held in an account in the state treasury for the natural resource commission to award to counties on a competitive grant basis by a project selection committee established in this subparagraph. Local matching funds are not required for grants awarded under this subparagraph. The project planning and review committee shall be composed of two staff members of the department and two county conservation board directors appointed by the director and a fifth member selected by a majority vote of the director's appointees. The

natural resource commission, by rule, shall establish procedures for application, review, and selection of county projects submitted for funding. Upon recommendation of the project planning and review committee, the director shall award the grants.

(4) Funds allocated to the counties under subparagraphs (1), (2), and (3) may be used for land easements or acquisitions, capital improvements, stabilization and protection of resources, repair and upgrading of facilities, environmental education, and equipment. However, expenditures are not allowed for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities. Funds may be used for county projects located within the boundaries of a city.

(5) Funds allocated pursuant to subparagraphs (2) and (3) shall only be allocated to counties dedicating property tax revenue at least equal to twenty-two cents per thousand dollars of the assessed value of taxable property in the county to county conservation purposes. State funds received under this paragraph shall not reduce or replace county tax revenues appropriated for county conservation purposes. The county auditor shall submit documentation annually of the dedication of property tax revenue for county conservation purposes. The annual audit of the financial transactions and condition of a county shall certify compliance with requirements of this subparagraph. Funds not allocated to counties not qualifying for the allocations under subparagraph (2) as a result of this subparagraph shall be held in reserve for each county for two years. Counties qualifying within two years may receive the funds held in reserve. Funds not spent by a county within two years shall revert to the general pool of county funds for reallocation to other counties where needed.

(6) Each board of supervisors shall create a special resource enhancement account in the office of county treasurer and the county treasurer shall credit all resource enhancement funds received from the state in that account. Notwithstanding section 12C.7, all interest earned on funds in the county resource enhancement account shall be credited to that account and used for the purposes authorized for that account.

(7) There is appropriated from the county conservation account to the department the amount in that account, or so much thereof as is necessary, to fund the provisions of this paragraph. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which a project funded pursuant to subparagraph (3) is completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the county conservation account.

(8) Any funds received by a county under this paragraph may be used to match other state or federal funds, and multicounty or multiagency projects may be funded under this paragraph.

c. Twenty percent shall be allocated to the soil and water enhancement account. The moneys shall be used to carry out soil and water enhancement programs including but not limited to reforestation, woodland protection and enhancement, wildlife habitat preservation and enhancement, protection of highly erodible soils, and clean water programs. The division of soil conservation and water quality within the department of agriculture and land stewardship, by rule, shall establish procedures for eligibility, application, review, and selection of projects and practices to implement the requirements of this paragraph. There is appropriated from the soil and water enhancement account to the division of soil conservation and water quality the amount in that account, or so much thereof as is necessary, to carry out the programs as specified in this paragraph. Remaining funds of the soil and water enhancement account shall be allocated to the accounts of the water protection fund authorized in section 161C.4. Annually, fifty percent of the soil and water enhancement account funds shall be allocated to the water quality protection projects account. The balance of the funds shall be allocated to the water protection practices account. An appropriation made under this paragraph shall continue in force for two fiscal years after the fiscal year in which the appropriation was made or until completion of the project for which the appropriation was made, whichever date is earlier. All unencumbered or unobligated funds remaining at the close of the fiscal year in which the project is

completed or at the close of the third fiscal year, whichever date is earlier, shall revert to the soil and water enhancement account.

d. Fifteen percent shall be allocated to a cities' parks and open space account. The moneys allocated in this paragraph may be used to fund competitive grants to cities to acquire, establish, and maintain natural parks, preserves, and open spaces. The grants may include expenditures for multipurpose trails, restroom facilities, shelter houses, and picnic facilities, but expenditures for single or multipurpose athletic fields, baseball or softball diamonds, tennis courts, golf courses, swimming pools, and other group or organized sport facilities requiring specialized equipment are excluded. The grants may be used for city projects located outside of a city's boundaries. The natural resource commission, by rule, shall establish procedures for application, review, and selection of city projects on a competitive basis. The rules shall provide for three categories of cities based on population within which the cities shall compete for grants. There is appropriated from the cities' parks and open space account to the department the amount in that account, or so much thereof as is necessary, to carry out the competitive grant program as provided in this paragraph.

e. Nine percent shall be allocated to the state land management account. The department shall use the moneys allocated to this account for maintenance and expansion of state lands and related facilities under its jurisdiction. The authority to expand state lands and facilities under this paragraph is limited to expansion of the state lands and facilities already owned by the state. There is appropriated from the state land management account to the department the moneys in that account, or so much thereof as is necessary, to implement a maintenance and expansion program for state lands and related facilities under the jurisdiction of the department.

f. Five percent shall be allocated to the historical resource grant and loan fund established pursuant to section 303.16. The department of cultural affairs shall use the moneys allocated to this fund to implement historical resource development programs as provided under section 303.16.

g. Three percent shall be allocated to the living roadway account for distribution to the living roadway trust fund created under section 314.21 for the development and implementation of integrated roadside vegetation plans.

2. *a.* The moneys appropriated under this section shall remain in the appropriate account of the Iowa resources enhancement and protection fund until such time as the agency, board, commission, or overseer of the fund to which moneys are appropriated has made a request to the treasurer for use of moneys appropriated to it and the amount needed for that use. Notwithstanding section 8.33, moneys remaining of the appropriations made for a fiscal year from any of the accounts within the Iowa resources enhancement and protection fund on June 30 of that fiscal year, shall not revert to any fund but shall remain in that account to be used for the purposes for which they were appropriated and the moneys remaining in that account shall not be considered in making the allotments for the next fiscal year.

b. However, any moneys in excess of five hundred thousand dollars, remaining in the living roadway account under subsection 1, paragraph "*g*", on June 30 shall revert to the Iowa resources enhancement and protection fund under this section for distribution pursuant to the formula under this section except for subsection 1, paragraph "*g*". That proportion of moneys that would have been reallocated to subsection 1, paragraph "*g*", shall be distributed to the open spaces account under subsection 1, paragraph "*a*".

89 Acts, ch 236, §6; 91 Acts, ch 146, §4 – 6; 91 Acts, ch 191, §120; 93 Acts, ch 176, §43; 95 Acts, ch 220, §29, 30; 2000 Acts, ch 1128, §1; 2001 Acts, ch 24, §53; 2002 Acts, ch 1140, §38; 2011 Acts, ch 25, §143; 2015 Acts, ch 103, §43

Referred to in §161A.73, 303.16, 350.12, 455A.18, 455A.20, 455A.21, 461.35

455A.20 County resource enhancement committee.

1. A county resource enhancement committee is created in each county. The membership of the committee shall be as follows:

a. The chairpersons of the board of supervisors, county conservation board, commissioners of the soil and water district, and board of directors of each school district in the county. A chairperson may appoint a designee to serve on the committee. The

chairperson or designee of a school district shall be a member of the county committee of the county in which a majority or the largest plurality of the district's students reside.

b. The mayor or the mayor's designee of each city in a county. If a city is located in more than one county, the membership shall be on the county committee of the county in which the largest population of the city resides.

c. The titular head or the head's designee of each recognized farm organization having a county organization in the county. The designee shall be a member of the organization represented. The recognized farm organizations are the following:

(1) The Iowa farm bureau federation.

(2) The Iowa farmers union.

(3) The Iowa grange.

(4) The national farmers organization.

(5) The Iowa farm unity coalition.

(6) Any other recognized farm or farm commodity group.

d. (1) The chairperson or the chairperson's designee of each of the following wildlife or conservation organizations having a recognized county organization:

(a) Iowa Audubon council.

(b) Iowa sportsmens federation.

(c) Ducks unlimited.

(d) Sierra club.

(e) Pheasants forever.

(f) The nature conservancy.

(g) Iowa association of naturalists.

(h) Izaak Walton league of America.

(i) Other recognized wildlife, conservation, environmental, recreation, conservation education, or historical-cultural preservation groups, or a nonpartisan governmental research or study group limited to the league of women voters.

(2) The designee shall be a member of the county chapter or organization in the county.

e. (1) A representative of each of the following entities:

(a) A historic preservation commission or similar entity established by a county or city in the county.

(b) A private organization that provides recognition and protection for the historic buildings, structures, sites, and districts in a county or a city in the county.

(c) A historic museum or organization that maintains a collection of documents relating to the history of a county or a city in the county.

(2) A representative shall be appointed by the county's board of supervisors. If the board appoints a person representing an entity established by a city in the county, the board shall consult with the city authority that established the entity.

f. If a question arises as to whether a recognized county organization exists under paragraph "*c*" or "*d*", the question shall be decided by a majority vote of the members selected under paragraphs "*a*" and "*b*", excluding the representative of the county conservation board. Sections 69.16 and 69.16A do not apply to appointments made pursuant to this subsection.

2. The duties of the county resource enhancement committee are to coordinate the resource enhancement program, plans, and proposed projects developed by cities, county conservation board, and soil and water conservation district commissioners for funding under this subchapter. The county committee shall review and comment upon all projects before they are submitted for funding under section 455A.19. Each county committee shall propose a five-year program plan which includes a one-year proposed expenditure plan and submit it to the department.

3. The initial meeting of the committee shall be called by the chairperson of the board of supervisors. The chairperson shall give written notice of the date, time, and location of the first meeting. The county committee shall meet at least annually to organize by selecting a chairperson, vice chairperson, and other officers as necessary. The committee shall adopt rules governing the conduct of its meetings, subject to chapter 21.

4. The board of supervisors shall provide a meeting room and the necessary secretarial

and clerical assistance for the committee. The expenses shall be paid from the county general fund.

5. The members of the committee are not entitled to compensation or expenses related to their duties of office, except as may otherwise be provided by the boards, commissions, or organizations which the members represent.

89 Acts, ch 236, §7; 91 Acts, ch 146, §7 – 9; 2008 Acts, ch 1161, §1, 2; 2014 Acts, ch 1092, §97

455A.21 Conservation education program board.

1. A conservation education program board is created in the department. The board shall have five members appointed as follows:

a. One member appointed by the director of the department of education.

b. One member appointed by the director of the department of natural resources.

c. One member appointed by the president of the Iowa association of county conservation boards.

d. One member appointed by the president of the Iowa association of naturalists.

e. One member appointed by the president of the Iowa conservation education council.

2. Section 69.16 does not apply to appointments made pursuant to this section.

3. The duties of the board are to revise and produce conservation education materials and to specify stipends to Iowa educators who participate in innovative conservation education programs approved by the board. The board shall allocate the funds provided for under section 455A.19, subsection 1, for the educational materials and stipends.

4. The department shall administer the funds allocated to the conservation education program as provided in this section.

2002 Acts, ch 1140, §39

Referred to in §455A.19

CHAPTER 455B

JURISDICTION OF DEPARTMENT OF NATURAL RESOURCES

Referred to in §13.2, 15E.208, 306.27, 331.428, 357A.11, 357E.1, 364.22, 455A.4, 455A.6, 455E.5, 455E.6, 455E.8, 455G.5, 455H.303, 455H.507, 455I.2, 461A.62, 463B.2

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455B.465 through 455B.468 Repealed by 2011 Acts, ch 9, §10.
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DIVISION I

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Referred to in §459.601, 459A.501

455B.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of natural resources created under section 455A.2.
2. *"Director"* means the director of the department or a designee.
3. *"Commission"* means the environmental protection commission created under section 455A.6.

[C66, §455B.2(10); C71, §136B.2(6), 455B.2(10), 455C.1(2); C73, 75, 77, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3); C79, §455B.1, 455B.10(6), 455B.30(11), 455B.50(2), 455B.67(2), 455B.75(5), 455B.85(4), 455B.95(3), 455B.110(7); C81, §455B.1; 82 Acts, ch 1199, §1, 96]

C83, §455B.101

86 Acts, ch 1245, §1884

455B.102 Reserved.

455B.103 Director's duties.

The director shall:

1. Recommend to the commission the adoption of rules that are necessary for the effective administration of the department.

2. Recommend to the commission the adoption of rules to implement the programs and services assigned to it.

3. Contract, with the approval of the commission, with public agencies of this state to provide all laboratory, scientific field measurement and environmental quality evaluation services necessary to implement the provisions of this chapter, chapter 459, and chapter 459A. If the director finds that public agencies of this state cannot provide the laboratory, scientific field measurement and environmental evaluation services required by the department, the director may contract, with the approval of the commission, with any other public or private persons or agencies for such services or for scientific or technical services required to carry out the programs and services assigned to the department.

4. Conduct investigations of complaints received directly or referred by the commission created in section 455A.6 or other investigations deemed necessary. While conducting an investigation, the director may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of this chapter, chapter 459, chapter 459A, chapter 459B, or the rules or standards adopted under this chapter, chapter 459, chapter 459A, or chapter 459B. However, the owner or person in charge shall be notified.

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

b. In the application the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or welfare requirements imposed by statutes, rules, or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, 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, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director it shall be identified in the application.

c. If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

d. In making inspections and searches pursuant to the authority of this division, the director must execute the warrant:

(1) Within ten days after its date.

(2) In a reasonable manner, and any property seized shall be treated in accordance with the provisions of chapters 808, 809, and 809A.

(3) Subject to any restrictions imposed by the statute, ordinance, or regulation pursuant to which inspection is made.

5. Accept, receive, and administer grants or other funds or gifts from public or private agencies, including the federal government, for the abatement, prevention, or control of pollution, or other environmental programs, subject to the approval of the commission.

6. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts relating to the control of pollution or the protection or enhancement of the environment. Any agreement is subject to the approval of the commission.

7. At the discretion of the director, enter into environmental covenants in accordance with

chapter 455I and accept or maintain such other real property interests as shall be appropriate for the protection of human health and safety or the environment.

[C66, §455B.14; C71, §136B.4, 136B.5, 455B.14; C73, §455B.3, 455B.12(12), 455B.13(3, 7), 455B.36, 455B.89(4); C75, 77, 79, §455B.3, 455B.12(12), 455B.13(6); C81, §455B.3]

C83, §455B.103

84 Acts, ch 1158, §1; 86 Acts, ch 1245, §1885, 1886, 1899; 96 Acts, ch 1133, §45; 2005 Acts, ch 102, §1; 2005 Acts, ch 136, §20; 2006 Acts, ch 1010, §170, 177; 2009 Acts, ch 155, §20, 34; 2010 Acts, ch 1069, §55

Referred to in §455B.475, 459.207, 459.601

455B.103A General permits — storm water discharge — air contaminant sources.

1. If a permit is required pursuant to this chapter or chapter 459, 459A, or 459B for storm water discharge or an air contaminant source and a facility to be permitted is representative of a class of facilities which could be described and conditioned by a single permit, the director may issue, modify, deny, or revoke a general permit for all of the following conditions:

a. If adoption of a general permit is proposed, the terms, conditions, and limitations of the permit shall be drafted into a notice of intended action and adopted in accordance with the provisions of chapter 17A as a rule of the department. The same process of adoption shall be used for modification of a general permit.

b. Following the effective date of a general permit, a person proposing to conduct activities covered by the general permit shall provide a notice of intent to conduct a covered activity on a form provided by the department. A person shall also provide public notice of intent to conduct activities covered under the general permit by publishing notice in one newspaper with the largest circulation in the area in which the facility is located. Notice of the discontinuation of a permitted activity other than storm water and allowable nonstorm water discharges shall be provided in the same manner.

c. If the department finds that a proposed activity is not covered by a general permit, the department shall notify the affected person and shall provide the person with a permit application if the practice is one which could be authorized by individual permit.

d. A person holding an existing permit is subject to the terms of the existing permit until it expires. If the person holding an existing permit continues the activity beyond the expiration date of the existing permit, an applicable, approved general permit shall become effective.

e. A variance or alteration of the terms and conditions of a general permit shall not be granted. If a variance or modification of an operation authorized by a general permit is desired, the applicant shall apply for an individual permit.

f. The department shall perform on-site inspections and review monitoring data to assess the effectiveness of general permits. If a significant adverse environmental problem exists for an individual facility or class of facilities due to regulation under a general permit, the facility or class of facilities shall be required to obtain individual permits.

g. The department shall establish a procedure for the filing of complaints by persons believing themselves to be adversely affected by the environmental impact of the discharge of a facility operating under a general permit under this section.

2. General permits are not subject to the requirements applicable to individual permits.

3. Three years after the adoption of a general permit by rule, the department shall assess the activities which have been conducted under the general permit and determine whether any significant adverse environmental consequences have resulted.

4. *a.* Except as provided in paragraph *"b"*, an applicant to be covered under a general permit shall pay a permit fee, as established by rule of the commission, which is sufficient in the aggregate to defray the costs of the permit program. Moneys collected shall be remitted to the department.

b. The commission shall adopt rules for a general permit described in section 455B.197, including fees, only to the extent that the rules are consistent with that section.

5. The enforcement provisions of division II of this chapter and chapter 459, subchapter II, apply to general permits for air contaminant sources. The enforcement provisions of division

III, part 1, of this chapter, chapter 459, subchapter III, and chapter 459A apply to general permits for storm water discharge.

91 Acts, ch 121, §1; 92 Acts, ch 1239, §46; 93 Acts, ch 137, §1; 2005 Acts, ch 136, §21, 22; 2006 Acts, ch 1178, §22; 2009 Acts, ch 155, §21, 34; 2013 Acts, ch 59, §1

Referred to in §455B.195, 455B.197

455B.104 Departmental duties.

1. The department shall either approve or deny a permit to a person applying for a permit under this chapter within six months from the date that the department receives a completed application for the permit. An application which is not approved or denied within the six-month period shall be approved by default. The department shall issue a permit to the applicant within ten days following the date of default approval. However, this subsection shall not apply to applications for permits which are issued under division II or division IV, parts 2 through 5.

2. The department shall assist persons applying for assistance to establish and operate renewable fuel production facilities pursuant to section 15.335B.

3. The department may periodically forward recommendations to the commission designed to encourage the reduction of statewide greenhouse gas emissions.

4. By December 31 of each year, the department shall submit a report to the governor and the general assembly regarding the greenhouse gas emissions in the state during the previous calendar year and forecasting trends in such emissions. The first submission by the department shall be filed by December 31, 2011, for the calendar year beginning January 1, 2010.

93 Acts, ch 176, §44; 94 Acts, ch 1119, §30; 98 Acts, ch 1209, §10, 53; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2009 Acts, ch 123, §31; 2010 Acts, ch 1031, §258; 2010 Acts, ch 1193, §54; 2011 Acts, ch 9, §2; 2011 Acts, ch 118, §86, 89; 2012 Acts, ch 1126, §25

455B.105 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of programs under its jurisdiction. The commission shall appoint advisory committees to advise the commission and the director in carrying out their respective powers and duties.

2. Advise, consult, and cooperate with other agencies of the state, political subdivisions, and any other public or private agency to promote the orderly, efficient, and effective accomplishment of its responsibilities.

3. Adopt, modify, or repeal rules necessary to implement this chapter, chapter 459, chapter 459A, and chapter 459B, and the rules deemed necessary for the effective administration of the department. When the commission proposes or adopts rules to implement a specific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the commission shall identify in its notice of intended action or adopted rule preamble each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirement. In addition, the commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. It is the intent of the general assembly that the commission exercise strict oversight of the operations of the department. The rules shall include departmental policy relating to the disclosure of information on a violation or alleged violation of the rules, standards, permits, or orders issued by the department and keeping of confidential information obtained by the department in the administration and enforcement of this chapter, chapter 459, chapter 459A, and chapter 459B. Rules adopted by the executive committee before January 1, 1981, shall remain effective until modified or rescinded by action of the commission.

4. Issue orders and directives necessary to insure integration and coordination of the programs administered by the department.

5. Make a concise biennial report to the governor and the general assembly, which report shall contain information relating to the accomplishments and status of the programs

administered by the department and include recommendations for legislative action which may be required to protect or enhance the environment or to modernize the operation of the department or any of the programs or services assigned to the department and recommendations for the transfer of powers and duties of the department as deemed advisable by the commission. The biennial report shall conform to the provisions of section 7A.3.

6. Approve all contracts and agreements under this chapter, chapter 459, chapter 459A, and chapter 459B between the department and other public or private persons or agencies.

7. Obtain an adequate public employees fidelity bond to cover those officers and employees of the department accountable for property or funds of this state.

8. Hold public hearings, except when the evidence to be received is confidential pursuant to this chapter, chapter 22, chapter 459, chapter 459A, or chapter 459B, necessary to carry out its powers and duties. The commission may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as provided in civil actions.

9. Upon request of at least four members of the commission before adopting or modifying a rule, the director shall prepare and publish with the notice required under section 17A.4, subsection 1, paragraph "*a*", a comprehensive estimate of the economic impact of the proposed rule or modification.

10. Appoint a water coordinator who shall coordinate requests from the public for information or assistance relating to the administration of water resources laws and programs and the resolution of water-related problems.

11. *a.* Adopt, by rule, procedures and forms necessary to implement the provisions of this chapter and chapters 459, 459A, and 459B relating to permits and general permits. The commission may also adopt, by rule, a schedule of fees for permit applications and a schedule of fees which may be periodically assessed for administration of permits. In determining the fee schedules, the commission shall consider:

(1) The state's reasonable cost of reviewing applications, issuing permits, and checking compliance with the terms of the permits.

(2) The relative benefits to the applicant and to the public of permit review, issuance, and monitoring compliance. It is the intention of the legislature that permit fees shall not cover any costs connected with correcting violation of the terms of any permit and shall not impose unreasonable costs on any municipality.

(3) The typical costs of the particular types of projects or activities for which permits are required, provided that in no circumstances shall fees be in excess of the actual costs to the department.

b. Except as otherwise provided in this chapter and chapter 459, fees collected by the department under this subsection shall be remitted to the treasurer of state and credited to the general fund of the state.

c. The commission shall adopt rules for applications or permits related to the national pollutant discharge elimination system (NPDES) coverage as described in section 455B.197, including fees, only to the extent that the rules are consistent with that section.

[C50, 54, 58, 62, 66, §455A.9; C71, §136B.4(7), 455A.9; C73, 75, 77, 79, §455A.9, 455B.5, 455B.7, 455B.12(6); C81, §455A.9, 455B.5; 82 Acts, ch 1199, §4, 5, 96]

C83, §455B.105

83 Acts, ch 136, §1; 83 Acts, ch 137, §1; 86 Acts, ch 1245, §1887, 1899; 89 Acts, ch 72, §3; 91 Acts, ch 121, §2; 94 Acts, ch 1198, §47; 2003 Acts, ch 44, §65; 2004 Acts, ch 1101, §61; 2005 Acts, ch 136, §23, 24; 2006 Acts, ch 1178, §23; 2009 Acts, ch 155, §22, 23, 34; 2013 Acts, ch 30, §100; 2014 Acts, ch 1010, §1; 2018 Acts, ch 1023, §2

Referred to in §455B.183A, 455B.310, 455B.387

455B.106 Reserved.

455B.107 Warrants by director of department of administrative services.

The director of the department of administrative services shall draw warrants on the treasurer of state for all disbursements authorized by the provisions of this chapter and

chapter 459, upon itemized and verified vouchers bearing the approval of the director of the department of natural resources.

[C73, 75, 77, 79, 81, §455B.8]
C83, §455B.107
86 Acts, ch 1245, §1899; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §62

455B.108 Office facilities.

The department of administrative services shall provide the department with appropriate office facilities.

[C73, 75, 77, 79, 81, §455B.9]
C83, §455B.108
2003 Acts, ch 145, §286

455B.109 Schedule of civil penalties — violations.

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

a. The costs saved or likely to be saved by noncompliance by the violator.

b. The gravity of the violation.

c. The degree of culpability of the violator.

d. The maximum penalty authorized for that violation under this chapter.

2. Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violations not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under subsection 1.

3. When the commission establishes a schedule for violations, the commission shall provide, by rule, a procedure for the screening of alleged violations to determine which cases may be appropriate for the administrative assessment of penalties. However, the screening procedure shall not limit the discretion of the department to refer any case to the attorney general for legal action.

4. A penalty shall be paid within thirty days of the date the order assessing the penalty becomes final. When a person against whom a civil penalty is assessed under this section seeks timely judicial review of an order imposing the penalty as provided under chapter 17A, the order is not final for the purposes of this section until all judicial review processes are completed. Additional judicial review may not be sought after the order becomes final. A person who fails to timely pay a civil penalty assessed by a final order of the department shall pay, in addition, interest at the rate of one and one-half percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. The attorney general shall institute, at the request of the department, summary proceedings to recover the penalty and any accrued interest.

5. *a.* Except as provided in paragraph *"b"*, all civil penalties assessed by the department and interest on the civil penalties shall be deposited in the general fund of the state.

b. Civil penalties assessed and collected by or on behalf of the department and interest on the civil penalties as provided in sections 459.602, 459.603, 459.604, 459A.502, and 459B.402 shall be credited to the Iowa nutrient research fund created in section 466B.46.

6. This section does not require the commission or the director to pursue an administrative remedy before seeking a remedy in the courts of this state.

84 Acts, ch 1159, §1; 86 Acts, ch 1245, §1899; 92 Acts, ch 1111, §1; 95 Acts, ch 195, §12; 2002 Acts, ch 1137, §2, 71; 2005 Acts, ch 136, §25; 2008 Acts, ch 1032, §57; 2009 Acts, ch 155, §24, 34; 2011 Acts, ch 128, §34, 45; 2016 Acts, ch 1134, §26, 34

Referred to in §455B.476, 455D.22, 459.602, 459.603, 466B.46

455B.110 Administrative appeal orders — deadline.

1. An order issued by the director or the department pursuant to authority granted in this chapter may be appealed, resulting in the scheduling of a contested case hearing as provided for in chapter 17A. The appeal must be received by the director within the applicable time frame established in this section. If the appeal is not received within the applicable time frame, the appeal is not timely and the order is final agency action.

2. For a person that holds a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the address of the person identified in the permit and the address of the responsible party listed in the permit, if any.

3. For a person that is required to maintain a registered agent or a registered office in the state and does not hold a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the official registered agent address on file with the secretary of state.

4. For any other person, an appeal must be received by the director within sixty days of issuance to the last known address.

5. The director or the department shall provide a copy of the order by ordinary mail or electronic mail to the person's attorney if the attorney has been identified to the department as representing the person.

6. For the purposes of this section, the date of issuance of an order by the director or the department is the postmarked date that the order is sent by the department to the registered agent or party by certified mail. For the purposes of this section, the date of receipt by the director is the postmarked date that the appeal was sent to the director.

2019 Acts, ch 97, §1
Referred to in §455B.138, 455B.175, 455B.279, 455B.308, 455B.476, 455D.23, 458A.11
NEW section

455B.111 Citizen actions.

1. Except as provided in subsection 2, a person with standing as provided in subsection 3 may commence a civil action in district court on the person's own behalf against any of the following:

a. A person, including the state of Iowa, for violating any provision of this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; chapter 459B; or a rule adopted pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B.

b. The director, the commission, or any official or employee of the department where there is an alleged failure to perform any act or duty under this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; chapter 459B; or a rule adopted pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B, which is not a discretionary act or duty.

2. An action shall not be commenced pursuant to subsection 1, paragraph "*a*", unless the person commencing the action has provided the director and the alleged violator with a written notice at least sixty days prior to commencing the action. The written notice shall specify the nature of the violation and that legal action is contemplated under this section if the violation is not abated and, if necessary, remedial action is not taken. The state may intervene in such an action as a matter of right. In addition, an action shall not be commenced pursuant to subsection 1, paragraph "*a*", if the department or the state has commenced and is actively prosecuting a civil action or is actively negotiating an out-of-court settlement to require abatement of the violation and, if necessary, remediation of damages. However, any person may intervene as a matter of right in such an action.

3. A person shall have standing to commence an action pursuant to subsection 1 or to intervene in an action pursuant to subsection 2 if the person is adversely affected by the alleged violation or the alleged failure to perform a duty or act.

4. In an action commenced pursuant to subsection 1, the court may award costs of litigation, including reasonable attorney and expert witness fees, to any party.

5. This section does not restrict any right under statutory or common law of a person or class of person to seek enforcement of provisions of this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; chapter 459B; or a rule adopted pursuant to this chapter;

chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B; or seek other relief permitted under the law.

86 Acts, ch 1245, §1888; 2005 Acts, ch 136, §26, 27; 2009 Acts, ch 155, §25, 26, 34
Referred to in §455K.8

455B.112 Actions by attorney general.

In addition to the duty to commence legal proceedings at the request of the director or commission under this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B, the attorney general may institute civil or criminal proceedings, including an action for injunction, to enforce the provisions of this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B, including orders or permits issued or rules adopted under this chapter; chapter 459, subchapters I, II, III, IV, and VI; chapter 459A; or chapter 459B.

86 Acts, ch 1245, §1889; 2005 Acts, ch 136, §28; 2009 Acts, ch 155, §27, 34
Referred to in §455H.508

455B.112A Environmental crimes investigation and prosecution fund.

1. An environmental crimes investigation and prosecution fund is created as a separate fund in the state treasury to be administered by the attorney general. Moneys credited to the fund shall include court-ordered fines and restitution awarded to the attorney general as part of a judgment in an environmental criminal case.

2. For each fiscal year not more than twenty thousand dollars is appropriated from the fund to the department of justice to be used for the investigation and prosecution of environmental crimes, including the reimbursement of expenses incurred by county, municipal, and other local government agencies cooperating with the attorney general in the investigation and prosecution of environmental crimes.

3. Not more than twenty thousand dollars shall be credited to the fund in a fiscal year and any moneys in excess of this amount shall be credited to the general fund of the state.

4. Notwithstanding section 8.33, moneys credited to the fund shall not revert to any other fund. Notwithstanding section 12C.7, interest or earnings deposited in the fund shall be credited to the fund.

2007 Acts, ch 213, §22

455B.113 Certification of laboratories.

1. The director shall certify laboratories which perform laboratory analyses of samples required to be submitted by the department by this chapter; chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A, or by rules adopted in accordance with this chapter; chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A, or by permits or orders issued under this chapter; chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A.

2. *a.* The commission shall adopt rules regarding content of laboratory certification application forms, which shall be furnished by the department.

b. The commission shall adopt rules regarding reciprocity agreements with other states that have equivalent laboratory certification requirements.

3. The director may charge a fee for processing of an application. The application fee is nonrefundable. In establishing the fee, the director shall take into account the administrative costs incurred and the cost of enforcement of this section. Fees collected shall be retained by the department.

4. A laboratory shall submit an application, every other year, accompanied by the fee determined by the director.

88 Acts, ch 1120, §1; 2005 Acts, ch 136, §29; 2011 Acts, ch 25, §143

455B.114 Laboratory certificates.

1. Upon determination by the director that an applicant for certification has the necessary competence, equipment, and capability to perform the laboratory analytical procedures required, the director shall issue a certificate of competency to the laboratory. The certificate shall indicate the analytical parameters and procedures which the laboratory is certified to conduct.

2. The director may suspend or revoke the certificate of competency of a laboratory upon determination of the director that the laboratory no longer fulfills the requirements for certification.

88 Acts, ch 1120, §2

455B.115 Analysis by certified laboratory required.

Laboratory analysis of samples as required by this chapter; chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A; or by rules adopted, or by permits or orders issued pursuant to this chapter; chapter 459, subchapters I, II, III, IV, and VI; or chapter 459A shall be conducted by a laboratory certified by the director as having the necessary competence, equipment, and capabilities to perform the analysis. Analytical results from laboratories not certificated shall not be accepted by the director.

88 Acts, ch 1120, §3; 2005 Acts, ch 136, §30

455B.116 Pollution hotline program. Repealed by 2011 Acts, ch 9, §10.

455B.117 Results of environmental tests — public records.

1. The results of any test, which test is relative to the purview of the department, and which test is conducted or performed by an independent entity at the request of a government body, as defined in section 22.1, or an agent or attorney for a government body, are public records pursuant to chapter 22.

2. A government body shall not be required to provide such test results to any person under this section until the agency head and agency's governing body have received a copy of the test results. A government body shall not be required to provide such test results if the confidentiality of such information is protected pursuant to section 22.7. However, following receipt of test results by an agency head and the agency's governing body, the agency head or agency's governing body shall not take action regarding such test results unless the test results have been made public knowledge for a period of not less than seven days.

89 Acts, ch 242, §1; 2018 Acts, ch 1041, §127

455B.118 through 455B.130 Reserved.

DIVISION II

AIR QUALITY

Referred to in §172D.3, 455B.103A, 455B.104

PART 1

GENERAL

455B.131 Definitions.

When used in this division II, unless the context otherwise requires:

1. *"Air contaminant"* means dust, fume, mist, smoke, other particulate matter, gas, vapor (except water vapor), odorous substance, radioactive substance, or any combination thereof.

2. *"Air contaminant source"* means any and all sources of emission of air contaminants whether privately or publicly owned or operated.

a. Air contaminant source includes but is not limited to all types of businesses, commercial and industrial plants, works, shops, and stores, heating and power plants and stations, buildings and other structures of all types including single and multiple family residences, office buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses, aircraft, and other motor vehicles, garages, vending and service locations and stations, railroad locomotives, ships, boats, and other waterborne craft, portable fuel-burning equipment, indoor and outdoor

incinerators of all types, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing.

b. An air contaminant source does not include a fire truck or other fire apparatus operated by an organized fire department.

3. *"Air pollution"* means presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is or may reasonably tend to be injurious to human, plant, or animal life, or to property, or which unreasonably interferes with the enjoyment of life and property.

4. *"Atmosphere"* means all space outside of buildings, stacks or exterior ducts.

5. *"Earthen waste slurry storage basin"* means an uncovered and exclusively earthen cavity which, on a regular basis, receives waste discharges from a confinement animal feeding operation if accumulated wastes from the basin are completely removed at least twice each year.

6. *"Emission"* means a release of one or more air contaminants into the outside atmosphere.

7. *"Greenhouse gas"* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

8. *"Major stationary source"* means a stationary air contaminant source which directly emits, or has the potential to emit, one hundred tons or more of an air pollutant per year including a major source of fugitive emissions of a pollutant as determined by rule by the department or the administrator of the United States environmental protection agency.

9. *"Person"* means an individual, partnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the state, trust, estate, joint stock company, an agency or department of the federal government or any other legal entity, or a legal representative, agent, officer, employee or assigns of such entities.

10. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof.

11. *"Potential to emit"* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design as defined in rules adopted by the department.

12. *"Schedule and timetable of compliance"* means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

13. *"Small business stationary source"* means a stationary air contaminant source that meets all of the following requirements:

a. Employs one hundred or fewer individuals.

b. Qualifies as a small business concern by the United States department of commerce pursuant to 15 U.S.C. §632.

c. Is not a major stationary source.

d. Emits less than fifty tons per year of any federally regulated air pollutant and less than seventy-five tons per year of all federally regulated pollutants under the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7401 et seq.

[C71, §136B.2; C73, 75, 77, 79, 81, §455B.10]

C83, §455B.131

85 Acts, ch 44, §1; 86 Acts, ch 1245, §1899B; 90 Acts, ch 1153, §1; 93 Acts, ch 137, §2; 2007 Acts, ch 120, §1; 2008 Acts, ch 1031, §52; 2008 Acts, ch 1032, §106; 2008 Acts, ch 1105, §1

Referred to in §427.1(19)(e)

455B.132 Executive agency.

The department shall be the agency of the state to prevent, abate, or control air pollution.

[C73, 75, 77, 79, 81, §455B.11]

C83, §455B.132

455B.133 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the abatement, control, and prevention

of air pollution in this state, recognizing varying requirements for different areas in the state. The plans may include emission limitations, schedules and timetables for compliance with the limitations, measures to prevent the significant deterioration of air quality and other measures as necessary to assure attainment and maintenance of ambient air quality standards.

2. Adopt, amend, or repeal rules pertaining to the evaluation, abatement, control, and prevention of air pollution. The rules may include those that are necessary to obtain approval of the state implementation plan under section 110 of the federal Clean Air Act as amended through January 1, 1991.

3. Adopt, amend, or repeal ambient air quality standards for the atmosphere of this state on the basis of providing air quality necessary to protect the public health and welfare and to reduce emissions contributing to acid rain pursuant to Tit. IV of the federal Clean Air Act Amendments of 1990.

4. Adopt, amend, or repeal emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source. The standards or limitations adopted under this section shall not exceed the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. This does not prohibit the commission from adopting a standard for a source or class of sources for which the United States environmental protection agency has not promulgated a standard. This also does not prohibit the commission from adopting an emission standard or limitation for infectious medical waste treatment or disposal facilities which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act as amended through January 1, 1991. The commission shall not adopt an emission standard or limitation for infectious medical waste treatment or disposal facilities prior to January 1, 1995, which exceeds the standards or limitations promulgated by the administrator of the United States environmental protection agency or the requirements of the federal Clean Air Act, as amended through January 1, 1991, for a hospital, or a group of hospitals, licensed under chapter 135B which has been operating an infectious medical waste treatment or disposal facility prior to January 1, 1991.

a. (1) The commission shall establish standards of performance unless in the judgment of the commission it is not feasible to adopt or enforce a standard of performance. If it is not feasible to adopt or enforce a standard of performance, the commission may adopt a design, equipment, material, work practice or operational standard, or combination of those standards in order to establish reasonably available control technology or the lowest achievable emission rate in nonattainment areas, or in order to establish best available control technology in areas subject to prevention of significant deterioration review, or in order to adopt the emission limitations promulgated by the administrator of the United States environmental protection agency under section 111 or 112 of the federal Clean Air Act as amended through January 1, 1991.

(2) If a person establishes to the satisfaction of the commission that an alternative means of emission limitation will achieve a reduction in emissions of an air pollutant at least equivalent to the reduction in emissions of the air pollutant achieved under the design, equipment, material, work practice or operational standard, the commission shall amend its rules to permit the use of the alternative by the source for purposes of compliance with this paragraph with respect to the pollutant.

(3) A design, equipment, material, work practice or operational standard promulgated under this paragraph shall be promulgated in terms of a standard of performance when it becomes feasible to promulgate and enforce the standard in those terms.

(4) For the purpose of this paragraph, the phrase "*not feasible to adopt or enforce a standard of performance*" refers to a situation in which the commission determines that the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

b. The degree of emission limitation required for control of an air contaminant under an emission standard shall not be affected by that part of the stack height of a source that exceeds good engineering practice, as defined in rules, or any other dispersion technique.

This paragraph shall not apply to stack heights in existence before December 30, 1970, or dispersion techniques implemented before that date.

5. Classify air contaminant sources according to levels and types of emissions, and other characteristics which relate to air pollution. The commission may require, by rule, the owner or operator of any air contaminant source to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample such emissions in accordance with such methods at such locations and intervals, and using such procedures as the commission shall prescribe, and provide such other information as the commission may reasonably require. Such classifications may be for application to the state as a whole, or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

6. *a.* Require, by rules, notice of the construction of any air contaminant source which may cause or contribute to air pollution, and the submission of plans and specifications to the department, or other information deemed necessary, for the installation of air contaminant sources and related control equipment. The rules relating to major stationary sources shall allow the submission of engineering descriptions, flow diagrams and schematics that quantitatively and qualitatively identify emission streams and alternative control equipment that will provide compliance with emission standards. Such rules shall not specify any particular method to be used to reduce undesirable levels of emissions, nor type, design, or method of installation of any equipment to be used to reduce such levels of emissions, nor the type, design, or method of installation or type of construction of any manufacturing processes or kinds of equipment, nor specify the kind or composition of fuels permitted to be sold, stored, or used unless authorized by subsection 4 of this section.

b. The commission may give technical advice pertaining to the construction or installation of the equipment or any other recommendation.

7. Commission rules establishing maximum permissible sulfate content shall not apply to an expansion of an industrial anaerobic lagoon facility which was constructed prior to February 22, 1979.

8. *a.* (1) Adopt rules consistent with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549, including those amendments effective on January 1, 1991, regulations promulgated by the United States environmental protection agency pursuant to that Act, the provisions of this chapter, and rules adopted by the commission pursuant to this chapter, which require the owner or operator of an air contaminant source to obtain an operating permit prior to operation of the source. The rules shall specify the information required to be submitted with the application for an operating permit and the conditions under which a permit may be granted, modified, suspended, terminated, revoked, reissued, or denied. For sources subject to the provisions of Tit. IV of the federal Clean Air Act Amendments of 1990, operating permit conditions shall include emission allowances for sulfur dioxide emissions.

(2) (a) The commission may establish fees to be imposed and collected by the department, including operating permit application fees and fees upon regulated pollutants emitted from an air contaminant source, in an amount sufficient to cover, on a state fiscal year basis as described in section 455B.133B, all reasonable costs, direct and indirect, required to implement and administer the operating permit program as described in subparagraph (1) in conformance with the federal Clean Air Act Amendments of 1990. Affected units regulated under Tit. IV of the federal Clean Air Act Amendments of 1990 shall pay fees in the same manner as other sources subject to operating permit requirements, except as provided in section 408 of that Act.

(b) The fees collected by the department pursuant to subparagraph division (a) shall be credited to the appropriate accounts of the air contaminant source fund created pursuant to section 455B.133B, and shall be utilized to cover all reasonable costs required to implement and administer the programs required by Tit. V of the federal Clean Air Act Amendments of 1990, including the operating permit program pursuant to section 502 of that Act and the small business stationary source technical and environmental compliance assistance program pursuant to section 507 of that Act. The amount of the fees credited to and expended from each account of the air contaminant source fund shall be subject to the limitations provided in section 455B.133B.

(c) Fees established pursuant to this subparagraph (2) shall not be imposed for the regulation of an activity that exceeds the requirements of the federal Clean Air Act Amendments of 1990.

b. Adopt rules allowing the department to issue a state operating permit to an owner or operator of an air contaminant source. The state operating permit granted under this paragraph may only be issued at the request of an air contaminant source and will be used to limit its potential to emit to less than one hundred tons per year of a criteria pollutant as defined by the United States environmental protection agency or ten tons per year of a hazardous air pollutant or twenty-five tons of any combination of hazardous air pollutants.

c. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous sources to the extent that the sources are representative of a class of facilities which can be identified and conditioned by a single permit.

9. Adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in fire fighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. Each fire department shall be permitted to host two fires per year as allowed under this subsection.

10. Adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the requirements that are in effect for the proper removal of all asbestos-containing materials prior to demolition and burning. The rules shall include provisions that a burn site have controlled access, that a burn site be supervised by representatives of the city at all times, and that the burning be conducted only when weather conditions are favorable with respect to surrounding property. For a burn site located outside of a city, the rules shall include a provision that a city may undertake not more than one such controlled burn per day and that a burn site be limited to an area located at least six-tenths of a mile from any inhabited building. For burn sites located within a city, the rules shall include a provision that a city may undertake not more than one such controlled burn in every six-tenths-of-a-mile-radius circle in each calendar year. The rules shall prohibit a controlled burn of a demolished building in Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City, or any other area where area-specific state implementation plans require the control of particulate matter.

[C71, §136B.4; C73, 75, 77, 79, 81, §455B.12; 82 Acts, ch 1124, §1]

C83, §455B.133

91 Acts, ch 242, §1; 91 Acts, ch 255, §8; 92 Acts, ch 1163, §87 – 89; 93 Acts, ch 137, §3; 94 Acts, ch 1040, §1; 95 Acts, ch 2, §1; 2002 Acts, ch 1162, §45; 2002 Acts, 2nd Ex, ch 1003, §241, 262; 2004 Acts, ch 1138, §1; 2010 Acts, ch 1061, §180; 2014 Acts, ch 1010, §2; 2015 Acts, ch 30, §131; 2015 Acts, ch 100, §1, 7

Referred to in §455B.133B, 455B.134

For the commission's authority to establish or adjust certain designated fees, see 2015 Acts, ch 100, §4, 5

455B.133A Small business stationary source technical and environmental compliance assistance program.

A small business stationary source technical and environmental compliance assistance program shall be administered and enforced as required pursuant to the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661f.

2008 Acts, ch 1105, §2

Referred to in §455B.133B, 455B.151

455B.133B Air contaminant source fund created — fees and appropriations.

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

a. *"Federal Clean Air Act Amendments of 1990"* means Pub. L. No. 101-549, including those amendments effective on January 1, 1991, regulations promulgated by the United States environmental protection agency pursuant to that Act, the provisions of this chapter, and rules adopted by the commission pursuant to this chapter.

b. *"State fiscal year"* means the fiscal year described in section 3.12.

2. An air contaminant source fund is created in the office of the treasurer of state under the control of the department. The fund shall be composed of an air emission fee account and an operating permit application fee account as provided in this section.

3. In establishing fees to be imposed and collected by the department pursuant to section 455B.133, subsection 8, the commission shall use the calculated estimate described in this section. The fees collected pursuant to section 455B.133, subsection 8, shall be credited to the fund. The fund may include any other moneys appropriated by the general assembly or otherwise available to and obtained or accepted by the department for deposit in the fund.

4. *a.* The commission shall establish each fee amount based on the department's calculated estimate of total revenues from all fees predicted to be credited to each account in the fund, but not to exceed a ceiling amount for each account as provided in this section. However, this subsection does not require that an account have a zero ending balance at the close of a state fiscal year.

b. Each state fiscal year the department shall recompute its calculated estimate and obtain approval from the commission if an established fee amount must be adjusted.

c. (1) The department shall annually convene a Tit. V fees stakeholder meeting. The department shall provide a report on the fees and budgets to the stakeholders. The department shall consider any recommendations of the stakeholders when computing its calculated estimate for the following state fiscal year.

(2) A person invited to attend a stakeholder meeting is not entitled to receive a per diem as specified in section 7E.6 and shall not be reimbursed for expenses incurred while attending the meeting.

5. *a.* The air emission fee account shall include all fees established by the commission to be imposed and collected by the department for emission fees for regulated pollutants submitted by major sources as defined in section 502 of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661, and as defined in 567 IAC ch. 22.

b. (1) The department's calculated estimate for the air emission fee account shall be computed to produce total revenues sufficient to pay for reasonable direct and indirect costs of implementing and administering the operating permit program as provided in section 455B.133, subsection 8, on a state fiscal year basis.

(2) The reasonable direct and indirect costs described in subparagraph (1) shall be limited to all of the following:

(a) General administrative costs of administering the operating permit program, including the supporting and tracking of operating permit applications, compliance certification, and related data entry.

(b) Costs of implementing and enforcing the terms of an operating permit, not including any court costs or other costs associated with an enforcement action, including adequate resources to determine which sources are subject to the program.

(c) Costs of emissions and ambient site-specific monitors.

(d) Costs of Tit. V source-specific modeling, analyses, or demonstrations.

(e) Costs of preparing inventories and tracking emissions.

(f) Costs of providing direct support to sources under the small business stationary source technical and environmental compliance assistance program as provided in section 455B.133A.

(3) The department shall not include in its computations for a calculated estimate, and the commission shall not establish fees, for greenhouse gas emissions as defined in 40 C.F.R. §70.12.

c. The department's calculated estimate for the air emission fee account shall not produce total revenues in excess of eight million two hundred fifty thousand dollars during any state fiscal year.

d. (1) Moneys in the air emission fee account are appropriated to the department to pay for the reasonable direct and indirect costs specified in paragraph "*b*", subparagraph (2).

(2) Notwithstanding subparagraph (1), moneys in the air emission fee account are also appropriated to the department to pay for costs associated with implementing and administering regulatory activities, including programs, provided for in division II of this chapter, other than costs covered by any of the following:

(a) Operating permit application fees credited to the operating permit application fee account as provided in subsection 6.

(b) New source review application fees credited to the major source account of the air quality fund as provided in section 455B.133C, subsection 5.

(c) New source review application fees credited to the minor source account of the air quality fund as provided in section 455B.133C, subsection 6.

(d) Notification fees credited to the asbestos account of the air quality fund as provided in section 455B.133C, subsection 7.

6. *a.* The operating permit application fee account shall include all fees established by the commission to be imposed and collected by the department for accepting applications for operating permits submitted by major sources as defined in section 502 of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661, and as defined in 567 IAC ch. 22.

b. (1) The department's calculated estimate for the operating permit application fee account shall be computed to produce total revenues sufficient to provide for the reasonable direct and indirect costs of implementing and administering operating permit programs described in paragraph "*a*".

(2) The reasonable direct and indirect costs described in subparagraph (1) shall be limited to all of the following:

(a) Costs of reviewing and acting on any application for an operating permit or operating permit revision.

(b) General administrative costs of administering the operating permit program, including the supporting and tracking of operating permit applications and related data entry.

c. The department's calculated estimate for the operating permit application fee account shall not produce total revenues in excess of one million two hundred fifty thousand dollars during any state fiscal year.

d. Moneys in the operating permit application fee account are appropriated to the department to pay for reasonable direct and indirect costs specified in paragraph "*b*", subparagraph (2).

7. *a.* The commission or department shall not transfer moneys credited from one account to another account of the fund.

b. Notwithstanding section 8.33, any unexpended balance in an account of the fund at the end of each state fiscal year shall be retained in that account.

c. Notwithstanding section 12C.7, any interest and earnings on investments from moneys in an account of the fund shall be credited to that account.

91 Acts, ch 255, §10; 92 Acts, ch 1163, §91, 92; 95 Acts, ch 26, §1, 2; 2008 Acts, ch 1105, §3; 2015 Acts, ch 100, §2, 7; 2016 Acts, ch 1011, §75

Referred to in §455B.133, 455B.133C, 455B.150

For the commission's authority to establish or adjust certain designated fees, see 2015 Acts, ch 100, §4, 5

455B.133C Air quality fund — fees and appropriations.

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

a. "*Federal Clean Air Act Amendments of 1990*" means the same as defined in section 455B.133B.

b. "*State fiscal year*" means the fiscal year described in section 3.12.

2. An air quality fund is created in the office of the treasurer of state under the control of the department. The fund shall be composed of a major source account, a minor source account, and an asbestos account as provided in this section.

3. The commission may establish fees to be imposed and collected by the department upon air contaminant sources required by 567 IAC ch. 22, 31, or 33, to obtain a permit, registration, template, or permit by rule, or to provide notification under 567 IAC 23.1(3). In establishing the fees, the commission shall use the calculated estimate described in this section. The fees collected shall be credited to the fund. The fund may include any other moneys appropriated by the general assembly or otherwise available to and obtained or accepted by the department for deposit in the fund.

4. *a.* The commission shall establish each fee amount based on the department's

calculated estimate of total revenues from all fees predicted to be credited to each account in the fund, but not to exceed a ceiling amount for each account as provided in this section. However, this subsection does not require that an account have a zero ending balance at the close of a state fiscal year.

b. Each state fiscal year the department shall recompute its calculated estimate and obtain approval from the commission if an established fee amount must be adjusted.

c. (1) The department shall annually convene air quality fees stakeholder meetings. The department shall provide a report on the fees and budgets to the stakeholders regarding each account described in this section. The department shall consider any recommendations of the stakeholders when computing its calculated estimate for the following state fiscal year.

(2) A person invited to attend a stakeholder meeting is not entitled to receive a per diem as specified in section 7E.6 and shall not be reimbursed for expenses incurred while attending the meeting.

5. *a.* The major source account shall include all fees established by the commission to be imposed and collected by the department for accepting applications for new source review permits including permit revisions submitted by major sources as defined in section 502 of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661, under new source review programs pursuant to that federal Act, including as provided under 567 IAC ch. 22, 31, and 33.

b. (1) The department's calculated estimate for the major source account shall be computed to produce total revenues sufficient to pay for reasonable direct and indirect costs of implementing and administering new source review programs described in paragraph "*a*" on a state fiscal year basis.

(2) The reasonable direct and indirect costs described in subparagraph (1) shall be limited to all of the following:

(a) Reviewing and acting on any application for a new source review permit, including the determination of all applicable requirements and dispersion modeling as part of the processing of a permit or permit revision, or an applicability determination.

(b) General administrative costs of administering new source review programs including supporting and tracking of any application for a new source review permit and related data entry.

(c) (i) Developing and implementing an expedited new source review permit application process.

(ii) Additional fees associated with subparagraph subdivision (i).

c. (1) The department's calculated estimate for the major source account shall not produce total revenues in excess of one million five hundred thousand dollars during any state fiscal year.

(2) Notwithstanding subparagraph (1), the department's calculated estimate for the major source account shall not include the additional fees described in paragraph "*b*", subparagraph (2), subparagraph division (c), subparagraph subdivision (ii).

d. Moneys in the major source account are appropriated to the department to pay for reasonable direct and indirect costs of implementing and administering new source review programs as specified in paragraph "*b*", subparagraph (2).

6. *a.* The minor source account shall include all fees established by the commission to be imposed and collected by the department for accepting applications submitted by minor air contaminant sources for construction permits or for providing for registrations, permits by rule, or template permits in lieu of obtaining construction permits, under minor source new source review programs pursuant to the federal Clean Air Act Amendments of 1990, including as provided under 567 IAC ch. 22.

b. (1) The department's calculated estimate for the minor source account shall be computed to produce total revenues sufficient to pay for reasonable direct and indirect costs of implementing and administering minor source new source review programs as described in paragraph "*a*" on a state fiscal year basis.

(2) The reasonable direct and indirect costs described in subparagraph (1) shall include costs associated with a new, modified, or existing minor air contaminant source, and related control equipment.

c. The department's calculated estimate for the minor source account shall not produce total revenues in excess of two hundred fifty thousand dollars during any state fiscal year.

d. Moneys in the minor source account are appropriated to the department to pay for reasonable direct and indirect costs of implementing and administering minor source new source review programs as specified in paragraph *"b"*.

7. *a.* The asbestos account shall include all fees established by the commission to be imposed and collected by the department for accepting notifications involving demolition or renovation projects under the asbestos national emission standard for hazardous air pollutants program pursuant to 567 IAC ch. 23.

b. The department's calculated estimate for the asbestos account shall be computed to produce total revenues sufficient to pay for reasonable direct and indirect costs of implementing and administering the asbestos national emission standard for hazardous air pollutants program as provided in paragraph *"a"* on a state fiscal year basis.

c. The department's calculated estimate for the asbestos account shall not produce total revenues in excess of four hundred fifty thousand dollars during any state fiscal year.

d. Moneys in the asbestos account are appropriated to the department to pay for reasonable direct and indirect costs of implementing and administering the asbestos national emission standard for hazardous air pollutants program as specified in paragraph *"b"*.

8. Fees established pursuant to this section shall not be imposed for the regulation of an activity that exceeds the requirements of the federal Clean Air Act Amendments of 1990.

9. *a.* The commission or department shall not transfer moneys credited from one account to another account of the fund.

b. Notwithstanding section 8.33, any unexpended balance in an account of the fund at the end of each state fiscal year shall be retained in that account.

c. Notwithstanding section 12C.7, any interest and earnings on investments from moneys in an account of the fund shall be credited to that account.

2015 Acts, ch 100, §3, 7; 2016 Acts, ch 1011, §76

Referred to in §455B.133B

For the commission's authority to establish or adjust certain designated fees, see 2015 Acts, ch 100, §4, 5

455B.134 Director — duties — limitations.

The director shall:

1. Publish and administer the rules and standards established by the commission. The department shall furnish a copy of such rules or standards to any person upon request.

2. Provide technical, scientific, and other services required by the commission or for the effective administration of this division II and chapter 459, subchapter II.

3. Grant, modify, suspend, terminate, revoke, reissue, or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment subject to the rules adopted by the commission. The department shall furnish necessary application forms for such permits.

a. No air contaminant source shall be installed, altered so that it significantly affects emissions, or placed in use unless a construction permit has been issued for the source.

b. The condition of expected performance shall be reasonably detailed in the construction permit.

c. All applications for permits shall be subject to such notice and public participation as may be provided by rule by the commission. Upon denial or limitation of a permit, the applicant shall be notified of such denial and informed of the reason or reasons therefor, and such applicant shall be entitled to a hearing before the commission.

d. A regulated air contaminant source for which a construction permit has been issued shall not be operated unless an operating permit also has been issued for the source. However, if the facility was in compliance with permit conditions prior to the requirement for an operating permit and has made timely application for an operating permit, the facility may continue operation until the operating permit is issued or denied. Operating permits shall contain the requisite conditions and compliance schedules to ensure conformance with state and federal requirements including emission allowances for sulfur dioxide emissions for sources subject to Tit. IV of the federal Clean Air Act Amendments of 1990.

If construction of a new air contaminant source is proposed, the department may issue an operating permit concurrently with the construction permit, if possible and appropriate.

e. (1) Notwithstanding any other provision of division II of this chapter or chapter 459, subchapter II, the following siting requirements shall apply to anaerobic lagoons and earthen waste slurry storage basins:

(a) Anaerobic lagoons, constructed or expanded on or after June 20, 1979, but prior to May 31, 1995, or earthen waste slurry storage basins, constructed or expanded on or after July 1, 1990, but prior to May 31, 1995, which are used in connection with animal feeding operations containing less than six hundred twenty-five thousand pounds live animal weight capacity of animal species other than beef cattle or containing less than one million six hundred thousand pounds live animal weight capacity of beef cattle, shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. Anaerobic lagoons or earthen waste slurry storage basins, which are used in connection with animal feeding operations containing six hundred twenty-five thousand pounds or more live animal weight capacity of animal species other than beef cattle or containing one million six hundred thousand pounds or more live animal weight capacity of beef cattle, shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the feeding operation or from a public use area other than a public road. For the purpose of this paragraph the determination of live animal weight capacity shall be based on the average animal weight capacity during a production cycle and the maximum animal capacity of the animal feeding operation.

(b) Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is one hundred thousand gallons per day or less shall be located at least one thousand two hundred fifty feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. Anaerobic lagoons which are used in connection with industrial treatment of wastewater where the average wastewater discharge flow is greater than one hundred thousand gallons per day shall be located at least one thousand eight hundred seventy-five feet from a residence not owned by the owner of the lagoon or from a public use area other than a public road. These separation distances apply to the construction of new facilities and the expansion of existing facilities.

(2) A person may build or expand an anaerobic lagoon or an earthen waste slurry storage basin closer to a residence not owned by the owner of the anaerobic lagoon or to a public use area than is otherwise permitted by subparagraph (1) of this paragraph, if the affected landowners enter into a written agreement with the anaerobic lagoon owner to waive the separation distances under such terms the parties negotiate. The written agreement becomes effective only upon recording in the office of the recorder of deeds of the county in which the residence is located.

f. All applications for construction permits or prevention of significant deterioration permits shall quantify the potential to emit greenhouse gases due to the proposed project.

4. Determine by field studies and sampling the quality of atmosphere and the degree of air pollution in this state or any part thereof.

5. Conduct and encourage studies, investigations, and research relating to air pollution and its causes, effects, abatement, control, and prevention.

6. Provide technical assistance to political subdivisions of this state requesting such aid for the furtherance of air pollution control.

7. Collect and disseminate information, and conduct educational and training programs, relating to air pollution and its abatement, prevention, and control.

8. Consider complaints of conditions reported to, or considered likely to, constitute air pollution, and investigate such complaints upon receipt of the written petition of any state agency, the governing body of a political subdivision, a local board of health, or twenty-five affected residents of the state.

9. Issue orders consistent with rules to cause the abatement or control of air pollution, or to secure compliance with permit conditions. In making the orders, the director shall consider the facts and circumstances bearing upon the reasonableness of the emissions

involved, including but not limited to, the character and degree of injury to, or interference with, the protection of health and the physical property of the public, the practicability of reducing or limiting the emissions from the air pollution source, and the suitability or unsuitability of the air pollution source to the area where it is located. An order may include advisory recommendations for the control of emissions from an air contaminant source and the reduction of the emission of air contaminants.

10. Encourage voluntary cooperation by persons or affected groups in restoring and preserving a reasonable quality of air within the state.

11. Encourage political subdivisions to handle air pollution problems within their respective jurisdictions.

12. Review and evaluate air pollution control programs conducted by political subdivisions of the state with respect to whether the programs are consistent with the provisions of division II of this chapter and chapter 459, subchapter II, and rules adopted by the commission.

13. Hold public hearings, except when the evidence to be received is confidential pursuant to section 455B.137, necessary to accomplish the purposes of division II of this chapter and chapter 459, subchapter II. The director may issue subpoenas requiring the attendance of witnesses and the production of evidence pertinent to the hearings. A subpoena shall be issued and enforced in the same manner as in civil actions.

14. Convene meetings not later than June 1 during the second calendar year following the adoption of new or revised federal ambient air quality standards by the United States environmental protection agency to review emission limitations or standards relating to the maximum quantities of air contaminants that may be emitted from any air contaminant source as provided in section 455B.133, subsection 4. By November 1 of the same calendar year, the department shall submit a report to the governor and the general assembly regarding recommendations for law changes necessary for the attainment of the new or revised federal standards.

[C71, §136B.4, 136B.5; C73, 75, 77, 79, §455B.12, 455B.13; C81, §455B.13; 82 Acts, ch 1124, §2, 3]

C83, §455B.134

86 Acts, ch 1245, §1899; 90 Acts, ch 1153, §2, 3; 91 Acts, ch 255, §11 – 13; 93 Acts, ch 137, §4; 95 Acts, ch 195, §14; 2007 Acts, ch 120, §2, 3; 2010 Acts, ch 1115, §1; 2011 Acts, ch 25, §49, 50; 2014 Acts, ch 1010, §3 – 5

Referred to in §455B.145

For regulations establishing separation distances between anaerobic lagoons or earthen manure storage structures constructed or expanded on or after May 31, 1995, and various locations and objects, see chapter 459

For regulations governing the construction of earthen storage structures within agricultural drainage well areas, see chapter 460

455B.135 Limit on authority.

Nothing contained in this division II or chapter 459, subchapter II, shall be deemed to grant to the department or the director any authority or jurisdiction with respect to air pollution existing solely within residences; or solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91; or to affect the relations between employers and employees with respect to, or arising out of, any condition of air pollution.

[C71, §136B.6; C73, 75, 77, 79, 81, §455B.14]

C83, §455B.135

86 Acts, ch 1245, §1899, 1899B

455B.136 Assistance on demand.

The department and the director may request and receive assistance from any other agency, department, or educational institution of the state, or political subdivision thereof, when it is deemed necessary or beneficial by the department or the director. The department may reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C71, §136B.7; C73, 75, 77, 79, 81, §455B.15]

C83, §455B.136

86 Acts, ch 1245, §1899, 1899B

455B.137 Privileged information.

Information received by the department or any employees of the department through filed reports, inspections, or as otherwise authorized in this division II or chapter 459, subchapter II, concerning trade secrets, secret industrial processes, or other privileged communications, except emission data, shall not be disclosed or opened to public inspection, except as may be necessary in a proceeding concerning a violation of said division or of any rules promulgated thereunder, or as otherwise authorized or ordered by appropriate court action or proceedings. Nothing herein shall be construed to prevent the director from compiling or publishing analyses or summaries relating to the general condition of the atmosphere; provided that such analyses or summaries do not reveal any information otherwise confidential under this section.

[C71, §136B.8; C73, 75, 77, 79, 81, §455B.16]
C83, §455B.137
86 Acts, ch 1245, §1899B
Referred to in §455B.134, 455B.138

455B.138 Resolution of violations — appeal.

1. When the director has evidence that a violation of any provision of division II of this chapter or chapter 459, subchapter II, or rule, standard, or permit established or issued under division II or chapter 459, subchapter II, has occurred, the director shall notify the alleged violator and, by informal negotiation, attempt to resolve the problem. If the negotiations fail to resolve the problem within a reasonable period of time, the director shall issue an order directing the violator to prevent, abate, or control the emissions or air pollution involved. The order shall prescribe the date by which the violation shall cease and may prescribe timetables for necessary action to prevent, abate, or control the emissions of air pollution. The order may be appealed to the commission. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110.

2. After the hearing on appeal, the commission may affirm, modify, or rescind the order of the director.

3. The director shall keep a complete record of the hearings and proceeding and the record shall be open to public inspection, subject to section 455B.137. Upon request, a copy of the transcript shall be furnished to the violator or alleged violator at the violator's or alleged violator's expense.

4. An appeal to the commission under this section shall be conducted as a contested case under chapter 17A.

[C71, §136B.9; C73, 75, 77, 79, 81, §455B.17]
C83, §455B.138
86 Acts, ch 1245, §1899; 2019 Acts, ch 97, §2
Referred to in §455B.149
Subsection 1 amended

455B.139 Emergency orders.

If the director has evidence that any person is causing air pollution and that such pollution creates an emergency requiring immediate action to protect the public health and safety, or property, the director may, without notice, issue an emergency order requiring such person to reduce or discontinue immediately the emission of air contaminants. A copy of the emergency order shall be served by personal service. An emergency order issued by the director may be appealed to the commission. After hearing on appeal, the commission may affirm, modify or rescind the order of the director.

[C71, §136B.9(5); C73, 75, 77, 79, 81, §455B.18]
C83, §455B.139
86 Acts, ch 1245, §1899

455B.140 Judicial review.

Judicial review of actions of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the

terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

[C71, §136B.10; C73, 75, 77, 79, 81, §455B.19]
C83, §455B.140
86 Acts, ch 1245, §1899; 2003 Acts, ch 44, §114

455B.141 Legal action.

If action to prevent, control, or abate air pollution is not taken in accordance with the rules established, or orders or permits issued by the department, or if the director has evidence that an emergency exists by reason of air pollution which requires immediate action to protect the public health or property, the attorney general, at the request of the director, shall commence legal action, in the name of the state, for an injunction to prevent any further or continued violation of such rule or order.

[C71, §136B.11; C73, 75, 77, 79, 81, §455B.20]
C83, §455B.141
86 Acts, ch 1245, §1899; 91 Acts, ch 255, §14
Referred to in §455B.142

455B.142 Burden of proof.

In all proceedings with respect to any alleged violation of the provisions of this division II or chapter 459, subchapter II, or any rule established by the commission, the burden of proof shall be upon the department except in an action for an injunction as provided in section 455B.141.

[C71, §136B.12; C73, 75, 77, 79, 81, §455B.21]
C83, §455B.142

455B.143 Variance.

Any person who owns or operates any plant, building, structure, process, or equipment may apply for a variance from the rules or standards adopted by the department by filing an application with the department. The application shall be accompanied by such information and data required by the department.

1. The director shall promptly investigate the application and approve or disapprove the application. The director may grant a variance if the director finds that:

a. The emissions occurring or proposed to occur do not endanger or tend to endanger human health or safety or property; and

b. Compliance with the rules or standards from which the variance is sought will produce serious hardship without equal or greater benefits to the public.

2. The applicant may request a review hearing before the department if the application is denied.

3. In determining under what conditions and to what extent a variance may be granted, the director shall give due recognition to the progress which the applicant has made toward eliminating or preventing air pollution. In such a case, the director shall consider the reasonableness of the request, conditioned upon such applicant effecting a partial abatement of the particular air pollution within a reasonable period of time, or the director may prescribe other requirements with which such applicant shall comply.

4. The director may grant a variance for a specified period of time, not exceeding one year, and the director may further specify that the applicant make periodic reports specifying the progress that has been made toward compliance with any rule for which the variance was granted. A variance may be extended from year to year by affirmative action of the director.

5. The director shall maintain a record of each variance granted specifying the reasons for its issuance or extension.

[C71, §136B.13; C73, 75, 77, 79, 81, §455B.22]
C83, §455B.143
86 Acts, ch 1245, §1899, 1899B

455B.144 Local control program.

1. Any political subdivision may conduct an air pollution control program within the boundaries of its jurisdiction, or may jointly conduct an air pollution control program with other political subdivisions of this state or of other states, except that every joint program shall be established and administered as provided in chapter 28E. In conducting such programs, political subdivisions may adopt and enforce rules or standards to secure and maintain adequate air quality within their respective jurisdictions.

2. If the board of supervisors in any county establishes an air pollution control program and has obtained a certificate of acceptance, the agency implementing the program may regulate air pollution within the county including any incorporated areas therein until such incorporated areas obtain a certificate of acceptance as a joint or separate agency.

[C71, §136B.14; C73, 75, 77, 79, 81, §455B.23]

C83, §455B.144

Referred to in §331.382

455B.145 Acceptance of local program.

When an air pollution control program conducted by a political subdivision, or a combination of them, is deemed upon review as provided in section 455B.134, to be consistent with the provisions of this division II or the rules established under this division, the director shall accept such program in lieu of state administration and regulation of air pollution within the political subdivisions involved. This section shall not be construed to limit the power of the director to issue state permits and to take other actions consistent with this division II or the rules established under this division that the director deems necessary for the continued proper administration of the air pollution programs within the jurisdiction of the local air pollution program.

1. In evaluating an air pollution control program, consideration shall be given to whether such program provides for the following:

a. Ordinances, rules and standards establishing requirements consistent with, or more strict than, those imposed by this division II or rules and standards adopted by the department.

b. Enforcement of such requirements by appropriate administrative and judicial process.

c. Administrative organization, staff, financial and other resources necessary to administer an efficient and effective program.

d. Location of emission monitoring devices in areas of the political subdivision in compliance with uniform state standards adopted by the department. The department shall adopt uniform state standards for the location of emission monitoring devices specifying such intervals and such procedures to provide a reasonably consistent measurement of emissions from air contaminant sources regardless of the political subdivision of the state in which the sources may be located.

2. Upon acceptance of a local air pollution control program, the director shall issue a certificate of acceptance to the appropriate local agency.

a. Any political subdivision desiring a certificate of acceptance shall apply to the department on forms prescribed by the director.

b. The director shall promptly investigate the application and approve or disapprove the application. The director may conduct a public hearing before action is taken to approve or disapprove. If the director disapproves issuing a certificate, the political subdivision may appeal the action to the department of inspections and appeals. At the hearing on appeal, the department of inspections and appeals shall decide whether the local program is substantially consistent with the provisions of this division II, or rules adopted thereunder, and whether the local program is being enforced. The burden of proof shall be upon the political subdivision.

c. If the director determines at any time that a local air pollution program is being conducted in a manner inconsistent with the substantive provisions of this division II or the rules adopted thereunder, the director shall notify the political subdivision, citing the deviations from the acceptable standards and the corrective measures to be completed within a reasonable amount of time. If the corrective measures are not implemented as prescribed, the director shall suspend in whole or in part the certificate of acceptance of

such political subdivision and shall administer the regulatory provisions of said division in whole or in part within the political subdivision until the appropriate standards are met. Upon receipt of evidence that necessary corrective action has been taken, the director shall reinstate the suspended certificate of acceptance, and the political subdivision shall resume the administration of the local air pollution control program within its jurisdiction. In cases where the certificate of acceptance is suspended, the political subdivision may appeal the suspension to the department of inspections and appeals.

d. Nothing in this division II shall be construed to supersede the jurisdiction of any local air pollution control program in operation on the first of January, 1973, except that any such program shall meet all requirements of said division.

[C71, §136B.15; C73, 75, 77, 79, 81, §455B.24]
C83, §455B.145
86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 33, §1
Referred to in §331.382

455B.146 Civil action for compliance — local program actions.

If any order, permit, or rule of the department is being violated, the attorney general shall, at the request of the department or the director, institute a civil action in any district court for injunctive relief to prevent any further violation of the order, permit, or rule, or for the assessment of a civil penalty as determined by the court, not to exceed ten thousand dollars per day for each day such violation continues, or both such injunctive relief and civil penalty. Notwithstanding sections 331.302 and 331.307, a city or county which maintains air pollution control programs authorized by certificate of acceptance under this division may provide civil penalties consistent with the amount established for such penalties under this division.

[C71, §136B.16; C73, 75, 77, 79, 81, §455B.25]
C83, §455B.146
86 Acts, ch 1245, §1899, 1899B; 91 Acts, ch 251, §1
Referred to in §29C.8A

455B.146A Criminal action — penalties.

1. A person who knowingly violates any provision of division II of this chapter, any permit, rule, standard, or order issued under division II of this chapter, or any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor. A conviction for a violation is punishable by a fine of not more than ten thousand dollars for each day of violation or by imprisonment for not more than two years, or both. If the conviction is for a second or subsequent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than four years, or by both.

2. *a.* A person who knowingly makes any false statement, representation, or certification of any application, record, report, plan, or other document filed or required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under division II of this chapter, or by any permit, rule, standard, or order issued under division II of this chapter, or who knowingly fails to notify or report as required by division II of this chapter or by any permit, rule, standard, or order issued under division II of this chapter, or by any condition or limitation included in any permit issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than ten thousand dollars per day per violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent violation committed by a person under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

b. A person who knowingly fails to pay any fee owed the state under any provision of division II of this chapter, or any permit, rule, standard, or order issued under division II of this chapter, is guilty of an aggravated misdemeanor punishable by a fine of not more than

ten thousand dollars per day per violation or by imprisonment for not more than six months, or by both. If the conviction is for a second or subsequent violation under this paragraph, however, the conviction is punishable by a fine of not more than twenty thousand dollars for each day of violation or by imprisonment for not more than one year, or by both.

3. A person who negligently releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a second or subsequent negligent violation committed by a person under this section, however, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or by both.

4. *a.* A person who knowingly releases into the ambient air any hazardous air pollutant or extremely hazardous substance, and who knows at the time that the conduct places another person in imminent danger of death or serious bodily injury shall, upon conviction, if the person committing the violation is an individual or a government entity, be punished by a fine of not more than fifty thousand dollars per violation or by imprisonment for not more than two years, or by both. However, if the person committing the violation is other than an individual or a government entity, upon conviction the person shall be punished by a fine of not more than one million dollars per violation. If the conviction is for a second or subsequent violation under this paragraph, the conviction is punishable by a fine or imprisonment, or both, as consistent with federal law.

b. In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury the following shall apply:

(1) The defendant is deemed to have knowledge only if the defendant possessed actual awareness or held an actual belief.

(2) Knowledge possessed by a person other than the defendant, and not by the defendant personally, is not attributable to the defendant. In establishing a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative action to be shielded from relevant information.

c. It is an affirmative defense that the conduct was freely consented to by the person endangered and that the danger and conduct were reasonably foreseeable hazards of either of the following:

(1) An occupation, a business, or a profession.

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods if the person was made aware of the risks involved prior to providing consent. An affirmative defense under this subparagraph shall be established by a preponderance of the evidence.

d. All general defenses, affirmative defenses, and bars to prosecution that are applicable with respect to other criminal offenses apply under paragraph "*a*". All defenses and bars to prosecution shall be determined by the courts in accordance with the principles of common law as interpreted, taking into consideration the elements of reason and experience. The concepts of justification and legal excuse, as applicable, may be developed, taking into consideration the elements of reason and experience.

e. As used in this subsection, "*serious bodily injury*" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

5. *a.* Notwithstanding this section, a source required to obtain a permit for construction or modification of a source prior to the date on which the state received delegation of the federal operating permit program which failed to timely file for the permit is subject to the civil penalty for noncompliance in effect at the time.

b. This subsection does not provide an exception from application of the penalties established under this section for failure of a person to file a timely and complete application for a federal construction permit.

c. This subsection does not provide an exception from application of the penalties

established in this section for a person who does not file a timely and complete application for a required permit once notified, in writing, by the department of the noncompliance. A person who does not comply following notification of noncompliance is subject to the criminal penalties established under this section.

93 Acts, ch 137, §5

455B.147 Failure — procedure.

If the director fails to take action within sixty days after an application for a variance is made, or if the department fails to enter a final order or determination within sixty days after the final argument in hearing on appeal, the person seeking the action may treat the failure to act as a grant of the requested variance, or of a finding favorable to the respondent in hearing on appeal, as the case may be.

[C71, §136B.17; C73, 75, 77, 79, 81, §455B.26]

C83, §455B.147

86 Acts, ch 1245, §1899, 1899B; 93 Acts, ch 137, §6; 2014 Acts, ch 1010, §6

455B.148 Reserved.

455B.149 Energy or economic emergency.

1. Upon application by the owner or operator of a fuel-burning stationary source, and after notice and opportunity for public hearing, the commission may petition the president, under section 110, subsection *"f"*, paragraph 1 of the federal Clean Air Act as amended through January 1, 1991, for a determination that a national or regional energy emergency exists. If the president determines an emergency exists, the commission may suspend any requirement of this division or a rule or permit issued under this division. A temporary emergency suspension under this subsection shall be issued only if there exists in the vicinity of the source a temporary emergency involving high levels of unemployment or loss of necessary energy supplies for residential buildings and if the unemployment or loss can be totally or partially alleviated by the suspension. Only one suspension may be issued for a source on the basis of the same set of circumstances or on the basis of the same emergency. A suspension shall remain in effect for a maximum of four months. The commission may include in a suspension a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 455B.138, if the source is unable to comply with the schedule or increment solely because of the conditions on the basis of which the suspension was issued.

2. If a plan revision has been submitted to the administrator of the United States environmental protection agency under section 110 of the federal Clean Air Act as amended through January 1, 1991, and if the commission determines that the revision meets the requirements of that section and the revision is necessary to prevent the closing of an air contaminant source for one year or more and to prevent substantial increases in unemployment which would result from the closing, and if the administrator has not approved or disapproved within the required four-month period, the commission may issue a temporary emergency suspension of the part of the applicable implementation plan which is proposed to be revised with respect to the source. The determination under this subsection shall not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved. A temporary emergency suspension issued under this subsection shall remain in effect for a maximum of four months. A temporary emergency suspension under this subsection may include a provision directing the director to delay for a period identical to the period of the suspension a compliance schedule or increment of progress to which the source is subject under section 119 of the federal Clean Air Act as in effect prior to August 7, 1977, or section 113, subsection *"d"* of the federal Clean Air Act as amended through January 1, 1991, upon a finding that the source is unable

to comply with the schedule or increment solely because of the conditions on the basis of which a suspension was issued under this subsection.

[C81, §455B.29]

C83, §455B.149

86 Acts, ch 1245, §1899; 92 Acts, ch 1163, §93

455B.150 Compliance advisory panel — creation.

A compliance advisory panel is created, pursuant to Tit. V, section 507(e) of the federal Clean Air Act Amendments of 1990, 42 U.S.C. §7661f.

1. Appointment to the compliance advisory panel shall be as follows:

a. Two persons shall be appointed by the governor.

(1) Each person shall represent the general public and have an interest in air quality issues. The person shall not be an owner or represent an owner of a small business stationary source.

(2) The person shall serve for a four-year term and may be reappointed. A term of office shall begin and end as provided in section 69.19.

(3) An appointment shall comply with sections 69.16 and 69.16A. In addition, the appointments shall be geographically balanced.

b. Four persons appointed by the leadership of the general assembly.

(1) The persons, who shall not be members of the general assembly, shall be appointed as follows:

(a) One person by the majority leader of the senate after consultation with the president of the senate, and one person by the minority leader of the senate.

(b) One person by the speaker of the house of representatives after consultation with the majority leader, and one person by the minority leader of the house of representatives.

(2) Each person shall be an owner of a small business stationary source or shall represent an owner of a small business stationary source.

(3) Each person shall serve for a term as provided in section 69.16B and may be reappointed.

c. The director or the director's designee who shall serve for a term of four years.

2. A vacancy shall be filled for the unexpired term by the original appointing authority in the manner of the original appointment.

3. The members are entitled to receive a per diem as specified in section 7E.6 for each day spent in performance of duties of members, and shall be reimbursed for all actual necessary expenses incurred in the performance of duties as members. Per diem and expenses shall be paid from moneys deposited in the air contaminant source fund created pursuant to section 455B.133B.

4. The compliance advisory panel shall elect a chairperson and may elect a vice chairperson or other officers from among its members as provided by its rules. The panel shall meet on a regular basis, but at least once each six months, and at the call of the chairperson or upon the written request to the chairperson of three or more members.

5. The department shall staff the compliance advisory panel and provide the panel with space to conduct its meetings, clerical assistance, and necessary supplies and equipment.

93 Acts, ch 137, §7; 2008 Acts, ch 1105, §4; 2009 Acts, ch 106, §13, 14

Referred to in §455B.151

455B.151 Compliance advisory panel — powers and duties.

The compliance advisory panel created in section 455B.150 shall review and report on the effectiveness of the small business stationary source technical and environmental compliance assistance program as provided in section 455B.133A. The compliance advisory panel shall do all of the following:

1. Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement.

2. Make periodic reports to the administrator of the federal environmental protection agency concerning the compliance of the state small business stationary source technical

and environmental compliance assistance program with the requirements of the federal Paperwork Reduction Act, 44 U.S.C. §3501 et seq.; the federal Regulatory Flexibility Act, 5 U.S.C. §601 et seq.; and the federal Equal Access to Justice Act, 5 U.S.C. §504.

3. Review information for small business stationary sources to assure such information is understandable by the layperson.

4. Have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

2008 Acts, ch 1105, §5; 2009 Acts, ch 41, §131

455B.152 Greenhouse gas inventory and registry.

1. *Definitions.* For purposes of this section, *"greenhouse gas"* means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, or sulfur hexafluoride.

2. *Greenhouse gas inventory.*

a. By January 1, 2008, the department shall establish a method for collecting data from producers of greenhouse gases regarding generated greenhouse gases. The data collection method shall provide for mandatory reporting to collect information from affected entities individually and shall include information regarding the amount and type of greenhouse gases generated, the type of source, and other information deemed relevant by the department in developing a baseline measure of greenhouse gases produced in the state.

b. The department may allow a series of reporting requirements to be phased in over a period of time and may provide for phasing in by producer sector, geographic area, size of producer, or other factors. The reporting requirements shall apply to the departments, agencies, boards, and commissions of the state, in addition to any other entities subject to the reporting requirements established by the department.

c. The department shall coordinate the data collection with the United States environmental protection agency upon the enactment of a federal mandatory greenhouse gas emission reporting rule.

3. *Greenhouse gas registry.*

a. The department shall establish a voluntary greenhouse gas registry for purposes of cooperating with other states in tracking, managing, and crediting entities in the state that reduce their generation of greenhouse gases or that provide increased energy efficiency.

b. The department shall develop a mechanism to coordinate the information obtained in the greenhouse gas inventory with the greenhouse gas registry.

4. *Availability.* By January 1, 2009, the greenhouse gas registry shall be made available on an internet site.

2007 Acts, ch 120, §4; 2010 Acts, ch 1034, §1; 2013 Acts, ch 90, §257

455B.153 through 455B.160 Reserved.

PART 2

ANIMAL FEEDING OPERATIONS REQUIREMENTS

455B.161 through 455B.163 Reserved.

455B.164 Distance measurements. Repealed by 2002 Acts, ch 1137, §69, 71. See §459.201.

455B.165 through 455B.170 Reserved.

DIVISION III

WATER QUALITY

Referred to in §455H.102, 459A.401

PART 1

GENERAL

Referred to in §455B.103A

455B.171 Definitions.

When used in this part 1 of division III, unless the context otherwise requires:

1. *"Abandoned well"* means a water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impracticable.

2. *"Construction"* of a water well means the physical act or process of making the water well including but not limited to siting, excavation, construction, and the installation of equipment and materials necessary to maintain and operate the well.

3. *"Contractor"* means a person engaged in the business of well construction or reconstruction or other well services.

4. *"Credible data"* means scientifically valid chemical, physical, or biological monitoring data collected under a scientifically accepted sampling and analysis plan, including quality control and quality assurance procedures. Data dated more than five years before the department's date of listing or other determination under section 455B.194, subsection 1, shall be presumed not to be credible data unless the department identifies compelling reasons as to why the data is credible.

5. *"Disposal system"* means a system for disposing of sewage, industrial waste, or other wastes, or for the use or disposal of sewage sludge. *"Disposal system"* includes sewer systems, treatment works, point sources, dispersal systems, and any systems designed for the usage or disposal of sewage sludge.

6. *"Effluent standard"* means any restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, radiological, and other constituents which are discharged from point sources into any water of the state including an effluent limitation, a water quality related effluent limitation, a standard of performance for a new source, a toxic effluent standard, or other limitation.

7. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as published in 33 U.S.C. §1251 – 1376, as amended through December 31, 1985.

8. *"Food commodity"* means any commodity that is derived from an agricultural animal or crop, both as defined in section 717A.1, which is intended for human consumption in its raw or processed state.

a. A food commodity in its raw state for processing includes but is not limited to milk, eggs, vegetables, fruits, nuts, syrup, and honey.

b. A food commodity in its processed state includes but is not limited to dairy products, pastries, pies, and meat or poultry products.

9. *"Historical data"* means data collected more than five years before the department's date of listing or other determination under section 455B.194, subsection 1.

10. *"Industrial waste"* means any liquid, gaseous, radioactive, or solid waste substance resulting from any process of industry, manufacturing, trade, or business or from the development of any natural resource.

11. *"Iowa nutrient reduction strategy"* means a water quality initiative developed and updated by the department of agriculture and land stewardship, the department of natural resources, and the college of agriculture and life sciences at Iowa state university of science and technology in order to assess and reduce nutrients in this state's watersheds that utilize

a pragmatic, strategic, and coordinated approach with the goal of accomplishing reductions over time.

12. *"Manure"* means the same as defined in section 459.102.

13. *"Manure sludge"* means the solid or semisolid residue produced during the treatment of manure in an anaerobic lagoon.

14. *"Maximum contaminant level"* means the maximum permissible level of any physical, chemical, biological, or radiological substance in water which is delivered to any user of a public water supply system.

15. *"Naturally occurring condition"* means any condition affecting water quality which is not caused by human influence on the environment including but not limited to soils, geology, hydrology, climate, wildlife influence on the environment, and water flow with specific consideration given to seasonal and other natural variations.

16. *"New source"* means any building, structure, facility, or installation, from which there is or may be the discharge of a pollutant, the construction of which is commenced after the publication of proposed federal rules prescribing a standard of performance which will be applicable to such source, if such standard is promulgated.

17. *"Nutrient"* means total nitrogen and total phosphorus.

18. *"On-farm processing operation"* means any place located on a farm where the form or condition of a food commodity originating from that farm or another farm is changed or packaged for human consumption, including but not limited to a dairy, creamery, winery, distillery, cannery, bakery, or meat or poultry processor.

19. *"Other waste"* means heat, garbage, municipal refuse, lime, sand, ashes, offal, oil, tar, chemicals, and all other wastes which are not sewage or industrial waste.

20. *a.* *"Person"* means any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.

b. For the purpose of imposing liability for violation of a section of this part, or a rule or regulation adopted by the department of natural resources under this part, *"person"* does not include a person who holds indicia of ownership in contaminated property from which prohibited discharges, deposits, or releases of pollutants into any water of the state have been or are evidenced, if the person has satisfied the requirements of section 455B.381, subsection 7, paragraph *"b"*, with respect to the contaminated property, regardless of whether the department has determined that the contaminated property constitutes a hazardous condition site.

21. *"Point source"* means any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. *"Point source"* does not include agricultural storm water discharge and return flows from irrigated agriculture.

22. *"Pollutant"* means sewage, industrial waste, or other waste.

23. *"Private sewage disposal system"* means a system which provides for the treatment or disposal of domestic sewage from four or fewer dwelling units or the equivalent of less than sixteen individuals on a continuing basis.

24. *"Private water supply"* means any water supply for human consumption which has less than fifteen service connections and regularly serves less than twenty-five individuals.

25. *"Production capacity"* means the amount of potable water which can be supplied to the distribution system in a twenty-four-hour period.

26. *"Public water supply system"* means a system for the provision to the public of piped water for human consumption, if the system has at least fifteen service connections or regularly serves at least twenty-five individuals. The term includes any source of water and any collection, treatment, storage, and distribution facilities under control of the operator of the system and used primarily in connection with the system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with the system.

27. "*Reconstruction*" of a water well means replacement or removal of all or a portion of the casing of the water well.

28. "*Schedule of compliance*" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with any effluent standard, water quality standard, or any other requirement of this part of this division or any rule promulgated pursuant thereto.

29. "*Section 303(d) list*" means any list required under 33 U.S.C. §1313(d).

30. "*Section 305(b) report*" means any report required under 33 U.S.C. §1315(b).

31. "*Semipublic sewage disposal system*" means a system for the treatment or disposal of domestic sewage which is not a private sewage disposal system and which is not owned by a city, a sanitary district, or a designated and approved management agency under §1288 of the federal Water Pollution Control Act, codified at 33 U.S.C. §1288.

32. "*Septage*" means the liquid and solid material pumped from a septic tank, cesspool, or similar domestic sewage treatment system, or from a holding tank, when the system is cleaned or maintained.

33. "*Sewage*" means the water-carried waste products from residences, public buildings, institutions, or other buildings, including the bodily discharges from human beings or animals together with such groundwater infiltration and surface water as may be present.

34. "*Sewage sludge*" means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. "*Sewage sludge*" includes but is not limited to solids removed during primary, secondary, or advanced waste water treatment, scum septage, portable toilet pumpings, type III marine device pumpings as defined in 33 C.F.R. ch. 1, subch. O, pt. 159, and sewage sludge products. "*Sewage sludge*" does not include grit, screenings, or ash generated during the incineration of sewage sludge.

35. "*Sewer extension*" means pipelines or conduits constituting main sewers, lateral sewers, or trunk sewers used for conducting pollutants to a larger interceptor sewer or to a point of ultimate disposal.

36. "*Sewer system*" means pipelines or conduits, pumping stations, force mains, vehicles, vessels, conveyances, injection wells, and all other constructions, devices, and appliances appurtenant thereto used for conducting sewage or industrial waste or other wastes to a point of ultimate disposal or disposal to any water of the state. To the extent that they are not subject to section 402 of the federal Water Pollution Control Act, ditches, pipes, and drains that serve only to collect, channel, direct, and convey nonpoint runoff from precipitation are not considered as sewer systems for the purposes of this part of this division.

37. "*Toilet unit*" means a portable or fixed tank or vessel holding untreated human waste without secondary wastewater treatment that is emptied for disposal. "*Toilet unit*" does not include a portable or fixed tank or vessel holding untreated human waste that is part of a recreational vehicle or marine vessel.

38. "*Total maximum daily load*" means the same as in the federal Water Pollution Control Act.

39. "*Treatment works*" means any plant, disposal field, lagoon, holding or flow-regulating basin, pumping station, or other works installed for the purpose of treating, stabilizing, or disposing of sewage, industrial waste, or other wastes.

40. "*Viable*" means a disposal system or a public water supply system which is self-sufficient and has the financial, managerial, and technical capability to reliably meet standards of performance on a long-term basis, as required by state and federal law, including the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

41. "*Water of the state*" means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

42. "*Water pollution*" means the contamination or alteration of the physical, chemical, biological, or radiological integrity of any water of the state by a source resulting in whole or in part from the activities of humans, which is harmful, detrimental, or injurious to public health, safety, or welfare, to domestic, commercial, industrial, agricultural, or recreational use or to livestock, wild animals, birds, fish, or other aquatic life.

43. *"Water supply distribution system extension"* means any extension to the pipelines or conduits which carry water directly from the treatment facility, source or storage facility to the consumer's service connection.

44. *"Water well"* means an excavation that is drilled, cored, bored, augered, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, or extracting water from or injecting water into the aquifer. *"Water well"* does not include an open ditch or drain tiles or an excavation made for obtaining or prospecting for oil, natural gas, minerals, or products mined or quarried.

[C66, 71, §455B.2; C73, 75, 77, 79, 81, §455B.30; 82 Acts, ch 1050, §1, 2, ch 1199, §6, 7, 8, 96]

C83, §455B.171

83 Acts, ch 137, §2; 84 Acts, ch 1121, §1, 2; 85 Acts, ch 176, §1; 86 Acts, ch 1144, §1; 86 Acts, ch 1237, §29; 91 Acts, ch 224, §3; 92 Acts, ch 1041, §1; 93 Acts, ch 42, §1; 95 Acts, ch 195, §20; 96 Acts, ch 1079, §13; 97 Acts, ch 137, §1, 2; 98 Acts, ch 1209, §22; 2000 Acts, ch 1068, §9; 2000 Acts, ch 1232, §72; 2002 Acts, ch 1137, §25, 68, 71; 2002 Acts, ch 1138, §3, 5; 2002 Acts, 2nd Ex, ch 1003, §249, 260, 262; 2003 Acts, ch 44, §66; 2005 Acts, ch 153, §1; 2007 Acts, ch 126, §74; 2009 Acts, ch 41, §132; 2011 Acts, ch 31, §1; 2012 Acts, ch 1023, §56; 2018 Acts, ch 1001, §18, 19

Referred to in §16.1, 161A.42, 331.382, 427.1(19)(e), 455B.172, 455B.176A, 455B.190, 455B.190A, 455B.194, 455B.266, 455B.291, 455E.2, 459.102, 459A.102, 459A.205, 466B.2

Legislative intent relating to changes to "point source" definition by 2018 Iowa Acts, ch 1001, §19; 2018 Acts, ch 1001, §26

455B.172 Jurisdiction of department and local boards.

1. The department is the agency of the state to prevent, abate, or control water pollution and to conduct the public water supply program.

2. The department shall carry out the responsibilities of the state related to private water supplies and private sewage disposal systems for the protection of the environment and the public health and safety of the citizens of the state.

3. Each county board of health shall adopt standards for private water supplies and private sewage disposal facilities. These standards shall be at least as stringent but consistent with the standards adopted by the commission. If a county board of health has not adopted standards for private water supplies and private sewage disposal facilities, the standards adopted by the commission shall be applied and enforced within the county by the county board of health.

4. Each county board of health shall regulate the private water supply and private sewage disposal facilities located within the county board's jurisdiction, including the enforcement of standards adopted pursuant to this section.

5. *a.* The department shall maintain jurisdiction over and regulate the direct discharge to a water of the state. The department shall retain concurrent authority to enforce state standards for private water supply and private sewage disposal facilities within a county, and exercise departmental authority if the county board of health fails to fulfill board responsibilities pursuant to this section.

b. The department shall by rule adopt standards for the commercial cleaning of private sewage disposal facilities, including but not limited to septic tanks, and for the disposal of waste from the facilities. The standards shall not be in conflict with the state building code adopted pursuant to section 103A.7. A person shall not commercially clean such facilities or dispose of waste from such facilities unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. The department may contract for the delegation of the authority for inspection of land application sites, record reviews, and equipment inspections to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each

vehicle used by the applicant for purposes of collecting septage from private sewage disposal facilities and each vehicle used by the applicant for purposes of applying septage to land. Septic disposal management plans shall be submitted to the department and approved annually as a condition of licensing and shall also be filed annually with the county board of health in the county where a proposed septage application site is located. The septic disposal management plan shall include, but not be limited to, the sites of septage application, the anticipated volume of septage applied to each site, the area of each septage application site, the type of application to be used at each site, the volume of septage expected to be collected from private sewage disposal facilities, and a list of registered vehicles collecting septage from private sewage disposal facilities and applying septage to land. The annual license or license renewal fee for a person commercially cleaning private sewage disposal facilities shall be established by the department based on the volume of septage that is applied to land. A septic management fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this section shall be deposited in the septic management fund and are appropriated to the department for purposes of contracting with county boards of health to conduct land application site inspections, record reviews, and septic cleaning equipment inspections. A person violating this section or the rules adopted pursuant to this section as determined by the department is subject to a civil penalty of not more than two hundred fifty dollars. The department shall adopt rules related to, but not limited to, recordkeeping requirements, application procedures and limitations, contamination issues, loss of septage, failure to file a septic disposal management plan, application by vehicles that are not properly registered, wrongful application, and violations of a septic disposal management plan. Each day that a violation continues constitutes a separate offense. The penalty shall be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. The septic disposal management plan may be examined to determine the duration of the violation. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

6. *a.* The department shall by rule adopt standards for the commercial cleaning of toilet units and for the disposal of waste from toilet units. Waste from toilet units shall be disposed of at a wastewater treatment facility and shall not be applied to land. The department may contract for the delegation of the authority for inspection of record reviews and equipment inspections for such units to a county board of health. In the event of entering into such a contract, the department shall retain concurrent authority over such activities.

b. A person shall not commercially clean toilet units or dispose of waste from such units unless the person has been issued a license by the department. The department shall be exclusively responsible for adopting the standards and issuing licenses. However, county boards of health shall enforce the standards and licensing requirements established by the department. Application for the license shall be made in the manner provided by the department. Licenses expire one year from the date of issue unless revoked and may be renewed in the manner provided by the department. A license application shall include registration applications for each vehicle used by the applicant for purposes of collecting waste from toilet units and each vehicle used by the applicant for purposes of transporting waste from toilet units to a wastewater treatment facility. The annual license or license renewal fee for a person commercially cleaning toilet units shall be established by the department based on the number of trucks or vehicles used by the licensee for purposes of commercial cleaning of toilet units and for the disposal of waste from the toilet units. For purposes of this subsection, *"vehicle"* includes a trailer.

c. A toilet unit fund is created in the state treasury under the control of the department. Annual license and license renewal fees collected pursuant to this subsection shall be deposited in the toilet unit fund and are appropriated to the department for purposes of contracting with county boards of health to conduct record reviews and toilet unit cleaning equipment inspections.

d. A person violating this section or the rules adopted pursuant to this section as

determined by the department is subject to a civil penalty of not more than five hundred dollars. Each day that a violation continues constitutes a separate offense. The penalty shall be assessed for the duration of time commencing with the time the violation begins and ending with the time the violation is corrected. Moneys collected by the department from the imposition of civil penalties shall be deposited in the general fund of the state. Moneys collected by a county board of health from the imposition of civil penalties shall be deposited in the general fund of the county.

7. *a.* The department is the state agency to regulate the construction, reconstruction and abandonment of all of the following water wells:

(1) Those used as part of a public water supply system as defined in section 455B.171.

(2) Those used for the withdrawal of water for which a permit is required pursuant to section 455B.268, subsection 1.

(3) Those used for the purpose of monitoring groundwater quantity and quality required or installed pursuant to directions or regulations of the department.

b. A local board of health is the agency to regulate the construction, reconstruction and abandonment of water wells not otherwise regulated by the department. The local board of health shall not adopt standards relative to the construction, reconstruction and abandonment of wells less stringent than those adopted by the department.

8. The department is the state agency to regulate the registration or certification of water well contractors pursuant to section 455B.187 or section 455B.190A.

9. Pursuant to chapter 28E, the department may delegate its authority for regulation of the construction, reconstruction and abandonment of water wells specified in subsection 7 or the registration of water well contractors specified in subsection 8 to boards of health or other agencies which have adequate authority and ability to administer and enforce the requirements established by law or rule.

10. Any county ordinance related to sewage sludge which is in effect on March 1, 1997, shall not be preempted by any provision of section 455B.171, 455B.174, 455B.183, or 455B.304.

11. *a.* If a building where a person resides, congregates, or is employed is served by a private sewage disposal system, the sewage disposal system serving the building shall be inspected prior to any transfer of ownership of the building. The requirements of this subsection shall be applied to all types of ownership transfer including at the time a seller-financed real estate contract is signed. The county recorder shall not record a deed or any other property transfer or conveyance document until either a certified inspector's report is provided which documents the condition of the private sewage disposal system and whether any modifications are required to conform to standards adopted by the department or, in the event that weather or other temporary physical conditions prevent the certified inspection from being conducted, the buyer has executed and submitted a binding acknowledgment with the county board of health to conduct a certified inspection of the private sewage disposal system at the earliest practicable time and to be responsible for any required modifications to the private sewage disposal system as identified by the certified inspection. Any type of on-site treatment unit or private sewage disposal system must be inspected according to rules developed by the department. For the purposes of this subsection, *"transfer"* means the transfer or conveyance by sale, exchange, real estate contract, or any other method by which real estate and improvements are purchased, if the property includes at least one but not more than four dwelling units. However, *"transfer"* does not include any of the following:

(1) A transfer made pursuant to a court order, including but not limited to a transfer under chapter 633 or 633A, the execution of a judgment, the foreclosure of a real estate mortgage pursuant to chapter 654, the forfeiture of a real estate contract under chapter 656, a transfer by a trustee in bankruptcy, a transfer by eminent domain, or a transfer resulting from a decree for specific performance.

(2) A transfer to a mortgagee by a mortgagor or successor in interest who is in default, a transfer by a mortgagee who has acquired real property as a result of a deed in lieu of foreclosure or has acquired real property under chapter 654 or 655A, or a transfer back to a mortgagor exercising a right of first refusal pursuant to section 654.16A.

(3) A transfer by a fiduciary in the course of the administration of a decedent's estate, guardianship, conservatorship, or trust.

(4) A transfer between joint tenants or tenants in common.

(5) A transfer made to a spouse, or to a person in the lineal line of consanguinity of a person making the transfer.

(6) A transfer between spouses resulting from a decree of dissolution of marriage, a decree of legal separation, or a property settlement agreement which is incidental to the decree, including a decree ordered pursuant to chapter 598.

(7) A transfer in which the transferee intends to demolish or raze the building. The department shall adopt rules pertaining to such transfers.

(8) A transfer of property with a system that was installed not more than two years prior to the date of the transfer.

(9) A deed arising from a partition proceeding.

(10) A tax sale deed issued by the county treasurer.

(11) A transfer for which consideration is five hundred dollars or less.

(12) A deed between a family corporation, partnership, limited partnership, limited liability partnership, or limited liability company as defined in section 428A.2, subsection 15, and its stockholders, partners, or members for the purpose of transferring real property in an incorporation or corporate dissolution or in the organization or dissolution of a partnership, limited partnership, limited liability partnership, or limited liability company under the laws of this state, where the deed is given for no actual consideration other than for shares or for debt securities of the family corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

b. At the time of inspection, any septic tank existing as part of the sewage disposal system shall be opened and have the contents pumped out and disposed of as provided for by rule. In the alternative, the owner may provide evidence of the septic tank being properly pumped out within three years prior to the inspection by a commercial septic tank cleaner licensed by the department which shall include documentation of the size and condition of the tank and its components at the time of such occurrence.

c. If a private sewage disposal system is failing to ensure effective wastewater treatment or is otherwise improperly functioning, the private sewage disposal system shall be renovated to meet current construction standards, as adopted by the department, either by the seller or, by agreement, and within a reasonable time period as determined by the county board of health or the department, by the buyer. If the private sewage disposal system is properly treating the wastewater and not creating an unsanitary condition in the environment at the time of inspection, the system is not required to meet current construction standards.

d. Inspections shall be conducted by an inspector certified by the department.

e. Pursuant to chapter 17A, the department shall adopt certification requirements for inspectors including training, testing, and fees, and shall establish uniform statewide inspection criteria and an inspection form. The inspector certification training shall include use of the criteria and form. The department shall maintain a list of certified inspectors.

f. County personnel are eligible to become certified inspectors. A county may set an inspection fee for inspections conducted by certified county personnel. A county shall allow any department certified inspector to provide inspection services under this subsection within the county's jurisdiction.

g. Following an inspection, the inspection form and any attachments shall be provided to the county board of health and the department for enforcement of any follow-up mandatory system improvement and to the department for record.

h. An inspection is valid for a period of two years for any ownership transfers during that period.

i. This subsection preempts any city or county ordinance related to the inspection of private sewage disposal systems in association with the transfer of ownership of a building.

[C66, 71, §455B.3; C73, §455B.31; C75, 77, 79, 81, §135.20, 455B.31; 82 Acts, ch 1199, §9]

C83, §455B.172

83 Acts, ch 137, §3; 84 Acts, ch 1121, §3; 85 Acts, ch 176, §2; 87 Acts, ch 225, §112, 113; 90 Acts, ch 1243, §1; 91 Acts, ch 224, §4; 97 Acts, ch 137, §3; 2004 Acts, ch 1086, §74; 2004 Acts,

ch 1167, §11; 2005 Acts, ch 153, §2, 3; 2006 Acts, ch 1010, §172, 177; 2008 Acts, ch 1033, §1, 2; 2009 Acts, ch 175, §22, 25; 2010 Acts, ch 1061, §85; 2010 Acts, ch 1120, §1 – 5; 2011 Acts, ch 25, §51

Referred to in §358.16, 358.22, 384.38, 455B.172A, 455B.188, 558.69

455B.172A On-farm processing operations.

1. The department shall adopt by rule standards for the disposal of wastewater from an on-farm processing operation. These standards shall provide for but are not limited to disposal by all of the following:

a. By land application if all of the following apply:

(1) The volume of wastewater produced by the on-farm processing operation is less than one thousand five hundred gallons per day.

(2) The application rate does not exceed thirty thousand gallons per acre per year.

(3) The application rate does not exceed one thousand five hundred gallons per acre per day.

(4) The standards for land application are consistent with the rules for land application of septage that implement section 455B.172.

b. At a publicly owned treatment works or other wastewater treatment system with the permission of the owner of the treatment works.

c. Through a subsurface absorption system in conformance with applicable regulations of the United States environmental protection agency.

d. Through a disposal system that meets all of the following:

(1) The disposal system is located on the same site as the on-farm processing operation.

(2) The disposal system is constructed in conformance with a permit issued by the department.

(3) For a disposal system that discharges wastewater to a water of the United States, the system must be operated in conformance with a national pollutant discharge elimination system permit issued by the department under section 455B.197.

2. The department shall adopt by rule standards for the disposal of septage from an on-farm processing operation. The rules shall provide that the septage may be discharged to a permitted septage lagoon or septage drying bed with the permission of the owner of the septage system.

2011 Acts, ch 31, §2; 2012 Acts, ch 1042, §1, 2

455B.173 Duties.

The commission shall:

1. Develop comprehensive plans and programs for the prevention, control and abatement of water pollution.

2. Establish, modify, or repeal water quality standards, pretreatment standards, and effluent standards in accordance with the provisions of this chapter.

a. The effluent standards may provide for maintaining the existing quality of the water of the state that is a navigable water of the United States under the federal Water Pollution Control Act where the quality thereof exceeds the requirements of the water quality standards.

b. If the federal environmental protection agency has promulgated an effluent standard or pretreatment standard pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act, a pretreatment or effluent standard adopted pursuant to this section shall not be more stringent than the federal effluent or pretreatment standard for such source. This section may not preclude the establishment of a more restrictive effluent limitation in the permit for a particular point source if the more restrictive effluent limitation is necessary to meet water quality standards, the establishment of an effluent standard for a source or class of sources for which the federal environmental protection agency has not promulgated standards pursuant to section 301, 306, or 307 of the federal Water Pollution Control Act. Except as required by federal law or regulation, the commission shall not adopt an effluent standard more stringent with respect to any pollutant than is necessary to reduce the concentration of that pollutant in the effluent to the level due to natural causes, including the

mineral and chemical characteristics of the land, existing in the water of the state to which the effluent is discharged. Notwithstanding any other provision of this part of this division or chapter 459, subchapter III, any new source, the construction of which was commenced after October 18, 1972, and which was constructed as to meet all applicable standards of performance for the new source or any more stringent effluent limitation required to meet water quality standards, shall not be subject to any more stringent effluent limitations during a ten-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the pollution control equipment for the facility for the purposes of section 167 or 169 or both sections of the Internal Revenue Code, whichever period ends first.

3. Establish, modify, or repeal rules relating to the location, construction, operation, and maintenance of disposal systems and public water supply systems and specifying the conditions, including the viability of a system pursuant to section 455B.174, under which the director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system, or for the discharge of any pollutant.

a. No rules shall be adopted which regulate the hiring or firing of operators of disposal systems or public water supply systems except rules which regulate the certification of operators as to their technical competency.

b. A publicly owned treatment works whose discharge meets the final effluent limitations which were contained in its discharge permit on the date that construction of the publicly owned treatment works was approved by the department shall not be required to meet more stringent effluent limitations for a period of ten years from the date the construction was completed and accepted but not longer than twelve years from the date that construction was approved by the department.

4. Cooperate with other state or interstate water pollution control agencies in establishing standards, objectives, or criteria for the quality of interstate waters originating or flowing through this state.

5. Establish, modify, or repeal rules relating to drinking water standards for public water supply systems. Such standards shall specify maximum contaminant levels or treatment techniques necessary to protect the public health and welfare. The drinking water standards must assure compliance with federal drinking water standards adopted pursuant to the federal Safe Drinking Water Act.

6. Adopt rules relating to inspection, monitoring, recordkeeping, and reporting requirements for the owner or operator of any public water supply or any disposal system or of any source which is an industrial user of a publicly or privately owned disposal system.

7. Adopt a statewide plan for the provision of safe drinking water under emergency circumstances. All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of the plan. The plan shall detail the manner in which the various state and local agencies shall participate in the response to an emergency. The department may enter into any agreement, subject to approval of the commission, with any state agency or unit of local government or with the federal government which may be necessary to establish the role of such agencies in regard to the plan. This plan shall be coordinated with disaster emergency plans.

8. Formulate and adopt specific and detailed statewide standards pursuant to chapter 17A for review of plans and specifications and the construction of sewer systems and water supply distribution systems and extensions to such systems not later than October 1, 1977. The standards shall be based on criteria contained in the "Recommended Standards for Sewage Works" and "Recommended Standards for Water Works" (Ten States Standards) as adopted by the Great Lakes – Upper Mississippi River board of state sanitary engineers, design manuals published by the department, applicable federal guidelines and standards, standard textbooks, current technical literature, and applicable safety standards. The rules adopted which directly pertain to the construction of sewer systems and water supply distribution systems and the review of plans and specifications for such construction shall be known respectively as the "Iowa Standards for Sewer Systems" and the "Iowa Standards for Water Supply Distribution Systems" and shall be applicable in each governmental

subdivision of the state. Exceptions shall be made to the standards so formulated only upon special request to and receipt of permission from the department. The department shall publish the standards and make copies of such standards available to governmental subdivisions and to the public.

9. Adopt, modify, or repeal rules relating to the construction and reconstruction of water wells, the proper abandonment of wells, and the registration or certification of water well contractors. The rules shall include those necessary to protect the public health and welfare, and to protect the waters of the state. The rules may include, but are not limited to, establishing fees for registration or certification of water well contractors, requiring the submission of well driller's logs, formation samples or well cuttings, water samples, information on test pumping and requiring inspections. Fees shall be based upon the reasonable cost of conducting the water well contractor registration or certification program.

10. Adopt, modify, or repeal rules relating to the business plan which disposal systems and public water supply systems must file with the department pursuant to section 455B.174, and adopt, modify, or repeal rules establishing a methodology and timetable by which nonviable systems shall take action to become viable or make alternative arrangements in providing treatment or water supply services.

11. Adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

12. Adopt, modify, or repeal rules relating to the construction or operation of animal feeding operations, as provided in sections relating to animal feeding operations provided in chapter 459, subchapter III.

[C97, §2565; C24, 27, 31, 35, 39, §**2220;** C46, 50, 54, 58, 62, §136.3(2,c); C66, 71, §136.3(2,c), 455B.9; C73, 75, §455B.32, 455B.65; C77, 79, 81, §455B.32; 82 Acts, ch 1199, §10, 96]

C83, §455B.173

83 Acts, ch 136, §2; 85 Acts, ch 176, §3; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §114; 89 Acts, ch 125, §1; 90 Acts, ch 1255, §23; 91 Acts, ch 224, §5; 92 Acts, ch 1041, §2, 3; 95 Acts, ch 61, §1; 95 Acts, ch 195, §21, 22; 98 Acts, ch 1209, §23, 53; 99 Acts, ch 45, §1; 2000 Acts, ch 1058, §43; 2004 Acts, ch 1086, §106; 2004 Acts, ch 1167, §12; 2006 Acts, ch 1014, §2; 2006 Acts, ch 1145, §1; 2011 Acts, ch 25, §102; 2014 Acts, ch 1010, §7

Referred to in §331.382, 455B.174, 455B.176A, 455B.183, 455B.188, 455B.474

455B.174 Director's duties.

The director shall:

1. Conduct investigations of alleged water pollution or of alleged violations of this part of this division, chapter 459, subchapter III, chapter 459A, chapter 459B, or any rule adopted or any permit issued pursuant thereto upon written request of any state agency, political subdivision, local board of health, twenty-five residents of the state, as directed by the department, or as may be necessary to accomplish the purposes of this part of this division, chapter 459, subchapter III, chapter 459A, or chapter 459B.

2. Conduct periodic surveys and inspection of the construction, operation, self-monitoring, recordkeeping, and reporting of all public water supply systems and all disposal systems except as provided in section 455B.183.

3. Take any action or actions allowed by law which, in the director's judgment, are necessary to enforce or secure compliance with the provisions of this part of this division or chapter 459, subchapter III, or of any rule or standard established or permit issued pursuant thereto.

4. *a.* (1) Approve or disapprove the plans and specifications for the construction of disposal systems or public water supply systems except for those sewer extensions and water supply distribution system extensions which are reviewed by a city or county public works department as set forth in section 455B.183. The director shall issue, revoke, suspend, modify, or deny permits for the operation, installation, construction, addition to, or modification of any disposal system or public water supply system except for sewer extensions and water supply distribution system extensions which are reviewed by a city

or county public works department as set forth in section 455B.183. The director shall also issue, revoke, suspend, modify, or deny permits for the discharge of any pollutant, or for the use or disposal of sewage sludge. The permits shall contain conditions and schedules of compliance as necessary to meet the requirements of this part of this division or chapter 459, subchapter III, the federal Water Pollution Control Act and the federal Safe Drinking Water Act. A permit issued under this chapter for the use or disposal of sewage sludge is in addition to and must contain references to any other permits required under this chapter. The director shall not issue or renew a permit to a disposal system or a public water supply system which is not viable. If the director has reasonable grounds to believe that a disposal system or public water supply system is not viable, the department may require the system to submit a business plan as a means of determining viability. This plan shall include the following components:

(a) A facilities plan which describes proposed new facilities and the condition of existing facilities, rehabilitation and replacement needs, and future needs to meet the requirements of the federal Water Pollution Control Act and the federal Safe Drinking Water Act.

(b) A management plan which consists of an administrative plan describing methods to assure performance of functions necessary to administer the system, including credentials of management personnel; and an operation and maintenance plan describing how all operating and maintenance duties necessary to the system's proper function will be accomplished.

(c) A financial plan which describes provisions for assuring that adequate revenues will be available to meet cash flow requirements, based on the full cost of providing the service, adequate initial capitalization, and access to additional capital for contingencies.

(2) If, upon submission and review of the business plan, the department determines that the disposal system or public water supply system is not viable, the director may require the system to take actions to become viable within a time period established pursuant to section 455B.173, or to make alternative arrangements in providing treatment or water supply services as determined by rule.

b. In addition to the requirements of paragraph "*a*", a permit shall not be issued to operate or discharge from any disposal system unless the conditions of the permit assure that any discharge from the disposal system meets or will meet all applicable state and federal water quality standards and effluent standards and the issuance of the permit is not otherwise prohibited by the federal Water Pollution Control Act. All applications for discharge permits are subject to public notice and opportunity for public participation including public hearing as the department may by rule require. The director shall promptly notify the applicant in writing of the director's action and, if the permit is denied, state the reasons for denial. A person who is an applicant or permittee may contest the denial of a permit or any condition of a permit issued by the director if the person notifies the director within thirty days of the director's notice of denial or issuance of the permit. Notwithstanding section 17A.11, subsection 1, if the applicant or permittee timely contests the director's action, the presiding officer in the resulting contested case proceeding shall be an administrative law judge assigned by the division of administrative hearings pursuant to sections 10A.801 and 17A.11.

c. Copies of all forms or other paper instruments required to be filed during on-site inspections or investigations shall be given to the owner or operator of the disposal system or public water supply system being investigated or inspected before the inspector or investigator leaves the site. Any other report, statement, or instrument shall not be filed with the department unless a copy is sent by ordinary mail to the owner or operator of the disposal system or public water supply system within ten working days of the filing. If an inspection or investigation is done in cooperation with another state department, the department involved and the areas inspected shall be stated.

d. If a public water supply has a groundwater source that contains petroleum, a fraction of crude oil, or their degradation products, or is located in an area deemed by the department as likely to be contaminated by such materials, and after consultation with the public water supply system and consideration of all applicable rules relating to remediation, the department may require the public water supply system to replace that groundwater source in order to receive a permit to operate. The requirement to replace the source shall only be made by the department if the public water supply system is fully compensated

for any additional design, construction, operation, and monitoring costs from the Iowa comprehensive petroleum underground storage tank fund created by chapter 455G or from any other funds that do not impose a financial obligation on the part of the public water supply system. Funds available to or provided by the public water supply system may be used for system improvements made in conjunction with replacement of the source. The department cannot require a public water supply system to replace its water source with a less reliable water source or with a source that does not meet federal primary, secondary, or other health-based standards unless treatment is provided to ensure that the drinking water meets these standards. Nothing in this paragraph shall affect the public water supply system's right to pursue recovery from a responsible party.

e. The department may enter into an agreement with a county to delegate to the county the duties of the department under this subsection as they relate to the construction of semipublic sewage disposal systems.

5. *a.* Periodically review permits and reports submitted by city and county public works departments in accordance with section 455B.183, subsection 3, to ensure such public works departments are complying with this part of this division. If a city or county public works department is not complying with section 455B.183 in reviewing plans and specifications or in granting permits or both, the department shall perform these functions in that jurisdiction until the city or county public works department is able to perform them. Performance of these functions in a jurisdiction by a local public works department shall not be suspended or revoked until after notice and opportunity for hearing as provided in chapter 17A.

b. The department shall give technical assistance to city and county public works departments upon request of such local public works departments.

[C97, §2565; C24, 27, 31, 35, 39, §**2191;** C46, 50, 54, 58, 62, §135.11(7); C66, 71, §135.11(7), 455B.9 – 455B.11, 455B.15, 455B.17; C73, 75, §455B.33, 455B.37, 455B.66; C77, 79, 81, §455B.33; 82 Acts, ch 1050, §3]

C83, §455B.174

83 Acts, ch 137, §4; 86 Acts, ch 1245, §1899, 1899B; 92 Acts, ch 1041, §4; 96 Acts, ch 1079, §14; 97 Acts, ch 137, §4; 2004 Acts, ch 1175, §260; 2005 Acts, ch 19, §57; 2009 Acts, ch 155, §28, 34; 2010 Acts, ch 1029, §1; 2011 Acts, ch 97, §2; 2014 Acts, ch 1010, §8; 2018 Acts, ch 1023, §3

Referred to in §331.382, 357A.2, 455B.172, 455B.173, 455B.175, 455B.183A

455B.175 Violations.

1. If there is substantial evidence that any person has violated or is violating any provision of this part of this division, chapter 459, subchapter III, chapter 459A, or chapter 459B, or of any rule or standard established or permit issued pursuant thereto; then:

a. The director may issue an order directing the person to desist in the practice which constitutes the violation or to take such corrective action as may be necessary to ensure that the violation will cease. The person to whom such order is issued may cause to be commenced a contested case within the meaning of the Iowa administrative procedure Act, chapter 17A, by filing with the director a notice of appeal to the commission. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110. On appeal the commission may affirm, modify, or vacate the order of the director; or

b. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a hearing before the commission or by a court; or

c. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.191 or 459.604.

2. Notwithstanding the limitations on civil and criminal penalty amounts in sections 331.302 and 331.307, a county that has entered into an agreement with the department pursuant to sections 455B.174 and 455B.183 regarding the construction of semipublic

sewage disposal systems may assess civil penalties in amounts consistent with and not exceeding the amounts established for such penalties under this division.

[C66, 71, §455B.12, 455B.15, 455B.17; C73, 75, §455B.34, 455B.37; C77, 79, 81, §455B.34]

C83, §455B.175

83 Acts, ch 137, §5; 86 Acts, ch 1245, §1899; 2003 Acts, ch 44, §114; 2007 Acts, ch 82, §1; 2009 Acts, ch 155, §29, 34; 2011 Acts, ch 97, §3; 2019 Acts, ch 97, §3

Referred to in §459.601, 459A.501

Subsection 1, paragraph a amended

455B.176 Criteria considered.

In establishing, modifying, or repealing water quality standards the commission shall base its decision upon data gathered from sources within the state regarding the following:

1. The protection of the public health.

2. The size, depth, surface area covered, volume, direction and rate of flow, stream gradient, and temperature of the affected water of the state.

3. The character and uses of the land area bordering the affected water of the state.

4. The uses which have been made, are being made, or may be made of the affected water of the state for public, private, or domestic water supplies, irrigation; livestock watering; propagation of wildlife, fish, and other aquatic life; bathing, swimming, boating, or other recreational activity; transportation; and disposal of sewage and wastes.

5. The extent of contamination resulting from natural causes including the mineral and chemical characteristics.

6. The extent to which floatable or settleable solids may be permitted.

7. The extent to which suspended solids, colloids, or a combination of solids with other suspended substances may be permitted.

8. The extent to which bacteria and other biological organisms may be permitted.

9. The amount of dissolved oxygen that is to be present and the extent of the oxygen demanding substances which may be permitted.

10. The extent to which toxic substances, chemicals or deleterious conditions may be permitted.

11. The economic costs and benefits. The goal shall be a reasonable balance between total costs to the people and to the economy, and the resultant benefits to the people of Iowa.

[C66, 71, §455B.13; C73, 75, 77, 79, 81, §455B.35]

C83, §455B.176

2009 Acts, ch 41, §133

455B.176A Water quality standards.

1. For purposes of this section, unless the context otherwise requires:

a. *"Base flow conditions"* means the flow of a stream segment, as measured during the time period between July 1 and September 30, that occurs during a period of time when the watershed in which the stream segment is located receives no twenty-four-hour rainfall in excess of one-quarter inch total rainfall and not more than one-half inch total rainfall for the watershed in the preceding two weeks.

b. *"Credible data"* means the same as defined in section 455B.171 and is subject to the same requirements as provided in section 455B.193 and may include, but not rely solely on, data that is older than five years and that is obtained pursuant to the best professional judgment of a professional designee or a state or federal agency.

c. *"Ephemeral stream"* means a stream that flows only in response to precipitation and whose channel is primarily above the water table.

d. *"Professional designee"* means the same as defined in section 455B.193.

e. *"Use attainability analysis"* means a structured scientific assessment that includes physical, chemical, biological, and economic factors.

2. A water of the state shall be a designated stream segment when any one of the following is met:

a. The most recent ten-year median flow is equal to or in excess of one cubic foot per second based on data collected and evaluated by the United States geological survey

between July 1 and September 30 of each year or in the absence of stream segment flow data calculations of flow conducted by extrapolation methods provided by the United States geological survey or based upon a calculation method adopted by rule.

b. The water is a critical habitat of a threatened or endangered aquatic specie as determined by the department or the United States fish and wildlife service.

c. Credible data developed in accordance with section 455B.193 shows that water flows that are less than set out in paragraph *"a"* provide a refuge for aquatic life that permits biological recolonization of intermittently flowing segments.

3. All waters of the state not designated as a stream segment shall be identified as a general stream segment and shall be subject to narrative water quality standards.

4. *a.* The commission shall adopt rules to define designated uses of stream segments in accordance with the following categories:

(1) Agricultural water supply use.

(2) Aquatic life support.

(3) Domestic water supply.

(4) Food procurement use.

(5) Industrial water supply use.

(6) Recreational use, including primary, secondary, and children's recreational use.

(7) Seasonal use. The department may allow for a seasonal use designation for streams that would otherwise be categorized under an aquatic or recreational designation if a varying degree of protection would be sufficient to protect the stream during a seasonal time period.

b. The commission shall include subcategories of designated uses of the categories listed in paragraph *"a"*, as deemed appropriate by the commission.

c. When reviewing whether a designated use is attainable, the department shall consider at a minimum the following:

(1) Whether the natural, ephemeral, intermittent, or low flow conditions or water levels could inhibit recreational activities.

(2) If opposite sides of a stream segment would have different designated recreational uses due to differences in public access, the designated use of the entire stream segment may be the higher attainable use.

(3) The time period for determining primary contact recreation shall be March 15 through November 15.

(4) The degree to which the public has access to the stream segment.

(5) The minimum depth of the deepest pool.

(6) Stream segments shall be protected for all existing uses as defined by the federal Water Pollution Control Act.

5. The commission shall adopt rules designating water quality standards which shall be specific to each designated use adopted pursuant to subsection 4. The standards shall take into account the different characteristics of each designated use and shall provide for only the appropriate level of protection based upon that particular use. The standards shall not be identical for each designated use unless required for the appropriate level of protection. The appropriate level of protection and standards shall be determined on a scientific basis. In the development process for the water quality standards, input shall be received from a water quality standards advisory committee convened by the department. The water quality standards advisory committee shall be comprised of experts in the scientific fields relating to water quality, such as environmental engineering, aquatic toxicology, fisheries biology, and other life sciences and experts in the development of the appropriate levels of aquatic life protection and standards. The water quality standards shall be reviewed and revised by the department as new scientific data becomes available to support revision.

6. Prior to any changes in a national pollutant discharge elimination system permit effluent limitation based upon a new use designation, the department or a designee of the department shall conduct a use attainability analysis. The commission shall adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The rules shall, at a minimum, provide all of the following:

a. A designated use, which is not an existing use as defined by the federal Water Pollution Control Act, may be removed due to any of the following:

(1) Naturally occurring pollutant concentrations prevent the attainment of the use.

(2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met.

(3) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place.

(4) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment of the use.

(5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses.

(6) Controls more stringent than those required by sections 1311(b) and 1316 of the federal Water Pollution Control Act would result in substantial and widespread economic and social impact.

b. A designated use shall not be removed if any of the following occur:

(1) The designated use is an existing use, as defined by the federal Water Pollution Control Act, unless a use requiring more stringent criteria is added.

(2) Such uses will be attained by implementing effluent limits required under sections 1311(b) and 1316 of the federal Water Pollution Control Act and by implementing cost-effective and reasonable best management practices for nonpoint source control.

c. Where existing water quality standards specify designated uses less than those which are presently being attained, the commission shall revise its standards to reflect the uses actually being attained.

7. *a.* The commission shall adopt rules pursuant to chapter 17A to administer this section. All new or revised stream segment use designations shall be adopted by rule. Any rule that establishes, modifies, or repeals existing water quality standards in this state shall be adopted in conformance with this section.

b. (1) By December 31, 2006, the department shall publish a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has not been completed and a list of all designated stream segments that receive a permitted discharge for which a use attainability analysis for recreational use and aquatic life has been completed and whether a recreational or aquatic use has been determined to be or not to be attainable. By December 31, 2007, a use attainability analysis shall be completed for all newly designated stream segments that receive a permitted discharge.

(2) A use attainability analysis for a designated stream segment receiving a permitted discharge shall be conducted by either the department or a professional designee.

(3) The department shall make public a written determination of whether a new or revised use designation is appropriate for the designated stream segment prior to adoption by rule of the proposed changes.

c. The department shall complete, upon request, a use attainability analysis for recreational and aquatic uses on any designated stream segment not receiving a permitted discharge or on any previously designated stream segment in accordance with the following provisions:

(1) The department shall make public a written determination of whether a new or revised designated use is appropriate for the designated stream segment within ninety days of completion of the use attainability analysis prior to adoption by rule of the proposed changes.

(2) The department shall accept a use attainability analysis submitted by someone other than a professional designee.

(a) Within thirty days after receipt of submission of a use attainability analysis, the department shall review and provide a written determination of whether the documentation submitted is complete.

(b) Within ninety days after receipt of submission of a completed use attainability analysis, the department shall review and make available to the public a written determination of whether a new or revised use designation is appropriate for the designated stream segment.

d. Any regulated entity or property owner adjacent to the accessed stream segment aggrieved by such a determination may make a written request, within thirty days from the date the written determination of the appropriate use designation is made available to the public, for a meeting with the director or the director's designee. A regulated entity or property owner adjacent to the accessed stream segment shall be allowed to provide evidence that the designation is not appropriate under the criteria as established in this subsection.

8. An operation permit issued pursuant to section 455B.173 that expires before a use attainability analysis is performed shall remain in effect and the department shall not renew the permit until a use attainability analysis is completed. If a use attainability analysis demonstrates that a change in the use designation is warranted, the permit shall remain in effect and the department shall not renew the permit until the stream use designation is changed. In order for an expired permit to remain in effect, the permit holder must meet the requirements for a permit renewal. This subsection does not apply if the permit applicant and the department agree that the performance of a use attainability analysis presents no reasonable likelihood of resulting in a change to the existing stream use designations.

2006 Acts, ch 1145, §3; 2009 Acts, ch 72, §12

455B.177 Declaration of policy.

1. The general assembly finds and declares that because the federal Water Pollution Control Act provides for a permit system to regulate the discharge of pollutants into the waters of the United States and provides that permits may be issued by states which are authorized to implement that Act, it is in the interest of the people of Iowa to enact this part of this division in order to authorize the state to implement the federal Water Pollution Control Act, and federal regulations and guidelines issued pursuant to that Act.

2. The general assembly further finds and declares that because the federal Safe Drinking Water Act, 42 U.S.C. §300f et seq., as amended by Pub. L. No. 104-182, provides for the implementation of the Act by states which have adequate authority to do so, it is in the interest of the people of Iowa to implement the provisions of the federal Safe Drinking Water Act and federal regulations and guidelines issued pursuant to the Act.

3. The general assembly further finds and declares that it is in the interest of the people of Iowa to assess and reduce nutrients in surface waters over time by implementing the Iowa nutrient reduction strategy. To evaluate the progress achieved over time toward the goals of the Iowa nutrient reduction strategy and the United States environmental protection agency gulf hypoxia action plan, the baseline condition shall be calculated for the time period from 1980 to 1996.

[C77, 79, 81, §455B.36; 82 Acts, ch 1050, §4]

C83, §455B.177

96 Acts, ch 1079, §15; 97 Acts, ch 4, §5; 2018 Acts, ch 1001, §20

455B.178 Judicial review.

Except as provided in section 455B.191, subsection 7, judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of said Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or such final order was entered.

[C66, 71, §455B.18; C73, 75, 77, 79, 81, §455B.39]

C83, §455B.178

86 Acts, ch 1245, §1899; 2003 Acts, ch 44, §114; 2009 Acts, ch 133, §247; 2010 Acts, ch 1061, §88, 181

Referred to in §455B.191

455B.179 Trade secrets protected.

Upon a satisfactory showing by any person to the director that public disclosure of any record, report, permit, permit application, or other document or information or part thereof would divulge methods or processes entitled to protection as a trade secret, any such record, report, permit, permit application, or other document or part thereof other than effluent data and analytical results of monitoring of public water supply systems, shall be accorded confidential treatment. Notwithstanding the provisions of chapter 22, a person in connection with duties or employment by the department shall not make public any information accorded confidential status; however, any such record or other information accorded confidential status may be disclosed or transmitted to other officers, employees, or authorized representatives of this state or the United States concerned with carrying out this part of this division; chapter 459, subchapter III; or chapter 459A; or when relevant in any proceeding under this part of this division; chapter 459, subchapter III; or chapter 459A.

[C66, 71, §455B.17; C73, 75, §455B.37; C77, 79, 81, §455B.40]

C83, §455B.179

86 Acts, ch 1245, §1899; 96 Acts, ch 1079, §16; 2005 Acts, ch 136, §31

455B.180 Stay order.

The granting of a stay may be conditioned upon the furnishing by the appellant of such reasonable security as the court may direct. A stay may be vacated on application of the department or any other party after hearing by the court.

[C66, 71, §455B.20; C73, 75, 77, 79, 81, §455B.41]

C83, §455B.180

455B.181 Variances and exemptions.

The director may, after public notice and hearing, grant exemptions from a maximum contaminant level or treatment technique, or both. The director may also grant a variance from drinking water standards for public water supply systems when the characteristics of the raw water sources, which are available to a system, cannot meet the requirements with respect to maximum contaminant level of the standards despite application of the best treatment techniques which are generally available and if the director determines that the variance will not result in an unreasonable risk to the public health. A schedule of compliance may be prescribed by the director, at the time the variance or exemption is granted. The director shall also require the interim measures to minimize the contaminant levels of systems subject to the variance or exemption as may reasonably be implemented. The director may also issue variances from other rules of the department if necessary and appropriate. The director shall submit variances granted regarding a wastewater treatment facility to the commission for the commission's review within thirty days of the granting of a variance. The denial of a variance or exemption may be appealed to the commission.

[C77, 79, 81, §455B.42]

C83, §455B.181

86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 29, §1

455B.182 Failure constitutes contempt.

Failure to obey any order issued by the department with reference to a violation of this part of this division; chapter 459, subchapter III; chapter 459A; chapter 459B; or any rule promulgated or permit issued pursuant thereto shall constitute prima facie evidence of contempt. In such event the department may certify to the district court of the county in which such alleged disobedience occurred the fact of such failure. The district court after notice, as prescribed by the court, to the parties in interest shall then proceed to hear the matter and if it finds that the order was lawful and reasonable, it shall order the party to comply with the order. If the person fails to comply with the court order, that person shall be guilty of contempt and shall be fined not to exceed five hundred dollars for each day that the person fails to comply with the court order. The penalties provided in this section shall be considered as additional to any penalty which may be imposed under the law relative to nuisances or any other statute relating to the pollution of any waters of the state or related

to public water supply systems and a conviction under this section shall not be a bar to prosecution under any other penal statute.

[C66, 71, §455B.24; C73, 75, 77, 79, 81, §455B.44]
C83, §455B.182
2005 Acts, ch 136, §32; 2009 Acts, ch 155, §30, 34
Referred to in §455B.191

455B.183 Written permits required.

1. It is unlawful to carry on any of the following activities without first securing a written permit from the director, or from a city or county public works department if the public works department reviews the activity under this section, as required by the department:

a. The construction, installation, or modification of any disposal system or public water supply system or part thereof or any extension or addition thereto except those sewer extensions and water supply distribution system extensions that are subject to review and approval by a city or county public works department pursuant to this section, the use or disposal of sewage sludge, and private sewage disposal systems. Unless federal law or regulation requires the review and approval of plans and specifications, a permit shall be issued for the construction, installation, or modification of a public water supply system or part of a system if a qualified, licensed engineer certifies to the department that the plans for the system or part of the system meet the requirements of state and federal law or regulations. The permit shall state that approval is based only upon the engineer's certification that the system's design meets the requirements of all applicable state and federal laws and regulations and the review of the department shall be advisory.

b. The construction or use of any new point source for the discharge of any pollutant into any water of the state.

c. The operation of any waste disposal system or public water supply system or any part of or extension or addition to the system. This paragraph does not apply to a pretreatment system, the effluent of which is to be discharged directly to another disposal system for final treatment and disposal; a semipublic sewage disposal system, the construction of which has been approved by the department and that does not discharge into a water of the state; or a private sewage disposal system that does not discharge into a water of the state. The commission may adopt additional exemptions for a class of disposal systems that do not discharge into a water of the state or the director may waive the permit requirement for an individual system that does not discharge into a water of the state. The commission or director shall consider the volume, location, frequency, and nature of disposal from a system or class of systems before granting a waiver or exemption. Sludge from a semipublic or private sewage disposal system shall be disposed of in accordance with the rules adopted by the department pursuant to chapter 17A.

2. Upon adoption of standards by the commission pursuant to section 455B.173, subsections 5 through 8, plans and specifications for sewer extensions and water supply distribution system extensions covered by this section shall be submitted to the city or county public works department for approval if the local public works department employs a qualified, licensed engineer who reviews the plans and specifications using the specific state standards known as the Iowa standards for sewer systems and the Iowa standards for water supply distribution systems that have been formulated and adopted by the department pursuant to section 455B.173, subsections 5 through 8. The local agency shall issue a written permit to construct if all of the following apply:

a. The submitted plans and specifications are in substantial compliance with departmental rules and the Iowa standards for sewer systems and the Iowa standards for water supply distribution systems.

b. The extensions primarily serve residential consumers and will not result in an increase greater than five percent of the capacity of the treatment works or serve more than two hundred fifty dwelling units or, in the case of an extension to a water supply distribution system, the extension will have a capacity of less than five percent of the system or will serve fewer than two hundred fifty dwelling units.

c. The proposed sewer extension will not exceed the capacity of any treatment works which received a state or federal monetary grant after 1972.

d. The proposed water supply distribution system extension will not exceed the production capacity of any public water supply system constructed after 1972.

3. After issuing a permit, the city or county public works department shall notify the director of such issuance by forwarding a copy of the permit to the director. In addition, the local agency shall submit quarterly reports to the director including such information as capacity of local treatment plants and production capacity of public water supply systems as well as other necessary information requested by the director for the purpose of implementing this chapter.

4. Plans and specifications for all other waste disposal systems and public water supply systems, including sewer extensions and water supply distribution system extensions not reviewed by a city or county public works department under this section, shall be submitted to the department before a written permit may be issued. Plans and specifications for public water supply systems and water supply distribution system extensions must be certified by a licensed engineer as provided in subsection 1, paragraph "*a*". The construction of any such waste disposal system or public water supply system shall be in accordance with standards formulated and adopted by the department pursuant to section 455B.173, subsections 5 to 8. If it is necessary or desirable to make material changes in the plans or specifications, revised plans or specifications together with reasons for the proposed changes must be submitted to the department for a supplemental written permit. The revised plans and specifications for a public water supply system must be certified by a licensed engineer as provided in subsection 1, paragraph "*a*".

5. Prior to the adoption of statewide standards, the department may delegate the authority to review plans and specifications to those governmental subdivisions if in addition to compliance with subsection 1, paragraph "*c*", the governmental subdivisions agree to comply with all state and federal regulations and submit plans for the review of plans and specifications including a complete set of local standard specifications for such improvements.

6. The director may suspend or revoke delegation of review and permit authority after notice and hearing as set forth in chapter 17A if the director determines that a city or county public works department has approved extensions which do not comply with design criteria, which exceed the capacity of waste treatment plants or the production capacity of public water supply systems, or which otherwise violate state or federal requirements.

7. The department shall exempt any public water supply system from any requirement respecting a maximum contaminant level or any treatment technique requirement of an applicable national drinking water regulation if these regulations apply to contaminants which the department determines are harmless or beneficial to the health of consumers and if the owner of a public water supply system determines that funds are not reasonably available to provide for controlling amounts of those contaminants which are harmless or beneficial to the health of consumers.

8. The department may enter into an agreement with a county to delegate to the county the duties of the department under this section as they relate to the construction of semipublic sewage disposal systems.

9. A rural water association organized under chapter 357A or chapter 504 that employs or retains a licensed engineer shall be considered to have met the permitting requirements of this section for the purposes of sewer extensions and water supply distribution system extensions. The department shall not disqualify a rural water system if the system's hydraulic modeling complies with standards for water supply distribution systems adopted by the commission pursuant to this chapter.

[C66, 71, §455B.25; C73, 75, 77, 79, 81, §455B.45; 82 Acts, ch 1199, §11, 96]

C83, §455B.183

83 Acts, ch 137, §6; 84 Acts, ch 1099, §1; 84 Acts, ch 1121, §4; 86 Acts, ch 1245, §1899, 1899B; 97 Acts, ch 4, §6; 97 Acts, ch 137, §5, 6; 2003 Acts, ch 44, §67; 2007 Acts, ch 126, §75

– 77; 2011 Acts, ch 97, §4; 2016 Acts, ch 1011, §77; 2017 Acts, ch 29, §126; 2019 Acts, ch 97, §4, 10
Referred to in §331.382, 455B.172, 455B.174, 455B.175, 455B.183A, 455B.191, 459.320
Subsection 1, paragraph c amended
NEW subsection 9

455B.183A Water quality protection fund.

1. A water quality protection fund is created in the state treasury under the control of the department. The fund consists of moneys appropriated to the fund by the general assembly, moneys deposited into the fund from fees described in subsection 2, moneys deposited into the fund from fees collected pursuant to sections 455B.187 and 455B.190A, and other moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the fund. The fund is divided into the public water supply system account and the private water supply system account. Moneys in the public water supply system account are appropriated to the department for purposes of carrying out the provisions of this division, which relate to the administration, regulation, and enforcement of the federal Safe Drinking Water Act, and to support the program to assist supply systems, as provided in section 455B.183B. Moneys in the private water supply system account are appropriated to the department for the purpose of supporting the programs established to protect private drinking water supplies as provided in sections 455B.187, 455B.188, 455B.190, and 455B.190A.

2. The commission shall adopt fees as required pursuant to section 455B.105 for permits required for public water supply systems as provided in sections 455B.174 and 455B.183. Fees paid pursuant to this section shall not be subject to the sales or services tax. The fees shall be for each of the following:

a. The construction, installation, or modification of a public water supply system. The amount of the fees may be based on the type of system being constructed, installed, or modified.

b. The operation of a public water supply system, including any part of the system. The commission shall adopt a fee schedule which shall be based on the total number of persons served by public water supply systems in this state. However, a public water supply system shall be assessed a fee of at least twenty-five dollars. A public water supply system not owned or operated by a community and serving a transient population shall be assessed a fee of twenty-five dollars. The commission shall calculate all fees in the schedule to produce total revenues equaling three hundred fifty thousand dollars for each fiscal year, commencing with the fiscal year beginning July 1, 1995, and ending June 30, 1996. For each fiscal year, the fees shall be deposited into the public water supply system account. By May 1 of each year, the department shall estimate the total revenue expected to be collected from the overpayment of fees, which are all fees in excess of the amount of the total revenues which are expected to be collected under the current fee schedule, and the total revenue expected to be collected from the payment of fees during the next fiscal year. The commission shall adjust the fees if the estimate exceeds the amount of revenue required to be deposited in the account pursuant to this paragraph.

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

4. Section 8.33 does not apply to moneys in the fund. Moneys earned as income, including interest from the fund, shall remain in the fund until expended.

5. On or before November 15 of each fiscal year, the department shall transmit to the department of management and the legislative services agency information regarding the fund and accounts, including all of the following:

a. The balance of unobligated and unencumbered moneys in each account as of November 1.

b. A summary of revenue deposited in and expenditures from each account during the current fiscal year.

c. Estimates of revenues expected to be deposited into the public water supply system

account during the current fiscal year, and an estimate of the expected balance of unobligated and unencumbered moneys in the account on June 30 of the current fiscal year.

94 Acts, ch 1198, §48; 95 Acts, ch 216, §39; 2003 Acts, ch 30, §1; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 145, §286; 2005 Acts, ch 29, §1, 2

Referred to in §455B.183B, 455B.183C, 455B.187, 455B.190A

455B.183B Program to assist supply systems.

1. The state of Iowa declares its intention to retain its jurisdiction to enforce areas provided under the federal Safe Drinking Water Act as delegated to the state by the United States.

2. The department shall establish a program to assist supply systems, in order to provide assistance to ensure safe public water supplies. The department in administering the program shall provide technical advice and perform vulnerability and viability studies of public water supply systems.

3. Whenever practical, the department may enter into a contract with a person qualified to provide assistance services under this section, if the agreement for the services is cost-effective and the quality of the services ensures compliance with state and federal law. A person entering into a contract with the department for the purpose of providing the services shall be deemed to be an agent of the department, and shall have the same authority as provided to the department, unless the contract specifies otherwise. The department shall review assistance services performed by a person under a contract to ensure that quality cost-effective service is being provided.

4. The program shall be supported by moneys deposited in the public water supply system account created in the water quality protection fund established pursuant to section 455B.183A.

94 Acts, ch 1198, §49

Referred to in §455B.183A

455B.183C Personnel — department of management.

Notwithstanding any limitation upon the department's number of full-time equivalent positions as defined in section 8.36A, any point limitation on personnel, or any other limitation upon the number of personnel or their employment classification, imposed by the department of management, the department may employ the number of full-time equivalent positions which equals the number of positions allocated by the general assembly to the department for each applicable fiscal year in order to carry out the provisions of this division relating to the administration, regulation, and enforcement of the federal Safe Drinking Water Act and the program to assist supply systems, but only to the extent that moneys used to support the positions derive from moneys deposited in the water quality protection fund, as provided in section 455B.183A. If a specific number of full-time equivalent positions are not allocated by the general assembly, the department may fill any number of positions required to administer the program, to the extent the positions are supported by the fund.

94 Acts, ch 1198, §50

455B.184 Disposal system plans.

The department may also require the owner of a disposal system, discharging pollutants into any water of the state, or of a public water supply system to file with it complete plans of the whole or any part of such system and any other information and records concerning the installation and operation of such system.

[C66, 71, §455B.26; C73, 75, 77, 79, 81, §455B.46]

C83, §455B.184

455B.185 Data from departments.

The commission and the director 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 commission or the director to properly carry out their activities and effectuate the

purposes of this part 1 of division III; chapter 459, subchapter III; chapter 459A; or chapter 459B. The department shall reimburse such agencies for special expense resulting from expenditures not normally a part of the operating expenses of any such agency.

[C66, 71, §455B.27; C73, 75, 77, 79, 81, §455B.47]

C83, §455B.185

86 Acts, ch 1245, §1899; 2005 Acts, ch 136, §33; 2009 Acts, ch 155, §31, 34

455B.186 Prohibited actions.

1. A pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state, except that this section shall not be construed to prohibit the discharge of adequately treated sewage, industrial waste, or other waste in accordance with rules adopted by the commission. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake except as authorized in subsection 2.

2. Subsection 1 shall not be construed to prohibit the use or application of a pesticide in accordance with the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 et seq. However, an aquatic pesticide shall not be applied to any water of the United States except as authorized in accordance with rules adopted by the commission.

[C66, 71, §455B.28; C73, 75, 77, 79, 81, §455B.48]

C83, §455B.186

86 Acts, ch 1245, §1899; 90 Acts, ch 1167, §1; 2013 Acts, ch 59, §2

Referred to in §455B.191

455B.187 Water well construction.

1. A contractor shall not engage in well construction or reconstruction without first being certified as required in this part and department rules adopted pursuant to this part. Water wells shall not be constructed, reconstructed, or abandoned by a person except as provided in this part or rules adopted pursuant to this part. Within thirty days after construction or reconstruction of a well, a contractor shall provide well information required by rule to the department and the Iowa geological survey.

2. A landowner or the landowner's agent shall not drill for or construct a new water well without first obtaining a permit for this activity from the department. The department shall not issue a permit to any person for this activity unless the person first registers with the department all wells, including abandoned wells, on the property. The department may delegate the authority to issue a permit to a county board of supervisors or the board's designee. In the event of such delegation, the department shall retain concurrent authority. The commission shall adopt rules pursuant to chapter 17A to implement this subsection.

3. The director may charge a fee for permits issued pursuant to this section. All fees collected pursuant to this section shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

4. Notwithstanding the provisions of this section, a county board of supervisors or the board's designee may grant an exemption from the permit requirements to a landowner or the landowner's agent if an emergency drilling is necessary to meet an immediate need for water. The exemption shall be effective immediately upon approval of the county board of supervisors or the board's designee. The board of supervisors or the board's designee shall notify the director within thirty days of the granting of an exemption.

5. In the case of property owned by a state agency, a person shall not drill for or construct a new water well without first registering with the department the existence of any abandoned wells on the property. The department shall develop a prioritized closure program and time frame for the completion of the program, and shall adopt rules to implement the program.

85 Acts, ch 176, §4; 87 Acts, ch 225, §304; 91 Acts, ch 224, §6; 2003 Acts, ch 30, §2; 2003 Acts, ch 44, §68; 2016 Acts, ch 1011, §78

Referred to in §455B.172, 455B.183A, 455B.188

455B.188 Provision for emergency replacement of water wells.

Rules adopted to implement section 455B.172, subsection 7, paragraph *"b"*; section 455B.173, subsection 9; and section 455B.187 shall specifically provide for the immediate

replacement or reconstruction of water wells in response to the sudden and unforeseen loss or serious impairment of a well for its intended use. These provisions shall include the granting of emergency authorizations and registration of well contractors pursuant to section 455B.187 and may include the granting of variances and exemptions from technical standards as appropriate.

85 Acts, ch 176, §5
Referred to in §455B.183A

455B.189 Reserved.

455B.190 Abandoned wells properly plugged.

1. As used in this section:

a. *"Class 1 well"* means a well one hundred feet or less in depth and eighteen inches or more in diameter.

b. *"Class 2 well"* means a well more than one hundred feet in depth or less than eighteen inches in diameter or a bedrock well.

c. *"Class 3 well"* means a sandpoint well or a well fifty feet or less in depth constructed by joining a screened drive point with lengths of pipe and driving the assembly into a shallow sand and gravel aquifer.

d. *"Department"* means the department of natural resources.

e. *"Designated agent"* means a person other than the state, designated by a county board of supervisors to review and confirm that a well has been properly plugged.

f. *"Filling materials"* means agricultural lime. Filling materials may also include other materials, including soil, sand, gravel, crushed stone, and pea gravel as approved by the department.

g. *"Owner"* means the titleholder of the land where a well is located.

h. *"Plug"* means the closure of an abandoned well with plugging materials which will permanently seal the well from contamination by surface drainage, or permanently seal off the well from contamination into an aquifer.

i. *"Plugging materials"* means filling and sealing materials.

j. *"Sealing materials"* means bentonite. Sealing materials may also include neat cement, sand cement grout, or concrete as approved by the department.

k. *"Well"* means an abandoned well as defined in section 455B.171.

2. All wells shall be properly plugged in accordance with the schedule established by the department. The department shall develop a prioritized closure program and a time frame for the completion of the program and shall adopt rules to implement the program. The schedule established by the department shall provide that to the fullest extent technically and economically feasible, all wells shall be properly plugged not later than July 1, 2000.

3. Wells shall be plugged as follows:

a. Class 1 wells shall be plugged by placing filling materials up to one foot below the static water level. At least one foot of sealing materials shall be placed on top of the filling materials up to the static water level, as a seal. Filling materials shall be added up to four feet below the ground surface. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The casing pipe shall be removed down to at least four feet below the ground surface and shall be capped with at least one foot of sealing materials. Obstructions shall be removed from the top four feet of the ground surface and the top four feet shall be backfilled with soil and graded.

b. Class 2 wells shall be plugged by placing filling materials at the bottom of the well up to four feet below the static water level. At least four feet of sealing material shall be added on top of the filling material up to the original static water level. Filling materials shall be placed up to four feet below the ground surface and the well shall be capped with at least one foot of sealing material. However, sealing materials may be used to fill the entire well up to four feet below the ground surface. The upper four feet of the casing pipe below the ground surface shall be removed. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

c. Class 3 wells shall be plugged by pulling the casing and sandpoint out of the ground,

and collapsing the hole. The well may also be plugged by placing sealing materials up to four feet below the ground surface and by removing the upper four feet of casing pipe below the ground surface. The top four feet of the ground surface shall be removed of obstructions and backfilled with soil and graded.

4. The department shall sponsor an advertising campaign directed to persons throughout the state by print and electronic media designed to notify owners of the deadline for plugging wells, penalties for noncompliance, and information about receiving assistance in plugging wells.

5. An owner may, independent of a contractor, plug a well pursuant to this section subject to review and confirmation by a designated agent of the county or a well driller registered with the department.

6. A person who fails to properly plug a well on property the person owns, in accordance with the program established by the department, or as reported by a designated agent or a registered or certified well contractor, is subject to a civil penalty of up to one hundred dollars per every five calendar days that the well remains unplugged or improperly plugged. However, the total civil penalty shall not exceed one thousand dollars. The penalty shall only be assessed after the one thousand dollar limit is reached. If the owner plugs the well in compliance with this section, including applicable departmental rules, before the date that the one thousand dollar limit is reached, the civil penalty shall not be assessed. The penalty shall not be imposed upon a person for improperly plugging a well until the department notifies the person of the improper plugging. The moneys collected shall be deposited in the financial incentive portion of the agriculture management account. The department of agriculture and land stewardship may provide by rule for financial incentive moneys, through expenditure of the moneys allocated to the financial-incentive-program portion of the agriculture management account, to reduce a person's cost in properly plugging wells abandoned prior to July 1, 1987.

87 Acts, ch 225, §305; 89 Acts, ch 286, §1; 91 Acts, ch 224, §7
Referred to in §455B.183A, 558.69

455B.190A Well contractor certification program.

1. As used in this section:

a. "Certified well contractor" means a well contractor who has successfully passed an examination prescribed by the department to determine the applicant's qualifications to perform well drilling or pump services or both.

b. "Examination" means an examination for well contractors which includes, but is not limited to, relevant aspects of Iowa groundwater law, well construction, well maintenance, pump services, and well abandonment practices which protect groundwater and water supplies.

c. "Groundwater" means groundwater as defined in section 455E.2.

d. "Pump services" means the installation, repair, and maintenance of water systems.

e. "Water systems" means any part of the mechanical portion of a water well that delivers water from the well to a valve that separates the well from the plumbing system. *"Water systems"* includes the pump, drop pipe to the well, electrical wire from the pump to the electrical panel, piping from the well to the pressure tank, pitless unit or adaptor, and all related miscellaneous fittings necessary to operate the well pump. *"Water systems"* does not include any outside piping to other buildings, and does not include the piping that carries the water in the remainder of the distribution system.

f. "Water well" or *"well"* means water well as defined in section 455B.171.

g. "Well contractor" means contractor as defined pursuant to section 455B.171, subsection 3.

h. "Well contractors' council" means the council established in subsection 3.

i. "Well services" means new well construction, well reconstruction, installation of pitless equipment, pump services, or well plugging.

2. The department shall establish a well contractor certification program which shall include all of the following provisions:

a. Specification of certification requirements, including minimum work experience levels, successful completion of an examination, and continuing education requirements.

b. A certified well contractor shall be present at the well site and in direct charge of the services whenever well services are provided.

c. A person shall not act as a well contractor on or after July 1, 1993, unless the person is certified by the department pursuant to this section.

d. Violation of the rules regarding the provision of well services are grounds for suspension or revocation of certification.

e. Provisional certification may be obtained by an applicant in instances of shortages of certified personnel if all of the following conditions are met:

(1) The applicant provides documentation of at least one year of work experience in well services performed under the direct supervision of a certified well contractor.

(2) The applicant successfully completes the examination.

(3) A certified well contractor who employs an applicant for well contractor certification cosigns the application for provisional certification. An employer who cosigns an application for provisional certification is jointly liable for a violation of the rules regarding well services by the provisionally certified well contractor and the violation is grounds for the suspension or revocation of certification of the certified well contractor and the provisionally certified well contractor.

f. The department shall develop continuing education requirements for certification of a well contractor in consultation with the well contractors' council.

g. The examination shall be developed by the department in consultation with the well contractors' council to determine the applicant's qualifications to perform well drilling or pump services or both. The examination shall be updated as necessary to reflect current groundwater law and well construction, maintenance, pump services, and abandonment practices. The examination shall be administered by the department or by a person designated by the department.

h. The department may provide for multiyear certification of well contractors.

3. *a.* The department shall establish a well contractors' council.

b. The membership of the council shall consist of the following members:

(1) Two well drilling contractors.

(2) Two pump installation contractors.

(3) One citizen member of the Iowa groundwater association or its successor.

(4) One citizen member of the Iowa environmental health association or its successor.

(5) The director of public health or the director's designee.

(6) The state geologist or the state geologist's designee.

(7) The director of the state hygienic laboratory or the director's designee.

c. The council shall advise and assist the department in doing all of the following:

(1) The development, review, and revision of the department's rules to implement this section.

(2) The development, updating, and revision of the examination for well contractor certification.

(3) The establishment, review, and revision of the continuing education requirements for certification.

(4) The production and publication of the consumer information pamphlet.

d. The council shall meet as often as necessary to perform the council's duties. The department shall provide the council with staff assistance.

4. The department shall develop, in consultation with the well contractors' council, a consumer information pamphlet regarding well construction, well maintenance, well plugging, pump services, and Iowa groundwater laws. The department and the council shall review and revise the consumer information pamphlet as necessary. The consumer information pamphlet shall be supplied to well contractors, at cost, and well contractors shall supply one copy at no cost to potential customers prior to initiation of well services.

5. The department shall establish by rule and collect, in consultation with the well contractors' council, the following fees to be used to implement and administer the provisions of this section:

a. An annual certification fee to be paid by certified well contractors. The initial annual certification fee is one hundred fifty dollars. The fee may be increased by rule, as necessary, to reflect the costs of administration of the program. The department may establish a fee for multiyear certification.

b. The department may also charge and collect fees for testing, the provision of continuing education, and other fees related to and based on the actual costs of the well contractor certification program.

c. All fees collected pursuant to this subsection shall be deposited into the private water supply system account within the water quality protection fund created in section 455B.183A.

6. Rules adopted by the commission shall be developed in consultation with the council. If a majority of the council does not endorse the rules adopted by the commission, notice shall be sent to the administrative rules review committee indicating the council's position.

7. A well contractor who is engaged in performing pump services on or prior to June 30, 2004, and who registers as a pump installer with the department by June 30, 2004, shall be deemed to have met the certification requirements of this section without examination. Beginning July 1, 2004, a pump installer seeking an initial well contractor certification shall meet the requirements for certification established in this section.

91 Acts, ch 224, §2; 2002 Acts, ch 1077, §1 – 5; 2003 Acts, ch 30, §3
Referred to in §105.11, 455B.172, 455B.183A

455B.191 Penalties — burden of proof.

1. As used in this section, *"hazardous substance"* means hazardous substance as defined in section 455B.381 or section 455B.411.

2. Any person who violates any provision of part 1 of division III of this chapter or any permit, rule, standard, or order issued under part 1 of division III of this chapter shall be subject to a civil penalty not to exceed five thousand dollars for each day of such violation.

3. *a.* Any person who negligently or knowingly does any of the following shall, upon conviction, be punished as provided in paragraph "*b*" or "*c*":

(1) Violates section 455B.183 or section 455B.186 or any condition or limitation included in any permit issued under section 455B.183.

(2) Introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which the person knew or reasonably should have known could cause personal injury or property damage.

(3) Causes a treatment works to violate any water quality standard, effluent standard, pretreatment standard or condition of a permit issued to the treatment works pursuant to section 455B.183, unless the person is in compliance with all applicable federal and state requirements or permits.

b. (1) A person who commits a negligent violation under this subsection is guilty of a serious misdemeanor punishable by a fine of not more than twenty-five thousand dollars for each day of violation or by imprisonment for not more than one year, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

c. (1) A person who commits a knowing violation under this subsection is guilty of an aggravated misdemeanor punishable by a fine of not more than fifty thousand dollars for each day of violation or by imprisonment for not more than two years, or both.

(2) If the conviction is for a second or subsequent violation committed by a person under this subsection, the conviction is punishable by a fine of not more than one hundred thousand dollars for each day of violation or by imprisonment for not more than five years, or both.

4. Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained under part 1 of division III of this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under part 1 of division III of this chapter or by any permit, rule, regulation, or order issued under part 1 of division III of this chapter, shall upon conviction be punished by a fine of not more than

ten thousand dollars or by imprisonment in the county jail for not more than six months or by both such fine and imprisonment.

5. The attorney general shall, at the request of the director with approval of the commission, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of this chapter or to obtain compliance with the provisions of part 1 of division III of this chapter or any rules promulgated or any provision of any permit issued under part 1 of division III of this chapter. In any such action, any previous findings of fact of the director or the commission after notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

6. In all proceedings with respect to any alleged violation of the provisions of this part 1 of division III or any rule established by the commission or the department, the burden of proof shall be upon the commission or the department except in an action for contempt as provided in section 455B.182.

7. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.178 shall be raised in the legal proceedings instituted in accordance with this section.

8. Any civil penalty collected by the state or a county relating to the construction of semipublic sewage disposal systems shall be deposited in the unsewered community revolving loan fund created pursuant to section 16.141.

[C66, 71, §455B.23, 455B.25; C73, §455B.43, 455B.45, 455B.49; C75, §455B.43, 455B.49; C77, 79, 81, §455B.49]

C83, §455B.187

C85, §455B.191

86 Acts, ch 1245, §1899A; 88 Acts, ch 1080, §1, 2; 95 Acts, ch 195, §23; 98 Acts, ch 1209, §24; 2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2009 Acts, ch 133, §154; 2010 Acts, ch 1069, §56; 2011 Acts, ch 97, §5

Referred to in §29C.8A, 455B.175, 455B.178, 459.603, 459A.502

455B.192 Local government — penalties.

Notwithstanding sections 331.302, 331.307, 364.3, and 364.22, a city or county may assess a civil penalty for a violation of this division which is equal to the amount the department has assessed for a violation under this division.

93 Acts, ch 137, §8

455B.193 Qualifications for collection of credible data.

1. For purposes of this part, all of the following shall apply:

a. Data is not credible data unless the data originates from studies and samples collected by the department, a professional designee of the department, or a qualified volunteer. For purposes of this paragraph, *"professional designee"* includes governmental agencies other than the department, and a person hired by, or under contract for compensation with, the department to collect or study data.

b. All information submitted by a qualified volunteer shall be reviewed and approved or disapproved by the department. The qualified volunteer shall submit a site specific plan with data which includes information used to obtain the data, the sampling and analysis plan, and quality control and quality assurance procedures used in the monitoring process. The qualified volunteer must provide proof to the department that the water monitoring plan was followed. The department shall review all data collected by a qualified volunteer, verify the accuracy of the data collected by a qualified volunteer, and determine that all components of the water monitoring plan were followed.

c. The department shall retain all information submitted by a qualified volunteer submitting the information for a period of not less than ten years from the date of receipt by the department. All information submitted shall be a public record.

d. The department shall adopt rules establishing requirements for a person to become a qualified volunteer.

2. The department of natural resources shall develop a methodology for water quality assessments as used in the section 303(d) lists and assess the validity of the data.

2000 Acts, ch 1068, §10; 2000 Acts, ch 1232, §73; 2011 Acts, ch 25, §143

Referred to in §455B.176A

455B.194 Credible data required.

1. The department shall use credible data when doing any of the following:

a. Developing and reviewing any water quality standard.

b. Developing any statewide water quality inventory or other water assessment report.

c. Determining whether any water of the state is to be placed on or removed from any section 303(d) list.

d. Determining whether any water of the state is supporting its designated use or other classification.

e. Determining any degradation of a water of the state under 40 C.F.R. §131.12.

f. Establishing a total maximum daily load for any water of the state.

2. Notwithstanding subsection 1, credible data shall not be required for any section 305(b) report and credible data shall not be required for the establishment of a designated use or other classification of a water of the state.

3. This section shall not be construed to require credible data as defined in section 455B.171, subsection 4, in order for the department to bring an enforcement action for an illegal discharge.

2000 Acts, ch 1068, §11

Referred to in §16.134, 455B.171, 455B.195

455B.195 Use or analysis of credible data.

1. For any use or analysis of credible data described in section 455B.194, subsection 1, all of the following shall apply:

a. The use of credible data shall be consistent with the requirements of the federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.

b. The data quality for removal of water of the state from any list of impaired waters including any section 303(d) list shall be the same as the data quality for adding a water to that list.

c. A water of the state shall not be placed on any section 303(d) list if the impairment is caused solely by violations of national pollutant discharge elimination system program permits or storm water permits issued pursuant to section 455B.103A and the enforcement of the pollution control measures is required.

d. A water of the state shall not be placed on any section 303(d) list if the data shows an impairment, but existing technology-based effluent limits or other required pollution control measures are adequate to achieve applicable water quality standards.

e. If a pollutant causing an impairment is unknown, the water of the state may be placed on a section 303(d) list. However, the department shall continue to monitor the water of the state to determine the cause of impairment before a total maximum daily load is established for the water of the state and a water of the state listed with an unknown status shall retain a low priority for a total maximum daily load development until the cause of the impairment is determined unless the department, after taking into consideration the use of the water of the state and the severity of the pollutant, identifies compelling reasons as to why the water of the state should not have a low priority.

f. When evaluating the waters of the state, the department shall develop and maintain three separate listings including a section 303(d) list, a section 305(b) report, and a listing for which further investigative monitoring is necessary. The section 305(b) report shall be a summary of all potential impairments for which credible data is not required. If credible data is not required for a section 305(b) report, the placement of a water of the state on any section 305(b) report alone is not sufficient evidence for the water of the state's placement on any section 303(d) list. When developing a section 303(d) list, the department is not required to use all data, but the department shall assemble and evaluate all existing and readily available water quality-related data and information. The department shall provide documentation

to the regional administrator of the federal environmental protection agency to support the state's determination to list or not to list its waters.

g. The department shall take into consideration any naturally occurring condition when placing or removing any water of the state on any section 303(d) list, and establishing or allocating responsibility for a total maximum daily load.

h. Numerical standards shall have a preference over narrative standards. A narrative standard shall not constitute the basis for determining an impairment unless the department identifies specific factors as to why a numeric standard is not sufficient to assure adequate water quality.

i. If the department has obtained credible data for a water of the state, the department may also use historical data for that particular water of the state for the purpose of determining whether any trends exist for that water of the state.

2. This section shall not be construed to require or authorize the department to perform any act listed in section 455B.194, subsection 1, not otherwise required or authorized by applicable law.

2000 Acts, ch 1068, §12
Referred to in §16.134

455B.196 National pollutant discharge elimination system permit fund.

1. A national pollutant discharge elimination system permit fund is created as a separate fund in the state treasury under the control of the department. The fund is composed of moneys appropriated to the department for deposit into the fund and moneys available to and obtained or accepted by the department from the United States or private sources for placement in the fund. The fund shall include moneys deposited into the fund from fees charged for the processing of applications for the issuance of permits related to the national pollutant discharge elimination system as provided in section 455B.197.

2. Moneys in the national pollutant discharge elimination system permit fund are appropriated to the department each fiscal year for purposes of administering section 455B.197 and expediting the department's processing of national pollutant discharge elimination system applications and the issuance of permits, including for salaries, support, maintenance, and other costs of administering section 455B.197.

3. Section 8.33 shall not apply to moneys credited to the national pollutant discharge elimination system permit fund. Notwithstanding section 12C.7, moneys earned as income or interest from the fund shall remain in the fund until expended as provided in this section.

2006 Acts, ch 1178, §24; 2009 Acts, ch 175, §20
Referred to in §455B.197

455B.197 National pollutant discharge elimination system permits.

The department may issue a permit related to the administration of the national pollutant discharge elimination system (NPDES) permit program pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pt. 124 including but not limited to storm water discharge permits issued pursuant to section 455B.103A. The department may provide for the receipt of applications and the issuance of permits as provided by rules adopted by the department which are consistent with this section. The department shall assess and collect fees for the processing of applications and the issuance of permits as provided in this section. The department shall deposit the fees into the national pollutant discharge elimination system permit fund created in section 455B.196. The fees shall be established as follows:

1. For a permit for the discharge from mining and processing facilities, NPDES general permit no. 5, the following fee schedule shall apply:

a. An annual permit, one hundred twenty-five dollars each year.

b. For a multiyear permit, all of the following shall apply:

(1) A three-year permit, three hundred dollars.

(2) A four-year permit, four hundred dollars.

(3) A five-year permit, five hundred dollars.

2. For coverage under NPDES individual permits for storm water, for a construction permit, an application fee of one hundred dollars.

3. For coverage under NPDES individual permits for non-storm water, the following annual fees apply:

a. For a major municipal facility, one thousand two hundred seventy-five dollars.

b. For a minor municipal facility, two hundred ten dollars. For a city with a population of two hundred fifty or less, the maximum fee shall be two hundred ten dollars regardless of how many NPDES individual permits for non-storm water the city holds.

c. For a semipublic facility, three hundred forty dollars.

d. For a facility that holds an operation permit, with no wastewater discharge into surface waters, one hundred seventy dollars.

e. For a municipal water treatment facility, a fee shall not be charged.

f. For a major industrial facility, three thousand four hundred dollars.

g. For a minor industrial facility, three hundred dollars.

h. For an open feedlot operation as provided in chapter 459A, an annual fee of three hundred forty dollars.

i. For a new facility that has not been issued a current non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

j. For a facility covered under an existing non-storm water NPDES permit, a prorated amount which shall be calculated by taking the annual fee amount multiplied by the number of months remaining before the next annual fee due date divided by twelve.

k. For a non-storm water permit as provided in this subsection, a single application fee of eighty-five dollars.

4. A single family home shall not be charged a fee under this section.

5. The owner of an on-farm processing operation that produces less than one thousand five hundred gallons per day of wastewater shall not be assessed a fee by the department under this section.

2006 Acts, ch 1178, §25; 2007 Acts, ch 22, §79; 2007 Acts, ch 53, §1, 2; 2011 Acts, ch 31, §3
Referred to in §455B.103A, 455B.105, 455B.172A, 455B.196

455B.198 Wastewater discharge from well drilling sites — rules.

1. The commission shall adopt rules pursuant to chapter 17A to regulate the discharge of wastewater from water well drilling sites. The rules shall incorporate the following considerations:

a. The size of the well as measured by the flow of water in gallons per minute.

b. The best management practices to address wastewater discharge.

c. Requirements for notification to the department prior to the commencement of drilling operations.

d. Requirements for retention of records for a well.

e. Reasonable and appropriate limitations on wastewater discharge that take into consideration the need for the well.

f. Reasonable and appropriate limitations on wastewater discharge that take into consideration the need to conserve soil and protect water quality.

2. The commission shall have the authority in the rules to provide for the issuance of a general permit and to establish a fee sufficient to recover the costs of issuing a general permit, which shall not exceed fifty dollars. The fees shall be remitted to the department and shall be used by the department to administer the permitting requirements of this section.

3. The commission shall convene an advisory committee that includes representatives of the Iowa water well association to assist in the development of the rules.

2008 Acts, ch 1165, §1; 2015 Acts, ch 30, §132, 133

455B.199 Water resource restoration sponsor program.

1. The department shall establish and administer a water resource restoration sponsor program to assist in enhancing water quality in the state through the provision of financial

assistance to communities for a variety of impairment-based, locally directed watershed projects.

2. For purposes of this section, unless the context otherwise requires:

a. *"Qualified entity"* means the same as defined in section 384.84.

b. *"Sponsor project"* means a water resource restoration project as defined in section 384.80.

3. Moneys in the water pollution control works revolving loan fund created in section 455B.295, and the drinking water facilities revolving loan fund created in section 455B.295, shall be used for the water resource restoration sponsor program. The department shall establish on an annual basis the percentage of moneys available for the sponsor program from the funds.

4. The interest rate on the loan under the program for communities participating in a sponsor project shall be set at a level that requires the community to pay not more than the amount the community would have paid if they did not participate in a sponsor project.

5. Not more than ninety percent of the projected interest payments on bonds issued under section 384.84 or the total cost of the sponsor project shall be advanced to the community, whichever is lower.

6. A proposed sponsor project must be compatible with the goals of the water resource restoration sponsor program, shall include the application of best management practices for the primary purpose of water quality protection and improvement, and may include but not be limited to any of the following:

a. Riparian buffer acquisition, enhancement, expansion, or restoration.

b. Conservation easements.

c. Riparian zone or wetland buffer extension or restoration.

d. Wetland restoration in conjunction with an adjoining high-quality water resource.

e. Stream bank stabilization and natural channel design techniques.

f. In-stream habitat enhancements and dam removals.

g. Practices related to water quality or water quality protection that are included in a field office technical guide published by the natural resources conservation service of the United States department of agriculture or are included in the Iowa stormwater management manual published by the department of natural resources.

7. A proposed sponsor project shall not include any of the following:

a. Passive recreation activities and trails including bike trails, playgrounds, soccer fields, picnic tables, and picnic grounds.

b. Parking lots, unless a parking lot is constructed in a manner to improve water quality and construction is consistent with a field office technical guide published by the natural resources conservation service of the United States department of agriculture or the Iowa stormwater management manual published by the department of natural resources.

c. Diverse habitat creation contrary to the botanical history of the area.

d. Planting of nonnative plant species.

e. Dredging.

f. Supplemental environmental projects required as a part of a consent decree.

8. A sponsor project must be approved by the department prior to participating in the water resource restoration sponsor program.

9. A resolution by the city council must be approved and included as part of an application for the water resource restoration sponsor program. After approval of the project, the city council shall enter into an agreement pursuant to chapter 28E with the qualified entity who shall implement the project.

10. A water resource restoration project shall not include the acquisition of property, an interest in property, or improvements to property through condemnation.

11. The commission shall adopt rules pursuant to chapter 17A necessary for the administration of this section.

2009 Acts, ch 72, §7; 2013 Acts, ch 53, §1, 2

Referred to in §16.151, 455B.295, 461.34, 466B.44

455B.199A Prioritization of municipal water quality improvement projects.

1. The department may allow schedules of compliance to be included in permits whenever authorized by federal law or regulations. Such schedules shall be established to maximize benefits and minimize local financial impact while improving water quality, where such opportunities arise. If information is provided showing that the anticipated costs of compliance with a schedule have no reasonable relationship to environmental or public health needs or benefits, or may result in other detrimental environmental impacts, such as significant greenhouse gas emissions, the projects may be deferred, in whole or in part as determined appropriate by the department, and a variance granted, as consistent with applicable federal law or regulations.

2. Unless otherwise restricted by federal law or regulations, the department may allow compliance schedules of up to thirty years in national pollutant discharge elimination system permits, particularly where the costs of compliance with federal program mandates will adversely impact the construction of other necessary local capital improvement projects. If the department determines an existing condition constitutes a significant public health or environmental threat, the schedule of compliance shall be based on the shortest practicable time frame for remedying the condition.

2009 Acts, ch 72, §9

455B.199B Disadvantaged communities variance.

1. The department may provide for a variance of regulations pursuant to this part when it determines that regulations adopted pursuant to this part affect a disadvantaged community. Such a variance shall be consistent with federal rules and regulations. In considering an application for a variance, the department shall consider the substantial and widespread economic and social impact to the ratepayers and the affected community that may occur as a result of compliance with a federal regulation, a rule adopted by the department, or an order of the department pursuant to this part. In considering an application for a variance, the department shall take into account the rules adopted pursuant to this part with which a regulated entity and the commensurate affected community are required to comply.

2. The department shall find that a regulated entity and the affected community are a disadvantaged community by evaluating all of the following:

a. The ability of the regulated entity and the affected community to pay for a project based on the ratio of the total annual project costs per household to median household income.

b. Median household income in the community and the unemployment rate of the county in which the community is located.

c. The outstanding debt of the system and the bond rating of the community.

3. The department shall find that an unsewered community is a disadvantaged community by evaluating all of the following:

a. The ability of the community to pay for a project based on the ratio of the total annual project costs per household to median household income.

b. The unemployment rate in the county where the community is located.

c. The median household income of the community.

4. The department shall not consider a regulated entity, affected community, or unsewered community a disadvantaged community if the ratio of compliance costs to median household income is below one percent.

5. The department may grant a regulated entity a variance from complying with a rule adopted pursuant to this part or as otherwise allowed by federal law or regulations, if the department determines that the regulated entity or the affected community will suffer substantial and widespread economic and social impact. The department shall ensure the conditions of any variance improve water quality and represent reasonable progress toward complying with rules adopted pursuant to this part, but do not result in substantial and widespread economic and social impact.

6. The department shall not require installation of a wastewater treatment system by an unsewered community if the department determines that such installation would create substantial and widespread economic and social impact.

7. The Iowa finance authority, in cooperation with the department, shall utilize the

disadvantaged community criteria in this section to determine the appropriate interest rates for loans awarded from the revolving loan funds created in sections 455B.291 through 455B.299, as allowed by federal law or regulations.

8. The economic development authority shall utilize the disadvantaged community criteria in this section to determine eligibility for water or sewer community development block grants as provided in section 15.108, subsection 1, paragraph "*a*".

2009 Acts, ch 72, §10; 2011 Acts, ch 97, §6, 7; 2011 Acts, ch 118, §85, 89
Referred to in §16.134

455B.199C Alternative wastewater treatment technologies — legislative intent and purpose.

1. The intent of the general assembly is to address the rising costs of water and wastewater treatment compliance for regulated entities and affected communities by authorizing the use of alternative treatment technologies. The purpose of this section is to eliminate regulatory barriers that limit or prevent the use of new or innovative technologies.

2. The department shall produce and publish design guidance documents for alternative wastewater treatment technologies. The guidance documents shall be intended to encourage regulated entities to use such technologies and to assist design engineers with the submission of projects employing alternative wastewater treatment technologies that can be readily approved by the department.

3. In writing design guidance documents for alternative wastewater treatment technologies the department shall review all of the following:

a. The on-site sewage design and reference manual published by the department of natural resources.

b. The guidance manual for the management of on-site and decentralized wastewater systems published by the United States environmental protection agency.

c. Other credible sources of information on the design, operation, and performance of alternative wastewater treatment technologies.

2009 Acts, ch 72, §11
Referred to in §16.134

455B.200 through 455B.210 Reserved.

PART 2

WATER TREATMENT

455B.211 Definitions.

When used in this part 2 of division III, unless the context otherwise requires:

1. "*Certificate*" means the certificate of competence issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

2. "*Operator*" means a person who has direct responsibility for the operation of a water treatment plant, water distribution system, or waste water treatment plant.

3. "*Waste water treatment plant*" means the facility or group of units used for the treatment of waste water from public sewer systems and for the reduction and handling of solids removed from such wastes.

4. "*Water distribution system*" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer.

5. "*Water supply system*" means the system of pipes, structures, and facilities through which a public water supply is obtained, treated and sold or distributed for human consumption or household use.

6. *"Water treatment plant"* means that portion of the water supply system which in some way alters the physical, chemical, or bacteriological quality of the water.

[C66, 71, §136A.1; C73, 75, 77, 79, 81, §455B.50]
C83, §455B.211
86 Acts, ch 1245, §1890
Referred to in §272C.1

455B.212 Director's duties.

The director shall classify all water treatment plants, water distribution systems, and waste water treatment plants affecting the public welfare with regard to the size, type, character of water and waste water to be treated and other physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge, and experience that an operator must have to supervise the operation of the facilities to protect the public health and prevent pollution. The director may appoint advisory committees to advise the department in carrying out the requirements of this part.

[C66, 71, §136A.2; C73, 75, 77, 79, 81, §455B.51]
C83, §455B.212
86 Acts, ch 1245, §1891, 1899
Referred to in §272C.1

455B.213 Certification of operators.

1. *By director.* The director shall certify persons as to their qualifications to supervise the operation of treatment plants and water distribution systems after considering the recommendations of the commission.

2. *Applications.* Applications for certification shall be on forms prescribed and furnished by the department and shall not contain a recent photograph of the applicant. An applicant is not ineligible for certification because of age, citizenship, sex, race, religion, marital status, or national origin although the application may require citizenship information. The director may consider the past felony record of an applicant only if the felony conviction relates directly to the practice of operation of waterworks or wastewater works. Character references may be required, but shall not be obtained from certificate holders.

3. *Disclosure of confidential information.* An employee of the department shall not disclose information relating to the following:

a. Criminal history or prior misconduct of the applicant.

b. Information relating to the contents of the examination to persons other than members of a board of certification of another state or their employees or an employee of the department.

c. Information relating to the examination results other than final scores except for information about the results of an examination which is given to the person who took the examination.

4. *Violation.*

a. An employee of the department who willfully communicates or seeks to communicate such information, and a person who willfully requests, obtains, or seeks to obtain such information, is guilty of a simple misdemeanor.

b. A member of the commission who willfully communicates or seeks to communicate such information, and any person who willfully requests, obtains, or seeks to obtain such information, is guilty of a public offense which is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail for not more than thirty days.

[C66, 71, §136A.3; C73, 75, 77, 79, 81, §455B.52]
C83, §455B.213
86 Acts, ch 1245, §1892, 1899; 88 Acts, ch 1134, §85; 2011 Acts, ch 25, §103
Referred to in §272C.1

455B.214 and 455B.215 Reserved.

455B.216 Examinations.

The director shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the director. Any written examination may be given by the department. All examinations in theory shall be in writing and the identity of the person taking the examination shall be concealed until after the examination papers have been graded. For examinations in practice, the identity of the person taking the examination shall also be concealed as far as possible. Those applicants whose competency is acceptable shall be recommended for certification. Applicants who fail the examination shall be allowed to take the examination at the next scheduled time. Thereafter, the applicant shall be allowed to take the examination at the discretion of the director. An applicant who has failed the examination may request in writing information from the department concerning the applicant's examination grade and subject areas or questions which the applicant failed to answer correctly, except that if the director administers a uniform, standardized examination, the director is only required to provide the examination grade and the other information concerning the applicant's examination results which is available to the department.

[C66, 71, §136A.7; C73, 75, 77, 79, 81, §455B.56]
C83, §455B.216
86 Acts, ch 1245, §1893; 2016 Acts, ch 1073, §124
Referred to in §272C.1

455B.217 Operator's certificate.

When the director is satisfied that an applicant is qualified by examination or otherwise, the director shall issue a certificate attesting to the competency of the applicant as an operator. The certificate shall indicate the classification of works which the operator is qualified to supervise.

[C66, 71, §136A.9; C73, 75, 77, 79, 81, §455B.57]
C83, §455B.217
86 Acts, ch 1245, §1894
Referred to in §272C.1

455B.218 Duration of certificates — fee — renewal.

Certificates shall be for the multiyear period determined by the director unless sooner revoked by the director, but the certificates remain the property of the department and the certificate shall so state. The fee for issuance of certificates as determined under section 455B.221 shall be prorated on a quarterly basis for any original certificate issued for a period of less than twelve months. A person who fails to renew a certificate prior to its expiration shall be allowed to renew it within thirty days following its expiration, but the director may assess a reasonable penalty as established by rule.

[C66, 71, §136A.10; C73, 75, 77, 79, 81, §455B.58]
C83, §455B.218
86 Acts, ch 1245, §1895
Referred to in §272C.1

455B.219 Revocation or suspension.

The director may suspend or revoke the certificate of an operator, following a hearing before the director, when the operator is guilty of the following acts or offenses:

1. Fraud in procuring a license.
2. Professional incompetency.
3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the operator's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.
4. Habitual intoxication or addiction to the use of drugs.
5. Conviction of a felony related to the profession or occupation of the licensee, or the conviction of any felony that would affect the licensee's ability to operate a water treatment or wastewater treatment plant. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

6. Fraud in representation as to skill or ability.
7. Use of untruthful or improbable statements in advertisements.
8. Willful or repeated violations of division III of this chapter.

[C66, 71, §136A.11; C73, 75, 77, 79, 81, §455B.59]
C83, §455B.219
86 Acts, ch 1245, §1896
Referred to in §272C.1, 272C.3, 272C.4

455B.220 Certificate without examination. Repealed by 2006 Acts, ch 1014, §10.

455B.221 Certification and examination fees.

The director may charge a fee for certificates issued under this part. The fee for the certificates and for renewal shall be based on the costs of administering and enforcing this part and paying the expenses of the department relating to certification. The department shall be reimbursed for all costs incurred. The director shall set a fee for the examination which shall be based upon the annual cost of administering the examinations. All fees collected shall be retained by the department for administration of the certification program.

[C66, 71, §136A.14; C73, 75, 77, 79, 81, §455B.61]
C83, §455B.221
86 Acts, ch 1245, §1897; 94 Acts, ch 1059, §1
Referred to in §272C.1, 455B.218

455B.222 Rules.

The commission may adopt rules as are necessary to carry out this part.

[C66, 71, §136A.15; C73, 75, 77, 79, 81, §455B.62]
C83, §455B.222
86 Acts, ch 1245, §1898
Referred to in §272C.1

455B.223 Competent operator required.

It shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency, operating a water treatment plant, water distribution system or wastewater treatment plant to operate same unless the competency of the operator to operate such plant or system is duly certified to by the director under the provisions of this part 2 of division III. It shall also be unlawful for any person to perform the duties of an operator, as defined herein, without being duly certified under the provisions of said part.

[C66, 71, §136A.16; C73, 75, 77, 79, 81, §455B.63]
C83, §455B.223
Referred to in §272C.1

455B.224 Simple misdemeanor.

Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, violating any provisions of this part 2 of division III or the rules adopted thereunder after written notice thereof by the executive director is guilty of a simple misdemeanor. Each day of operation in such violation of said part or any rules adopted thereunder shall constitute a separate offense. It shall be the duty of the appropriate county attorney to secure injunctions of continuing violations of any provisions of said part or the rules adopted thereunder.

[C66, 71, §136A.17; C73, 75, 77, 79, 81, §455B.64]
C83, §455B.224
Referred to in §272C.1, 331.756(58)

455B.225 through 455B.240 Reserved.

PART 3

SEWAGE WORKS CONSTRUCTION

455B.241 through 455B.246 Repealed by 2011 Acts, ch 9, §10.

455B.247 through 455B.260 Reserved.

PART 4

WATER ALLOCATION AND USE; FLOODPLAIN CONTROL

Referred to in §456.14

455B.261 Definitions.

As used in this part of division III, unless the context otherwise requires:

1. *"Aquifer"* means a water-bearing geologic formation which is capable of yielding a usable quantity of water to a well or spring and which transports and stores groundwater.

2. *"Aquifer storage and recovery"* means the injection and storage of treated water in an aquifer through a permitted well during times when treated water is available, and withdrawal of the treated water from the same aquifer through the same well during times when treated water is needed.

3. *"Basin"* means a specific subsurface water-bearing reservoir having reasonably ascertainable boundaries.

4. *"Beneficial use"* means the application of water to a useful purpose that inures to the benefit of the water user and subject to the user's dominion and control but does not include the waste or pollution of water.

5. *"Depleting use"* means the storage, diversion, conveyance, or other use of a supply of water if the use may impair rights of lower or surrounding users, may impair the natural resources of the state, or may injure the public welfare if not controlled.

6. *"Diffused waters"* means waters from precipitation and snowmelt which is not a part of any watercourse or basin including capillary soil water.

7. *"Established average minimum flow"* means the average minimum flow for a given watercourse at a given point determined and established by the commission.

a. The "average minimum flow" for a given watercourse shall be determined by the following factors:

(1) Average of minimum daily flows occurring during the preceding years chosen by the commission as more nearly representative of changing conditions and needs of a given drainage area at a particular time.

(2) Minimum daily flows shown by experience to be the limit at which further withdrawals would be harmful to the public interest in any particular drainage area.

(3) The minimum daily flows shown by established discharge records and experiences to be definitely harmful to the public interest.

b. The determination shall be based upon available data, supplemented, when available data are incomplete, with whatever evidence is available.

8. *"Floodplains"* means the area adjoining a river or stream which has been or may be covered by flood water.

9. *"Floodway"* means the channel of a river or stream and those portions of the floodplains adjoining the channel which are reasonably required to carry and discharge the flood water or flood flow of any river or stream.

10. *"Groundwater"* means that water occurring beneath the surface of the ground.

11. *"Nonregulated use"* means any beneficial use of water by any person of less than twenty-five thousand gallons per day.

12. *"Permit"* means a written authorization issued by the department to a permittee which authorizes diversion, storage, including storage of treated water in an aquifer, or withdrawal

of water limited as to quantity, time, place, and rate in accordance with this part or authorizes construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or floodplain in accordance with the principles and policies of protecting life and property from floods as specified in this part.

13. *"Permittee"* means a person who obtains a permit from the department authorizing the person to take possession by diversion, storage in an aquifer, or otherwise and to use and apply an allotted quantity of water for a designated beneficial use, and who makes actual use of the water for that purpose or a person who obtains a permit from the department authorizing construction, use, or maintenance of a structure, dam, obstruction, deposit, or excavation in a floodway or floodplain for a designated purpose.

14. *"Regulated use"* means any depleting use except a use specifically designated as a nonregulated use.

15. *"Surface water"* means the water occurring on the surface of the ground.

16. *"Waste"* means any of the following:

a. Permitting groundwater or surface water to flow, or taking it or using it in any manner so that it is not put to its full beneficial use.

b. Transporting groundwater from its source to its place of use in such a manner that there is an excessive loss in transit.

c. Permitting or causing the pollution of a water-bearing strata through any act which will cause salt water, highly mineralized water, or otherwise contaminated water to enter it.

17. *"Watercourse"* means any lake, river, creek, ditch, or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except lakes or ponds without outlet to which only one landowner is riparian.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.1; 82 Acts, ch 1199, §15, 96]

C83, §455B.261

83 Acts, ch 137, §7, 8; 85 Acts, ch 7, §1; 98 Acts, ch 1043, §1, 2; 2012 Acts, ch 1023, §57

Referred to in §455B.265A

455B.262 Declaration of policy and planning requirements.

1. It is recognized that the protection of life and property from floods, the prevention of damage to lands from floods, and the orderly development, wise use, protection, and conservation of the water resources of the state by their considered and proper use is of paramount importance to the welfare and prosperity of the people of the state, and to realize these objectives, it is the policy of the state to correlate and vest the powers of the state in a single agency, the department, with the duty and authority to assess the water needs of all water users at five-year intervals for the twenty years beginning January 1, 1985, and ending December 31, 2004, utilizing a database developed and managed by the Iowa geological survey, and to prepare a general plan of water allocation in this state considering the quantity and quality of water resources available in this state designed to meet the specific needs of the water users. The department shall also develop and the department shall adopt no later than June 30, 1986, a plan for delineation of floodplain and floodway boundaries for selected stream reaches in the various river basins of the state. Selection of the stream reaches and assignment of priorities for mapping of the selected reaches shall be based on consideration of flooding characteristics, the type and extent of existing and anticipated floodplain development in particular stream reaches, and the needs of local governmental bodies for assistance in delineating floodplain and floodway boundaries. The plan of floodplain mapping shall be for the period from June 30, 1986, to December 31, 2004. After the department adopts a plan of floodplain mapping, the department shall submit a progress report and proposed implementation schedule to the general assembly biennially. The department may modify the floodplain mapping plan as needed in response to changing circumstances.

2. The general welfare of the people of the state requires that the water resources of the state be put to beneficial use which includes ensuring that the waste or unreasonable use, or unreasonable methods of use of water be prevented, and that the conservation and protection of water resources be required with the view to their reasonable and beneficial use in the interest of the people, and that the public and private funds for the promotion and expansion

of the beneficial use of water resources be invested to the end that the best interests and welfare of the people are served.

3. Water occurring in a basin or watercourse, or other body of water of the state, is public water and public wealth of the people of the state and subject to use in accordance with this chapter, and the control and development and use of water for all beneficial purposes is vested in the state, which shall take measures to ensure the conservation and protection of the water resources of the state. These measures shall include the protection of specific surface and groundwater sources as necessary to ensure long-term availability in terms of quantity and quality to preserve the public health and welfare.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.2; 82 Acts, ch 1199, §16, 96]

C83, §455B.262

83 Acts, ch 137, §9; 85 Acts, ch 7, §2; 85 Acts, ch 91, §1; 86 Acts, ch 1245, §1899B; 2019 Acts, ch 24, §104

Referred to in §455B.265A

Code editor directive applied

455B.262A National flood insurance program — participation required.

1. All counties and cities in this state that have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the political boundaries of the county or city shall meet the requirements for participation in the national flood insurance program administered by the federal emergency management agency on or before June 30, 2011.

2. If a county or city does not currently have an effective flood insurance rate map or flood hazard boundary map published by the federal emergency management agency that identifies a special flood hazard area within the political boundaries of the county or city, the county or city shall have twenty-four months from the effective date of any future flood insurance rate map or flood hazard boundary map published by the federal emergency management agency to meet the requirements for participation in the national flood insurance program.

3. State participation in funding financial assistance for a flood-related disaster under section 29C.6, subsection 17, paragraph "*a*", is contingent upon the county or city participating in the national flood insurance program pursuant to the terms, conditions, and deadlines set forth in this section.

2009 Acts, ch 147, §1

Referred to in §455B.265A

455B.262B Cooperation with the state geologist.

The department may request and shall receive assistance from the state geologist pursuant to section 456.14 to allow for the allocation and use of water resources, and the preclusion of conflicts among users of water resources, as provided in this part.

2018 Acts, ch 1167, §26

Referred to in §455B.265A, 456.14

455B.263 Duties.

1. The commission shall deliver to the general assembly by January 15, 1987, a plan embodying a general groundwater protection strategy for this state which considers the effects of potential sources of groundwater contaminations on groundwater quality. The plan shall evaluate the ability of existing laws and programs to protect groundwater quality and recommend any necessary additional or alternative laws and programs. The department shall develop the plan with the assistance of and in consultation with representatives of agriculture, industry, and public and other interests. The commission shall report to the general assembly on the status and implementation of the plan on a biennial basis. This section does not preclude the implementation of existing or new laws or programs which may protect groundwater quality.

2. The commission shall designate the official representative of this state on all comprehensive water resources planning groups for which state participation is provided. The commission shall coordinate state planning with local and national planning and, in safeguarding the interests of the state and its people, shall undertake the resolution of any

conflicts that may arise between the water resources policies, plans, and projects of the federal government and the water resources policies, plans, and projects of the state, its agencies, and its people. This section does not limit or supplant the functions, duties, and responsibilities of other state or local agencies or institutions with regard to planning of water-associated projects within the particular area of responsibility of those state or local agencies or institutions.

3. The commission shall enter into negotiations and agreements with the federal government relative to the operation of, or the release of water from, any project that has been authorized or constructed by the federal government when the commission deems the negotiations and agreements to be necessary for the achievement of the policies of this state relative to its water resources.

4. The commission, on behalf of the state, shall enter into negotiations with the federal government relative to the inclusion of conservation storage features for water supply in any project that has been authorized by the federal government when the commission deems the negotiations to be necessary for the achievement of the policies of this state, however, an agreement reached pursuant to these negotiations does not bind the state until enacted into law by the general assembly.

5. A water user who benefits from the development by the federal government of conservation storage for water supply shall be encouraged to assume the responsibility for repaying to the federal government any reimbursable costs incurred in the development, and a user who accepts benefits from the developments financed in whole or part by the state shall assume by contract the responsibility of repaying to the state the user's reasonable share of the state's obligations in accordance with a basis which will assure payment within the life of the development. An appropriation, diversion, or use shall not be made by a person of any waters of the state that have been stored or released from storage either under the authority of the state or pursuant to an agreement between the state and the federal government until the person has assumed by contract the person's repayment responsibility. However, this subsection does not infringe upon any vested property interests.

6. *a.* In its contracts with water users for the payment of state obligations incurred in the development of conservation storage for water supply, the commission shall include the terms deemed reasonable and necessary:

(1) To protect the health, safety, and general welfare of the people of the state.

(2) To achieve the purposes of this chapter.

(3) To provide that the state is not responsible to any person if the waters involved are insufficient for performance.

b. The commission may designate and describe any such contract, and describe the relationships to which it relates, as a sale of storage capacity, a sale of water release services, a contract for the storage or sale of water, or any similar terms suggestive of the creation of a property interest. The term of the contracts shall be commensurate with the investment and use concerned, but the commission shall not enter into any such contract for a term in excess of the maximum period provided for water use permits.

7. The commission shall procure flood control works and water resources projects from or by cooperation with any agency of the United States, by cooperation with the cities and other subdivisions of the state under the laws of the state relating to flood control and use of water resources, and by cooperation with the action of landowners in areas affected by the works or projects when the commission deems the projects to be necessary for the achievement of the policies of this state.

8. The commission shall promote the policies set forth in this part and shall represent this state in all matters within the scope of this part. The commission shall adopt rules pursuant to chapter 17A as necessary to transact its business and for the administration and exercise of its powers and duties.

9. In carrying out its duties, the commission may accept gifts, contributions, donations and grants, and use them for any purpose within the scope of this part.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.3, 455A.8, 455A.15, 455A.17; 82 Acts, ch 1199, §17, 96]

C83, §455B.263
83 Acts, ch 137, §10; 85 Acts, ch 7, §3; 2011 Acts, ch 25, §143
Referred to in §455B.264, 455B.265A, 455B.266

455B.264 Jurisdiction — water and floodplains.

1. The department has jurisdiction over the public and private waters in the state and the lands adjacent to the waters necessary for the purposes of carrying out this part. The department may construct flood control works or any part of the works. In the construction of the works, in making surveys and investigations, or in formulating plans and programs relating to the water resources of the state, the department may cooperate with an agency of another state or the United States, or with any other person.

2. Upon application by any person for permission to divert, pump, or otherwise take waters from any watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use, the director shall investigate the effect of the use upon the natural flow of the watercourse, the effect of the use upon the owners of any land which might be affected by the use, the effect of the use upon prior users of the water source and contracts made under section 455B.263 and whether the use is consistent with the principles and policies of beneficial use.

3. Upon application by any person for approval of the construction or maintenance of any structure, dam, obstruction, deposit, or excavation to be erected, used, or maintained in or on the floodplains of any river or stream, the department shall investigate the effect of the construction or maintenance project on the efficiency and capacity of the floodway. In determining the effect of the proposal the department shall consider fully its effect on flooding of or flood control for any proposed works and adjacent lands and property, on the wise use and protection of water resources, on the quality of water, on fish, wildlife, and recreational facilities or uses, and on all other public rights and requirements.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.18; 82 Acts, ch 1199, §18, 96]
C83, §455B.264
83 Acts, ch 137, §11; 85 Acts, ch 7, §4; 86 Acts, ch 1245, §1899A, 1899B
Referred to in §455B.265A

455B.265 Permits for diversion, storage, and withdrawal — fees authorized.

1. In its consideration of applications for permits, the department shall give priority in processing to persons in the order that the applications are received, except where the application of this processing priority system prevents the prompt approval of routine applications or where the public health, safety, or welfare will be threatened by delay. If the department determines after investigation that the diversion, storage, or withdrawal is consistent with the principles and policies of beneficial use and ensuring conservation, the department shall grant a permit. An application for a permit shall be approved or denied within ninety days from the date that the department receives the complete application. A renewal permit shall be approved or denied by the department within thirty days from the date that the department receives a complete application for renewal. If the applicant requests an extension of the time allotted, the department may approve the request to allow the applicant more time to submit additional information to resolve a contested or complex application. Regardless of the request in the application, and subject to appeal, the director or the department may determine the duration and frequency of withdrawal and the quantity of water to be diverted, stored, or withdrawn pursuant to the permit. Each permit granted after July 1, 1986, shall include conditions requiring routine conservation practices, and requiring implementation of emergency conservation measures after notification by the department.

2. If an application is received by July 1, 1986, the department shall grant a permit for the continuation of a beneficial use of water that was a nonregulated use prior to July 1, 1985, and now requires a permit pursuant to section 455B.268. However, the permit is subject to conditions requiring routine and emergency conservation measures and to modification or cancellation under section 455B.271. Applications received after July 1, 1986 for those uses shall be determined pursuant to subsection 1.

3. Permits shall be granted for a period of ten years; however, permits for withdrawal of water may be granted for less than ten years if geological data on the capacity of the aquifer and the rate of its recharge are indeterminate, and permits for the storage of water may be granted for the life of the structure unless revoked by the department. A permit granted shall remain as an appurtenance of the land described in the permit through the date specified in the permit and any extension of the permit or until an earlier date when the permit or its extension is canceled under section 455B.271. Upon application for a permit prior to the termination date specified in the permit, a permit may be renewed by the department for a period of ten years.

4. Permits for aquifer storage and recovery shall be granted for a period of twenty years or the life of the project, whichever is less, unless revoked by the department. The department shall adopt rules pursuant to chapter 17A relating to information an applicant for a permit shall submit to the department. At a minimum, the information shall include engineering, investigation, and evaluation information requisite to assure protection of the groundwater resource, and assurances that an aquifer storage and recovery site shall not unreasonably restrict other uses of the aquifer. Upon application and prior to the termination date specified in the original permit or a subsequent renewal permit, a renewal permit may be issued by the department for an additional period of twenty years. The department shall not authorize withdrawals of treated water from an aquifer storage and recovery site by anyone other than the permittee during the period of the original permit and each subsequent renewal permit. Treated water injected into an aquifer covered by a permit issued pursuant to this subsection is the property of the permittee.

5. Prior to the issuance of a new permit or modification of a permit under this section to a community public water supply, the department shall publish a notice of recommendation to grant a permit. The notice shall include a brief summary of the proposed permit.

6. The department may charge a fee to a person who has been granted a permit pursuant to this section or is required to have a permit pursuant to section 455B.268. The commission shall adopt by rule the fee amounts.

a. The amount of a fee shall be based on the department's reasonable cost of reviewing applications, issuing permits, ensuring compliance with the terms of the permits, and resolving water interference complaints. The commission shall calculate the fees to produce total revenues of not more than five hundred thousand dollars for each fiscal year.

b. Fees collected pursuant to this subsection shall be credited to the water use permit fund created in section 455B.265A.

c. The commission shall annually review the amount of moneys generated by the fees, the balance in the water use permit fund, and the anticipated expenses for succeeding fiscal years.

d. Fees paid pursuant to this section shall not be subject to sales or services taxes.

e. The department shall not require an applicant to pay both an annual fee and an application fee when submitting an application for a water use permit.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.20; 82 Acts, ch 1199, §19, 96]

C83, §455B.265

83 Acts, ch 137, §12; 85 Acts, ch 7, §5; 86 Acts, ch 1245, §1899A, 1899B; 90 Acts, ch 1094, §1; 98 Acts, ch 1043, §3; 2005 Acts, ch 51, §1; 2008 Acts, ch 1163, §2; 2013 Acts, ch 59, §3; 2019 Acts, ch 97, §11, 12

Referred to in §423.3, 455B.265A, 455B.271, 455B.281

Subsection 5 amended

Subsection 6, paragraphs a and c amended

455B.265A Water use permit fund — appropriation.

1. A water use permit fund is created in the state treasury. The fund shall be separate from the general fund of the state and shall be under the control of the department.

2. Moneys credited to the fund from the fees assessed pursuant to section 455B.265, subsection 6, are appropriated to the department and shall be used for all of the following purposes:

a. Reviewing applications for permits under section 455B.265, issuing permits, and providing technical assistance to permit applicants.

b. Ensuring compliance with the terms of the permits.

c. Implementing and enforcing the provisions of sections 455B.261 through 455B.281 pertaining to water allocation, use, diversion, storage, and withdrawal, and completing investigations needed to issue new or modified permits or to resolve water interference complaints.

3. Notwithstanding section 8.33, any unexpended balance in the fund at the end of a fiscal year shall be retained in the fund.

4. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in the fund shall be retained in the fund.

2008 Acts, ch 1163, §3

Referred to in §455B.265

455B.266 Priority allocation.

1. After any event described in paragraphs *"a"* through *"d"* of this subsection has occurred, the department shall investigate and, if appropriate, may implement the priority allocation plan provided in subsection 2. The department shall require existing permittees to implement appropriate emergency conservation measures. The pertinent public notice and hearing requirements of subsection 4 of this section and sections 455B.271 and 455B.278 shall apply to the implementation of the plan.

a. Receipt of a petition by twenty-five affected persons or a governmental subdivision requesting that the priority allocation plan be implemented due to a substantial local water shortage.

b. Receipt of information from a state or federal natural resource, research or climatological agency indicating that a drought of local or state magnitude is imminent.

c. Issuance by the governor of a proclamation of a disaster emergency due to a drought or other event affecting water resources of the state.

d. Determination by the department in conjunction with the department of homeland security and emergency management of a local crisis which affects availability of water.

2. Notwithstanding a person's possession of a permit or the person's use of water being a nonregulated use, the department may suspend or restrict usage of water by category of use on a local or statewide basis in the following order:

a. Water conveyed across state boundaries.

b. Uses of water primarily for recreational or aesthetic purposes.

c. Uses of water for the irrigation of hay, corn, soybeans, oats, grain sorghum or wheat.

d. Uses of water for the irrigation of crops other than hay, corn, soybeans, oats, grain sorghum or wheat.

e. Uses of water for manufacturing or other industrial processes.

f. Uses of water for generation of electrical power for public consumption.

g. Uses of water for livestock production.

h. Uses of water for human consumption and sanitation supplied by rural water districts, municipal water systems, or other public water supplies as defined in section 455B.171.

i. Uses of water for human consumption and sanitation supplied by a private water supply as defined in section 455B.171.

3. Unless the governor has issued a proclamation described in subsection 1, paragraph *"c"*, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the uses of water provided in subsection 2, paragraphs *"g"* through *"i"* or on users of water pursuant to a contract with the state as provided in section 455B.263, subsections 5 and 6. If a contract with the state as provided in section 455B.263, subsections 5 and 6 was in effect prior to March 5, 1985, the department shall not impose a suspension of water use or a further restriction, other than conservation, on the users of water pursuant to that contract.

4. Suspension or restrictions of water usage applicable to otherwise nonregulated water users shall be by emergency order of the director which the department shall cause to be published in local newspapers of general circulation and broadcast by local media. The emergency order shall state an effective date of the suspension or restriction and shall be

immediately effective on such date unless stayed, modified or vacated at a hearing before the commission or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.21; 82 Acts, ch 1199, §20, 96]

C83, §455B.266

83 Acts, ch 137, §13; 85 Acts, ch 7, §6; 86 Acts, ch 1136, §1; 86 Acts, ch 1245, §1899A, 1899B; 92 Acts, ch 1139, §30; 2003 Acts, ch 179, §157; 2013 Acts, ch 29, §56

Referred to in §455B.265A, 455B.271

455B.267 Permits for beneficial use — prohibitions.

1. The director or the commission may issue a permit for beneficial use of water in a watercourse if the established average minimum water flow is preserved.

2. A use of water shall not be authorized if it will impair the effect of this chapter or any other pollution control law of this state.

3. A permit shall not be issued or continued if it will impair the navigability of any navigable watercourse.

4. A permit to divert, store or withdraw water shall not be issued or continued if it will unreasonably impair the long-term availability of water from a surface or groundwater source in terms of quantity or quality, or otherwise adversely affect the public health or welfare.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.22 – 455A.24; 82 Acts, ch 1199, §21, 96]

C83, §455B.267

85 Acts, ch 7, §7; 86 Acts, ch 1245, §1899A

Referred to in §455B.265A, 460.302

455B.268 When permit required.

1. A permit shall be required for the following:

a. Except for a nonregulated use, a person diverting, storing or withdrawing water from any surface or groundwater source.

b. A person who diverts water or any material from the surface directly into an underground watercourse or basin.

2. The commission may adopt, modify, or repeal rules pursuant to chapter 17A specifying the conditions under which the director may authorize specific nonrecurring minor uses of water for periods not to exceed one year through registration.

3. Notwithstanding any exemptions from permit requirements, nothing in this part exempts water users from requirements for reporting which the commission adopts by rule.

[C58, 62, 66, 71, 73, 75, 77, §455A.25; C79, 81, §455A.8, 455A.25; 82 Acts, ch 1199, §22, 96]

C83, §455B.268

85 Acts, ch 7, §8; 86 Acts, ch 1245, §1899A

Referred to in §455B.172, 455B.265, 455B.265A

455B.269 Taking water prohibited.

1. A person shall not take water from a natural watercourse, underground basin or watercourse, drainage ditch, or settling basin within this state for any purpose other than a nonregulated use except in compliance with the sections of this part which relate to the withdrawal, diversion, or storage of water. However, existing uses may be continued during the period of the pendency of an application for a permit.

2. A person, other than the aquifer storage and recovery permittee, shall not take treated water from a permitted aquifer storage and recovery site within this state.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.26; 82 Acts, ch 1199, §23, 96]

C83, §455B.269

83 Acts, ch 137, §14; 98 Acts, ch 1043, §4

Referred to in §455B.265A

455B.270 Rights preserved.

The sections of this part which relate to the withdrawal, diversion, or storage of water do not deprive any person of the right to use diffused waters, to drain land by use of tile, open ditch, or surface drainage, or to construct an impoundment on the person's property or across a stream that originates on the person's property if provision is made for safe construction

and for a continued established average minimum flow when the flow is required to protect the rights of water users below.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.27; 82 Acts, ch 1199, §24, 96]

C83, §455B.270

83 Acts, ch 137, §15

Referred to in §455B.265A

455B.271 Modification or cancellation of permits.

Each permit issued under section 455B.265 is irrevocable for its term and for any extension of its term except as follows:

1. A permit may be modified or canceled by the department with the consent of the permittee.

2. Subject to appeal to the department of inspections and appeals, a permit may be modified or canceled by the director if any of the following occur:

a. There is a breach of the terms of the permit.

b. There is a violation of the law pertaining to the permit by the permittee or the permittee's agents.

c. There is a circumstance of nonuse as provided in section 455B.272.

d. The department finds that modification or cancellation is necessary to protect the public health or safety, to protect the public interests in lands or waters, to require conservation measures or to prevent substantial injury to persons or property in any manner. Before the modification or cancellation is effective, the department shall give at least thirty days' written notice mailed to the permittee at the permittee's last known address, stating the grounds of the proposed modification or cancellation and giving the permittee an opportunity to be heard on the proposal.

3. By written emergency order to the permittee, the department may suspend or restrict operations under a permit if the director finds it necessary in an emergency to protect the public health, to protect the public interest in waters against imminent danger of substantial injury in any manner or to an extent not expressly authorized by the permit, to implement the priority allocation system of section 455B.266, or to protect persons or property against imminent danger. The department may require the permittee to take measures necessary to prevent or remedy the injury. The emergency order shall state the effective date of the suspension or restriction and shall be immediately effective on that date unless stayed, modified or vacated at a hearing before the department or by a court.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.28; 82 Acts, ch 1199, §25, 96]

C83, §455B.271

83 Acts, ch 137, §16; 85 Acts, ch 7, §9, 10; 86 Acts, ch 1245, §1899A, 1899B

Referred to in §455B.265, 455B.265A, 455B.266, 455B.281

455B.272 Termination of permit.

The right of the permittee and the permittee's successors to the use of water shall terminate when the permittee or the permittee's successors fail for three consecutive years to use it for the specific beneficial purpose authorized in the permit and, after notification by the department of intent to cancel the permit for nonuse, the permittee or the permittee's successors fail to demonstrate adequate plans to use water within a reasonable time. However, nonuse of water due to adequate rainfall does not constitute grounds for cancellation of a permit to use water for irrigation.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.29; 82 Acts, ch 1199, §26, 96]

C83, §455B.272

83 Acts, ch 137, §17

Referred to in §455B.265A, 455B.271

455B.273 Disposal of permit.

A permittee may sell, transfer, or assign a permit by conveying, leasing, or otherwise transferring the ownership of the land described in the permit, but the permit does not

constitute ownership or absolute rights of use of the waters. The waters remain subject to the principle of beneficial use and the orders of the director or commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.30; 82 Acts, ch 1199, §27, 96]
C83, §455B.273
86 Acts, ch 1245, §1899
Referred to in §455B.265A

455B.274 Unauthorized depleting uses.

If a person files a complaint with the department that another person is making a depleting use of water not expressly exempted as a nonregulated use under this part and without a permit to do so, the department shall cause an investigation to be made and if the facts stated in the complaint are verified the department shall order the discontinuance of the use.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.32; 82 Acts, ch 1199, §28, 96]
C83, §455B.274
Referred to in §455B.265A

455B.275 Prohibited acts — powers of commission and executive director.

1. A person shall not permit, erect, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on a floodway or floodplains, 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.

2. The department may commence, maintain, and prosecute any appropriate action to enjoin or abate a nuisance, including any of the nuisances specified in subsection 1 and any other nuisance which adversely affects flood control.

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

(1) Erect, construct, use, or maintain a structure, dam, obstruction, deposit, or excavation in or on any floodway or floodplains.

(2) Erect, construct, maintain, or operate a dam on a navigable or meandered stream.

(3) Erect, construct, maintain, or operate a dam on a stream for manufacturing or industrial purposes.

b. 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. Notwithstanding design criteria and guidelines for Iowa dams adopted by the department, all of the following standards shall apply to a person reconstructing a dam that was damaged due to a natural disaster who files an application under subsection 3:

a. The person reconstructing the dam is only required to possess the flooding easements or ownership which was held prior to the reconstruction as long as the former normal pool elevation is not exceeded and the spillway capacity is increased by at least fifty percent.

b. Flooding easements or ownership is only required to the top of the reconstructed spillway elevation.

5. 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 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 352.11, a structure, dam, obstruction, deposit, or excavation on a floodway or floodplain in an agricultural area established under chapter 352 is not exempt from the sections of this part which relate to regulation of floodplains 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.

6. The department may remove or eliminate a structure, dam, obstruction, deposit, or excavation in a floodway which adversely affects the efficiency of or unduly restricts the capacity of the floodway, by an action in condemnation, and in assessing the damages in the proceeding, the appraisers and the court shall take into consideration whether the structure, dam, obstruction, deposit, or excavation is lawfully in or on the floodway in compliance with this part.

7. The department may require, as a condition of an approval order or permit granted pursuant to this part, 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.

8. When approving a request to straighten a stream, the department may establish as a condition of approval a permanent prohibition against tillage of land owned by the person receiving the approval and lying within a minimum distance from the stream sufficient in the judgment of the director or commission to hold soil erosion to reasonable limits. The department shall record the prohibition in the office of the county recorder of the appropriate county and the prohibition shall attach to the land.

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

10. The commission or the department shall not initiate any administrative or judicial action to remove or eliminate any structure, dam, obstruction, deposit, or excavation in a floodway, or to remove or eliminate any stream straightening, or to place other restrictions on the use of land or water affected by the structure, dam, obstruction, deposit, excavation, or stream straightening if not initiated within five years after the department becomes aware of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening. After ten years from the completion of the erection or making of the structure, dam, obstruction, deposit, excavation, or stream straightening, the prohibition of this subsection applies to, but is not limited to, any administrative or judicial abatement or action in condemnation that the commission or department may initiate under this section unless action is required to protect the public safety, in which case this section is not intended to limit the department from taking actions otherwise authorized by law.

[C50, 54, §455A.19; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.33; 82 Acts, ch 1199, §29, 96]

C83, §455B.275

83 Acts, ch 137, §18; 86 Acts, ch 1144, §2; 88 Acts, ch 1196, §1, 2; 90 Acts, ch 1108, §4; 2011 Acts, ch 25, §143; 2013 Acts, ch 69, §1; 2013 Acts, ch 140, §70

Referred to in §455B.265A, 469A.8

Nuisances in general, chapter 657

In addition to prospective application, 1988 amendments amending subsection 5 and enacting subsection 10 apply to all knowledge possessed by department for at least five years before July 1, 1988, and to all projects completed earlier than ten years before July 1, 1988; 88 Acts, ch 1196, §3

Validity of permits or licenses issued before July 1, 1990, under chapter 469, Code 1989; rights and obligations governed by §455B.275; 90 Acts, ch 1108, §6

455B.276 Floodplains — encroachment limits.

1. The commission may establish and enforce rules for the orderly development and wise use of the floodplains of any river or stream within the state and alter, change, or revoke the rules. The commission shall determine the characteristics of floods which reasonably may be expected to occur and may establish by order encroachment limits, protection methods, and minimum protection levels appropriate to the flooding characteristics of the stream and to reasonable use of the floodplains. The order shall fix the length of floodplains to be regulated at any practical distance, the width of the zone between the encroachment limits so as to include portions of the floodplains adjoining the channel, which with the channel,

are required to carry and discharge the flood waters or flood flow of the river or stream, and the design discharge and water surface elevations for which protection shall be provided for projects outside the encroachment limits but within the limits of inundation. Plans for the protection of projects proposed for areas subject to inundation shall be reviewed as plans for flood control works within the purview of section 455B.277. An order establishing encroachment limits shall not be issued until notice of the proposed order is given and an opportunity for public hearing is given for the presentation of protests against the order. In establishing the limits, the commission shall avoid to the greatest possible degree the evacuation of persons residing in the area of a floodway, the removal of residential structures occupied by the persons in the area of a floodway, and the removal of structures erected or made prior to July 4, 1965, which are located on the floodplains of a river or stream but not within the area of a floodway.

2. The commission shall cooperate with and assist local units of government in the establishment of encroachment limits, floodplain regulations, and zoning ordinances relating to floodplain areas within their jurisdiction. Encroachment limits, floodplain regulations, or floodplain zoning ordinances proposed by local units of government shall be submitted to the department for review and approval prior to adoption by the local units of government. Changes or variations from an approved regulation or ordinance as it relates to floodplain use are subject to approval by the commission prior to adoption. Individual applications, plans, and specifications and individual approval orders shall not be required for works on the floodplains constructed in conformity with encroachment limits, floodplain regulations, or zoning ordinances adopted by the local units of government and approved by the commission.

[C50, 54, §455A.21; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.35; 82 Acts, ch 1199, §30, 96]
C83, §455B.276
83 Acts, ch 137, §19; 2018 Acts, ch 1041, §127
Referred to in §455B.265A

455B.277 Flood control works coordinated.

1. All flood control works in the state, which are established and constructed after April 16, 1949, shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout the state. A person shall not construct or install works of any nature for flood control until the proposed works and the plans and specifications for the works are approved by the department. The department shall consider all the pertinent facts relating to the proposed works which will affect flood control and water resources in the state and shall determine whether the proposed works in the plans and specifications will be in aid of and acceptable as part of, or will adversely affect and interfere with flood control in the state, adversely affect the control, development, protection, allocation, or utilization of the water resources of the state, or adversely affect or interfere with an approved local water resources plan. In the event of disapproval, the department shall set forth the objectionable features so that the proposed works and the plans and specifications for the proposed works may be corrected or adjusted to obtain approval.

2. This section applies to drainage districts, soil and water conservation districts, the natural resource commission, political subdivisions of the state, and private persons undertaking projects relating to flood control.

[C50, 54, §455A.22; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.36; 82 Acts, ch 1199, §31, 96]
C83, §455B.277
83 Acts, ch 137, §20; 88 Acts, ch 1134, §86; 2018 Acts, ch 1041, §127
Referred to in §455B.265A, 455B.276

455B.278 Permit application procedures.

1. The commission shall adopt, modify, or repeal rules establishing procedures by which permits required under this part shall be issued, suspended, revoked, modified, or denied. The rules shall include provisions for application, public notice and opportunity for public hearing, and contested cases. Public notice of a decision by the director to issue a permit

shall be given in a manner designed to inform persons who may be adversely affected by the permitted project or activity.

2. Action by the department upon an application for a permit required under this part may be appealed to the commission by the applicant or any affected person within thirty days of the department's action. A hearing before the commission or its designee is a contested case. The hearings and judicial review of decisions of the commission shall be carried out in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located. If the commission, the district court, or the supreme court determines that the action of the commission shall be stayed, the petitioner shall file an appropriate bond approved by the court.

[C50, 54, §455A.23; C58, 62, 66, 71, 73, 75, 77, 79, 81, §455A.19, 455A.37; 82 Acts, ch 1199, §32, 96]

C83, §455B.278

83 Acts, ch 136, §3; 83 Acts, ch 137, §21

Referred to in §455B.265A, 455B.266

455B.279 Violation.

1. The director may issue any order necessary to secure compliance with or prevent a violation of this part or the rules adopted pursuant to this part. The order may be appealed to the commission by filing a notice of appeal with the director. The appeal shall be conducted as a contested case pursuant to chapter 17A and the commission may affirm, modify, or revoke the order. The department may request legal services as required from the attorney general, including any legal proceeding necessary to obtain compliance with this part and rules and orders issued under this part. The applicable time frames for the issuance and appeal of an order are defined in section 455B.110.

2. A person who violates a provision of this part or a rule or order adopted or promulgated or the conditions of a permit issued pursuant to this part is subject to a civil penalty not to exceed five hundred dollars for each day that a violation occurs.

[C50, 54, §455A.26; C58, 62, 66, 71, 73, 75, 77, §455A.39; C79, 81, §455A.33(7), 455A.39; 82 Acts, ch 1199, §33, 96]

C83, §455B.279

83 Acts, ch 137, §22; 86 Acts, ch 1144, §3; 2019 Acts, ch 97, §5

Referred to in §455B.265A

Subsection 1 amended

455B.280 Reserved.

455B.281 Compensation for well interference.

1. If an investigation by the department, using information provided by the applicant or permittee and the complainant, discloses that a proposed or existing permitted use or combination of such uses is causing or will cause the delivery system to fail in a well which supplies water for a nonregulated use, the department may condition issuance or continuation of a permit upon payment by the permittee of compensation for all or a portion of the cost of a replacement water supply system or remedial measures necessitated by the interference. However, such condition may be imposed only after the parties demonstrate to the department that a good-faith effort to negotiate a mutually agreeable compensation has been made and has failed.

2. Determination of the amount of compensation for the well interference shall be made a part of the determination of the department in accordance with section 455B.265 or 455B.271. The department may require the submission of itemized estimates of the cost of remedial repairs or a replacement water supply system. In determining appropriate compensation, the department shall consider the age and condition of the affected well or pumping system and its reasonableness as a method of obtaining groundwater in light of the history of development of groundwater in the surrounding area. When compensation is required for all or part of the cost of construction of a replacement water supply system or reconstruction of an affected well, the construction or reconstruction must comply with

applicable well construction standards. A permittee is not required to pay compensation before having an opportunity to do test pumping authorized by the department and supervised by the department or designee.

3. The determination of the department shall be subject to administrative and judicial review and shall be the exclusive remedy for such interference.

85 Acts, ch 7, §11; 2018 Acts, ch 1041, §127

Referred to in §455B.265A

455B.282 County and city control of junkyards.

Nothing in this part shall be construed as limiting the authority of a city or county to adopt an ordinance regulating a junkyard located within a five hundred year floodplain.

2009 Acts, ch 146, §4

455B.283 through 455B.290 Reserved.

PART 5

WATER POLLUTION CONTROL WORKS AND DRINKING WATER FACILITIES FINANCING PROGRAM

See also §16.131 – 16.135

455B.291 Definitions.

As used in this part, unless the context requires otherwise:

1. *"Administration funds"* means funds established pursuant to this part for the costs and expenses associated with administering the program under this part and section 16.133A.

2. *"Authority"* means the Iowa finance authority created in section 16.1A.

3. *"Clean Water Act"* means the federal Water Pollution Control Act of 1972, Pub. L. No. 92-500, as amended by the Water Quality Act of 1987, Pub. L. No. 100-4, as published in 33 U.S.C. §1251 – 1376, as amended.

4. *"Cost"* means all costs, charges, expenses, or other indebtedness incurred by a loan recipient and determined by the department as reasonable and necessary for carrying out all works and undertakings necessary or incidental to the accomplishment of any project.

5. *"Eligible entity"* means a person eligible under the provisions of the Clean Water Act, the Safe Drinking Water Act, and the commission rules to receive loans for projects from any of the revolving loan funds.

6. *"Loan recipient"* means an eligible entity that has received a loan from any of the revolving loan funds.

7. *"Municipality"* means a city, county, sanitary district, state agency, or other governmental body or corporation empowered to provide sewage collection and treatment services, or any combination of two or more of the governmental bodies or corporations acting jointly, in connection with a project.

8. *"Private entity"* means a corporation, limited liability company, trust, estate, partnership, association, or any other legal entity or a legal representative, agent, officer, employee, or assignee of such entity. *"Private entity"* does not include an individual, municipality, city utility as defined in section 362.2, public water supply system as defined in section 455B.171, or a qualified entity as defined in section 384.84.

9. *"Program"* means the water pollution control works and drinking water facilities financing program created pursuant to section 455B.294.

10. *"Project"* means one of the following:

a. (1) In the context of water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment, and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in section 212 of the Clean Water Act, or the implementation and development of management programs established under sections 319 and 320 of the Clean Water Act, including construction and undertaking

of nonpoint source water pollution control projects and related development activities authorized under those sections.

(2) On and after July 1, 2019, nonpoint source water pollution control projects for purposes of subparagraph (1) shall not include the acquisition of real property by a private entity for future donation or sale to a political subdivision, the department, or the federal government except as included in subparagraph (3).

(3) Subparagraph (2) does not apply to the acquisition of land by a private entity intended for such future donation when the private entity acquires any of the following:

(a) Only that portion of land on which an edge-of-field practice consistent with the Iowa nutrient reduction strategy is installed to provide water quality benefits beyond the geographic footprint of the practice.

(b) Any necessary setbacks to a portion of land included in subparagraph division (a) as authorized by the department.

b. In the context of drinking water facilities, the acquisition, construction, reconstruction, extending, remodeling, improving, repairing, or equipping of waterworks, water mains, extensions, or treatment facilities useful for providing potable water to residents served by a water system, including the acquisition of real property needed for any of the foregoing purposes, and such other purposes and programs as may be authorized under the Safe Drinking Water Act.

11. *"Revolving loan funds"* means the funds of the program established under sections 16.133A and 455B.295.

12. *"Safe Drinking Water Act"* means Tit. XIV of the federal Public Health Service Act, commonly known as the "Safe Drinking Water Act", 42 U.S.C. §300f et seq., as amended by the Safe Drinking Water Amendments of 1996, Pub. L. No. 104-182, as amended.

13. *"Water system"* means any community water system or nonprofit noncommunity water system, each as defined in the Safe Drinking Water Act, that is eligible under the rules of the department to receive a loan under the program for the purposes of undertaking a project.

88 Acts, ch 1217, §10; 89 Acts, ch 83, §54; 95 Acts, ch 98, §1; 97 Acts, ch 4, §7; 2002 Acts, ch 1019, §1; 2009 Acts, ch 30, §11; 2013 Acts, ch 100, §25, 27; 2014 Acts, ch 1080, §89, 98; 2019 Acts, ch 98, §1, 2

Referred to in §16.131, 418.4, 455B.199B, 455B.295, 456A.17
NEW subsection 8
Former subsection 8 renumbered as 9
Former subsection 9 amended and renumbered as 10
Former subsections 10 – 12 renumbered as 11 – 13

455B.292 Findings.

The general assembly finds that the proper construction, rehabilitation, operation, and maintenance of modern and efficient wastewater treatment works, other water pollution control works, and drinking water facilities are essential to protecting and improving the state's water quality and the health of its citizens; that protecting and improving water quality is an issue of concern to the citizens of the state; that in addition to protecting and improving the state's water quality, adequate wastewater treatment and water pollution control works and drinking water facilities are essential to economic growth and development; that during the last several years the amount of federal grant money available to states and local governments for assistance in constructing and improving wastewater treatment works and safe drinking water facilities has sharply diminished and will likely continue to diminish; and that it is proper for the state to encourage local governments, individuals, and other entities to undertake water pollution control and drinking water projects through the establishment of a state mechanism to provide loans at the lowest reasonable rates.

88 Acts, ch 1217, §11; 97 Acts, ch 4, §8; 2002 Acts, ch 1019, §2

Referred to in §16.131, 455B.199B, 456A.17

455B.293 Policy.

It is the policy of this state that it is in the public interest to establish a water pollution control works and drinking water facilities financing program and revolving loan funds and administration funds to make loans available from the state to eligible entities for the purpose

of undertaking projects. This section shall be broadly construed to effect and accomplish that purpose.

88 Acts, ch 1217, §12; 97 Acts, ch 4, §9; 2002 Acts, ch 1019, §3
Referred to in §16.131, 455B.199B, 456A.17

455B.294 Establishment of the water pollution control works and drinking water facilities financing program.

The water pollution control works and drinking water facilities financing program is established for the purpose of making loans available to eligible entities to finance all or part of the costs of projects. The program shall be a joint and cooperative undertaking of the department and the authority. The department and the authority may enter into and provide any agreements, documents, instruments, certificates, data, or information necessary in connection with the operation, administration, and financing of the program consistent with this part, the Safe Drinking Water Act, the Clean Water Act, the rules of the department and the commission, the rules of the authority, and other applicable federal and state law. The authority and the department may act to conform the program to the applicable guidance and regulations adopted by the United States environmental protection agency.

88 Acts, ch 1217, §13; 97 Acts, ch 4, §10; 2002 Acts, ch 1019, §4; 2014 Acts, ch 1080, §90, 98
Referred to in §16.131, 16.131A, 455B.199B, 455B.291, 456A.17

455B.295 Funds and accounts.

1. Four separate funds are established in the state treasury, to be known as the water pollution control works revolving loan fund, the water pollution control works administration fund, the drinking water facilities revolving loan fund, and the drinking water facilities administration fund.

2. *a.* Each of the revolving loan funds shall include sums appropriated to the revolving loan funds by the general assembly, sums transferred by action of the governor under section 455B.296, subsection 3, sums allocated to the state expressly for the purposes of establishing each of the revolving loan funds under the Clean Water Act and the Safe Drinking Water Act, all receipts by the revolving loan funds, and any other sums designated for deposit to the revolving loan funds from any public or private source. All moneys appropriated to and deposited in the revolving loan funds are appropriated and shall be used for the sole purpose of making loans to eligible entities to finance all or part of the cost of projects, including sponsor projects under the water resource restoration sponsor program established in section 455B.199. The moneys appropriated to and deposited in the water pollution control works revolving loan fund shall not be used to pay the nonfederal share of the cost of projects receiving grants under the Clean Water Act. On and after July 1, 2019, moneys in the revolving loan funds shall not be used to finance, subsidize, or enable the acquisition of real property by a private entity except that moneys in the revolving loan funds may be used to finance or subsidize an acquisition of real property by a private entity that occurred prior to July 1, 2019, or to finance, subsidize, or acquire an edge-of-field practice or setback included in section 455B.291, subsection 10, paragraph "*a*", subparagraph (3). The moneys in the revolving loan funds are not considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state but shall remain in the revolving loan funds to be used for their respective purposes. The revolving loan funds are separate dedicated funds under the administration and control of the authority and subject to section 16.31. Moneys on deposit in the revolving loan funds shall be invested by the treasurer of state in cooperation with the authority, and the income from the investments shall be credited to and deposited in the appropriate revolving loan funds.

b. For purposes of this subsection, "*edge-of-field practice*" means a bioreactor, saturated buffer, wetland, or buffer.

3. The administration funds shall include sums appropriated to the administration funds by the general assembly, sums allocated to the state for the express purposes of administering the programs, policies, and undertakings authorized by the Clean Water Act and the Safe Drinking Water Act, and all receipts by the administration funds from any

public or private source. All moneys appropriated to and deposited in the administration funds are appropriated for and shall be used and administered by the department to pay the costs and expenses associated with the program, including administration of the program, as may be determined by the department.

4. The department may establish and maintain funds or accounts determined to be necessary to carry out the purposes of this part and shall provide for the funding, administration, investment, restrictions, and disposition of the funds and accounts. The department and the authority may combine administration of the revolving loan funds, and cross collateralize the same to the extent permitted by the Clean Water Act, the Safe Drinking Water Act, and other applicable federal law. Moneys appropriated to the department and the authority for purposes of paying the costs and expenses associated with the administration of the program shall be administered as determined by the department and the authority.

5. The funds or accounts held by the department, or a trustee acting on behalf of the department pursuant to a trust agreement related to the program, shall not be considered part of the general fund of the state, are not subject to appropriation for any other purpose by the general assembly, and in determining a general fund balance shall not be included in the general fund of the state, but shall remain in the funds and accounts maintained by the department or trustee pursuant to a trust agreement. Funds and accounts held by the department, or a trustee acting on behalf of the department pursuant to a trust agreement related to the program, are separate dedicated funds and accounts under the administration and control of the department.

88 Acts, ch 1217, §14; 97 Acts, ch 4, §11; 2002 Acts, ch 1019, §5; 2009 Acts, ch 30, §12 – 14; 2009 Acts, ch 72, §8; 2019 Acts, ch 98, §3

Referred to in §16.131, 16.131A, 455B.199, 455B.199B, 455B.291, 456A.17

Subsection 2 amended

455B.296 Intended use plans — capitalization grants — accounting.

1. Each fiscal year beginning July 1, 1988, the department may prepare and deliver intended use plans and enter into capitalization grant agreements with the administrator of the United States environmental protection agency under the terms and conditions set forth in the Clean Water Act and the Safe Drinking Water Act and federal regulations adopted pursuant to the Acts and may accept capitalization grants for each of the revolving loan funds in accordance with payment schedules established by the administrator. All payments from the administrator shall be deposited in the appropriate revolving loan funds.

2. The department and the authority shall establish fiscal controls and accounting procedures during appropriate accounting periods for payments received for deposit in and disbursements made from the revolving loan funds and the administration funds and to fund balances at the beginning and end of the accounting periods.

3. Upon receipt of the joint recommendation of the department and the authority with respect to the amounts to be so reserved and transferred, and subject in all respects to the applicable provisions of the Clean Water Act, Safe Drinking Water Act, and other applicable federal law, the governor may direct that the recommended portion of a capitalization grant made in respect of one of the revolving loan funds in any year be reserved for the transfer to another revolving loan fund. The authority and the department may effect the transfer of any funds reserved for such purpose, as directed by the governor, and shall cause the records of the program to reflect the transfer. Any sums so transferred shall be expended in accordance with the intended use plan for the applicable revolving loan fund.

88 Acts, ch 1217, §15; 97 Acts, ch 4, §12; 2002 Acts, ch 1019, §6; 2009 Acts, ch 30, §15

Referred to in §16.131, 455B.199B, 455B.295, 455B.297, 456A.17

455B.297 Loans to eligible entities.

1. Moneys deposited in the revolving loan funds shall be used for the primary purpose of making loans to eligible entities to finance the eligible costs of projects in accordance with the intended use plans developed by the department under section 455B.296. The loan recipients and the purpose and amount of the loans shall be determined by the director, in accordance with rules adopted by the commission, in compliance with and subject to the terms and conditions of the Clean Water Act, the Safe Drinking Water Act, and other

applicable federal law, as applicable, and any resolution, agreement, indenture, or other document of the authority, and rules adopted by the authority, relating to any bonds, notes, or other obligations issued for the program which may be applicable to the loan.

2. Notwithstanding any provision of this chapter to the contrary, moneys received under the federal American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, and deposited in the revolving loan funds may be used in any manner permitted or required by applicable federal law.

88 Acts, ch 1217, §16; 97 Acts, ch 4, §13; 2002 Acts, ch 1019, §7; 2009 Acts, ch 30, §16; 2009 Acts, ch 100, §19, 21

Referred to in §16.131, 455B.199B, 456A.17

455B.298 Powers and duties of the director.

The director shall:

1. Process, review, and approve or deny intended use plan applications to determine if an application meets the eligibility requirements set by the rules of the department.

2. Process and review all documents relating to the planning, design, construction, and operation of water pollution control works and drinking water facilities pursuant to this part.

3. Prepare and process, in coordination with the authority, documents relating to the administration of the program.

4. Include in the budget prepared pursuant to section 455A.4, subsection 1, paragraph "c", an annual budget for the administration of the program and the use and disposition of amounts on deposit in the administration funds.

5. Receive fees pursuant to the program as determined in conjunction with the authority.

6. Perform other acts and assume other duties and responsibilities necessary for the operation of the program and for the carrying out of the Clean Water Act and the Safe Drinking Water Act.

88 Acts, ch 1217, §17; 97 Acts, ch 4, §14; 2002 Acts, ch 1019, §8; 2009 Acts, ch 30, §17

Referred to in §16.131, 455B.199B, 456A.17

455B.299 Adoption of rules.

The commission shall adopt rules pursuant to chapter 17A appropriate for the administration of this part.

88 Acts, ch 1217, §18

Referred to in §16.131, 455B.199B, 456A.17

455B.300 Reserved.

DIVISION IV

SOLID WASTE DISPOSAL

PART 1

SOLID WASTE

Referred to in §455D.4A

455B.301 Definitions.

As used in this part 1 of division IV, unless the context clearly indicates a contrary intent:

1. *"Actual cost"* means the operational, remedial and emergency action, closure, postclosure, and monitoring costs of a sanitary disposal project for the lifetime of the project.

2. *"Beneficial use"* means a specific utilization of a solid by-product as a resource that constitutes reuse rather than disposal, does not adversely affect human health or the environment, and is approved by the department.

3. *"Beverage"* means wine as defined in section 123.3, subsection 54, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, wine cooler or drink, tea, potable water, soda water and similar carbonated soft drinks, mineral

water, fruit juice, vegetable juice, or fruit or vegetable drinks, which are intended for human consumption.

4. *"Beverage container"* means a sealed glass, plastic, or metal bottle, can, jar, or carton containing a beverage.

5. *"Biodegradable"* means degradable through a process by which fungi or bacteria secrete enzymes to convert a complex molecular structure to simple gasses and organic compounds.

6. *"Closure"* means actions that will prevent, mitigate, or minimize the threat to public health and the environment posed by a closed sanitary landfill, including but not limited to application of final cover, grading and seeding of final cover, installation of an adequate monitoring system, and construction of ground and surface water diversion structures, if necessary.

7. *"Closure plan"* means the plan which specifies the methods and schedule by which an operator will complete or cease disposal operations of a sanitary disposal project, prepare the area for long-term care, and make the area suitable for other uses.

8. *"Degradable"* means capable of decomposing by biodegradation, photodegradation, or chemical process into harmless component parts after exposure to natural elements for not more than three hundred sixty-five days.

9. *"Financial assurance instrument"* means an instrument submitted by an applicant to ensure the operator's financial capability to provide reasonable and necessary remedial responses.

a. The instrument shall be sufficient to ensure adequate response pursuant to section 455B.304, subsection 6.

b. The instrument shall be sufficient to ensure the proper closure and postclosure care of the project, and corrective action, if necessary, in the event the operator fails to correctly perform those requirements.

c. The instrument may provide for one or more of the following:

(1) The establishment of a secured trust fund.

(2) The use of a cash or surety bond.

(3) The obtaining of insurance.

(4) The satisfaction of a corporate financial test.

(5) The satisfaction of a local government financial test.

(6) The obtaining of a corporate guarantee.

(7) The obtaining of a local government guarantee.

(8) The use of a local government dedicated fund.

(9) The obtaining of an irrevocable letter of credit.

10. *"Gasification"* means a process through which recoverable feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted to crude oil, diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are returned to the economic mainstream in the form of raw materials, products, or fuels.

11. *"Gasification facility"* means a facility that receives, separates, stores, and converts post-use polymers and recoverable feedstocks using gasification. A gasification facility is not a sanitary disposal project, solid waste disposal facility, or processing facility.

12. *"Incinerator"* means any enclosed device using controlled flame combustion that does not meet the criteria for classification as a boiler and is not listed as an industrial furnace. *"Incinerator"* does not include thermal oxidizers used for the treatment of gas emissions.

13. *"Leachate"* means fluid that has percolated through solid waste and which contains contaminants consisting of dissolved or suspended materials, chemicals, or microbial waste products from the solid waste.

14. *"Lifetime of the project"* means the projected period of years that a landfill will receive waste, from the time of opening until closure, based on the volume of waste to be received projected at the time of submittal of the initial project plan and the calculated refuse capacity of the landfill based upon the design of the project.

15. *"Manufacturer"* means a person who by labor, art, or skill transforms raw material into a finished product or article of trade.

16. *"Photodegradable"* means degradable through a process in which ultraviolet radiation in sunlight causes a chemical change in a material.

17. *"Postclosure"* and *"postclosure care"* mean the time and actions taken for the care, maintenance, and monitoring of a sanitary disposal project after closure that will prevent, mitigate, or minimize the threat to public health, safety, and welfare and the threat to the environment posed by the closed facility.

18. *"Postclosure plan"* means the plan which specifies the methods and schedule by which the operator will perform the necessary monitoring and care for the area after closure of a sanitary disposal project.

19. *"Post-use polymer"* means a plastic polymer to which all of the following apply:

a. The plastic polymer is derived from any industrial, commercial, agricultural, or domestic activities.

b. The plastic polymer is used or is intended to be used to manufacture crude oil, fuels, feedstocks, blendstocks, raw materials, or other intermediate products or final products using pyrolysis or gasification.

c. The plastic polymer may contain incidental contaminants or impurities, such as paper labels or metal rings.

20. *"Private agency"* means a private agency as defined in section 28E.2.

21. *"Public agency"* means a public agency as defined in section 28E.2.

22. *"Pyrolysis"* means a process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted to crude oil, diesel, gasoline, home heating oil, or other fuels; chemicals, waxes, lubricants, chemical feedstocks, diesel and gasoline blendstocks, or other raw materials; or intermediate or final products that are returned to the economic mainstream in the form of raw materials, products, or fuels.

23. *"Pyrolysis facility"* means a facility that receives, separates, stores, and converts post-use polymers using pyrolysis. A pyrolysis facility is not a sanitary disposal project, solid waste disposal facility, or processing facility.

24. *"Recoverable feedstock"* means one or more of the following materials derived from recoverable waste that has been processed so that it may be used as feedstock in a gasification facility:

a. Post-use polymers.

b. Materials for which the United States environmental protection agency has made a nonwaste determination pursuant to 40 C.F.R. §241.3(c), or has otherwise determined are not solid waste.

25. *"Resource recovery system"* means the recovery and separation of ferrous metals and nonferrous metals and glass and aluminum and the preparation and burning of solid waste as fuel for the production of electricity.

26. *"Rubble"* means dirt, stone, brick, or similar inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project. *"Rubble"* includes asphalt waste only as long as it is not used in contact with water or in a floodplain. For purposes of this chapter, *"rubble"* does not mean gypsum or gypsum wallboard, coal combustion residue, foundry sand, or other industrial process wastes unless those wastes are approved by the department.

27. *"Sanitary disposal project"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director. *"Sanitary disposal project"* does not include a pyrolysis or gasification facility.

28. *"Sanitary landfill"* means a sanitary disposal project where solid waste is buried between layers of earth.

29. *"Solid waste"* means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial,

commercial, agricultural, and domestic activities. *"Solid waste"* may include vehicles, as defined by section 321.1, subsection 90. This definition does not prohibit the use of rubble at places other than a sanitary disposal project. *"Solid waste"* does not include any of the following:

a. Hazardous waste regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. §6921-6934.

b. Hazardous waste as defined in section 455B.411, except to the extent that rules allowing for the disposal of specific wastes have been adopted by the commission.

c. Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

d. Petroleum contaminated soil that has been remediated to acceptable state or federal standards.

e. Steel slag which is a product resulting from the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material.

f. Material that is legitimately recycled pursuant to section 455D.4A.

g. Post-use polymers or recoverable feedstocks that are any of the following:

(1) Processed at a pyrolysis or gasification facility.

(2) Held at a pyrolysis or gasification facility prior to processing to ensure production is not interrupted.

30. *"Waste conversion technologies"* means thermal, chemical, mechanical, and biological processes capable of converting waste from which recyclable materials have been substantially diverted or removed into useful products and chemicals, green fuels such as ethanol and biodiesel, and clean, renewable energy. *"Waste conversion technologies"* includes but is not limited to anaerobic digestion, plasma gasification, and pyrolysis, except the term does not include gasification and pyrolysis facilities that process post-use polymers or recoverable feedstocks.

[C71, §406.2; C73, 75, 77, 79, 81, §455B.75]

C83, §455B.301

85 Acts, ch 241, §1, 2; 86 Acts, ch 1175, §1; 87 Acts, ch 225, §404; 88 Acts, ch 1182, §1; 90 Acts, ch 1168, §50; 91 Acts, ch 252, §4; 92 Acts, ch 1182, §1; 2008 Acts, ch 1118, §1; 2013 Acts, ch 90, §109; 2014 Acts, ch 1039, §1; 2015 Acts, ch 112, §1; 2018 Acts, ch 1023, §4; 2019 Acts, ch 14, §1, 2

Referred to in §331.441, 331.461, 455B.306, 455B.482, 455D.3, 455E.11, 558.69

Section amended

455B.301A Declaration of policy.

1. The protection of the health, safety, and welfare of Iowans and the protection of the environment require the safe and sanitary disposal of solid wastes. An effective and efficient solid waste disposal program protects the environment and the public, and provides the most practical and beneficial use of the material and energy values of solid waste. While recognizing the continuing necessity for the existence of landfills, alternative methods of managing solid waste and a reduction in the reliance upon land disposal of solid waste are encouraged. In the promotion of these goals, the following waste management hierarchy in descending order of preference, is established as the solid waste management policy of the state:

a. Volume reduction at the source.

b. Recycling and reuse.

c. Waste conversion technologies.

d. Combustion with energy recovery.

e. Other approved techniques of solid waste management including but not limited to combustion for waste disposal and disposal in sanitary landfills.

2. In the implementation of the solid waste management policy, the state shall:

a. Establish and maintain a cooperative state and local program of project planning, and technical and financial assistance to encourage comprehensive solid waste management.

b. Utilize the capabilities of private enterprise as well as the services of public agencies to accomplish the desired objectives of an effective solid waste management program.

87 Acts, ch 225, §405; 94 Acts, ch 1177, §1; 2006 Acts, ch 1063, §1; 2015 Acts, ch 112, §2
Referred to in §455B.302, 455B.304, 455B.311, 455D.3, 455D.5

455B.302 Duty of cities and counties — agreements — liens.

1. Every city and county of this state shall provide for the establishment and operation of a comprehensive solid waste reduction program consistent with the waste management hierarchy under section 455B.301A, and a sanitary disposal project for final disposal of solid waste by its residents. Comprehensive programs and sanitary disposal projects may be established either separately or through cooperative efforts for the joint use of the participating public agencies as provided by law.

2. Cities and counties may execute with public and private agencies contracts, leases, or other necessary instruments, and may purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of sanitary disposal projects, and general administration of the same. Any agreement executed with a private agency for the operation of a sanitary disposal project shall provide for the posting of a sufficient surety bond by the private agency conditioned upon the faithful performance of the agreement. A city or county may at any time during regular working hours enter upon the premises of a sanitary disposal project, including the premises of a sanitary landfill, in order to inspect the premises and monitor the operations and general administration of the project to ensure compliance with the agreement and with state and federal laws. This includes the right of the city or county to enter upon the premises of a former sanitary disposal project which has been closed, including the premises of a former sanitary landfill, owned by a private agency, for the purpose of providing required postclosure care.

3. A city or county which provides closure or postclosure care on the premises of a sanitary landfill owned by a private agency, shall have a lien upon the property to secure payment for the amount of materials and labor expended by the city or county to perform the required closure or postclosure care on the premises. The lien shall be recordable and collectible in the same manner as provided in section 424.11, Code 2016. The lien shall attach at the time the city or county incurs expenses to provide closure or postclosure care on the premises of the sanitary landfill. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only upon filing a notice of the lien with the recorder of the county in which the property is located. Upon payment, the city or county shall release the lien. If no lien has been recorded at the time the property is sold or transferred, the property shall not be subject to a lien or claim for any closure or postclosure costs incurred by the city or county.

[C71, §406.3; C73, 75, 77, 79, 81, §455B.76]
C83, §455B.302
88 Acts, ch 1169, §4; 89 Acts, ch 272, §28; 94 Acts, ch 1044, §1; 2016 Acts, ch 1011, §121; 2016 Acts, ch 1105, §3, 15; 2017 Acts, ch 29, §127
Referred to in §331.381, 331.427, 455B.304, 455B.306

455B.303 Administrator's duties.

1. The director shall administer the provisions of this part 1 of division IV subject to the rules established by the commission.

2. Local boards of health shall cooperate in the enforcement of the provisions of said part and the director may seek their aid and delegate administrative duties of the department to the local boards of health in matters relating to solid waste, refuse disposal plants, and sanitary disposal projects.

3. The director may issue, modify, or deny variances from the rules of the commission. The applicant may appeal the decision of the director to the commission.

[C71, §406.4; C73, 75, 77, 79, 81, §455B.77]
C83, §455B.303
86 Acts, ch 1245, §1899; 2018 Acts, ch 1041, §127

455B.304 Rules established.

1. The commission shall establish rules for the proper administration of this part 1 of division IV which shall reflect and accommodate as far as is reasonably possible the current and generally accepted methods and techniques for treatment and disposition of solid waste which will serve the purposes of this part, and which shall take into consideration the factors, including others which it deems proper, such as existing physical conditions, topography, soils and geology, climate, transportation, and land use, and which shall include but are not limited to rules relating to the establishment and location of sanitary disposal projects, sanitary practices, inspection of sanitary disposal projects, collection of solid waste, disposal of solid waste, pollution controls, the issuance of permits, approved methods of private disposition of solid waste, the general operation and maintenance of sanitary disposal projects, and the implementation of this part.

2. The commission shall adopt rules that allow the use of wet or dry sludge from publicly owned treatment works for land application. A sale of wet or dry sludge for the purpose of land application shall be accompanied by a written agreement signed by both parties which contains a general analysis of the contents of the sludge. The heavy metal content of the sludge shall not exceed that allowed by rules of the commission. An owner of a publicly owned treatment works which sells wet or dry sludge is not subject to any action by the purchaser to recover damages for harm to person or property caused by sludge that is delivered pursuant to a sale unless it is a result of a violation of the written agreement or if the heavy metal content of the sludge exceeds that allowed by rules of the commission. Nothing in this section shall provide immunity to any person from action by the department pursuant to section 455B.307.

3. The commission shall adopt rules prohibiting the disposal of uncontained liquid waste in a sanitary landfill. The rules shall prohibit land burial or disposal by land application of wet sewer sludge at a sanitary landfill.

4. The commission shall adopt rules requiring that each sanitary disposal project established pursuant to section 455B.302 and permitted pursuant to section 455B.305 install and maintain a sufficient number of groundwater monitoring wells to adequately determine the quality of the groundwater and the impact the sanitary disposal project, if any, is having on the groundwater adjacent to the sanitary disposal project site.

5. The commission shall adopt rules requiring a schedule of monitoring of the quality of groundwater adjacent to the sanitary disposal project from the groundwater monitoring wells installed in accordance with this section during the period the sanitary disposal project is in use. Schedules of monitoring may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operation characteristics, and volumes and types of wastes handled at the sanitary disposal project site.

6. The commission shall, by rule, require continued monitoring of groundwater pursuant to this section for a period of thirty years after the sanitary disposal project is closed. The commission may prescribe a lesser period of monitoring duration and frequency in consideration of the potential or lack thereof for groundwater contamination from the sanitary disposal project. The commission may extend the thirty-year monitoring period on a site-specific basis by adopting rules specifically addressing additional monitoring requirements for each sanitary disposal project for which the monitoring period is to be extended.

7. The commission shall adopt rules which may require the installation of shafts to relieve the accumulation of gas in a sanitary disposal project.

8. The commission shall adopt rules which establish closure, postclosure, leachate control and treatment, and financial assurance standards and requirements and which establish minimum levels of financial responsibility for sanitary disposal projects.

9. The commission shall adopt rules which establish the minimum distance between tiling lines and a sanitary landfill in order to assure no adverse effect on the groundwater.

10. The commission shall adopt rules for the distribution of grants to cities, counties, central planning agencies, and public or private agencies working in cooperation with cities or counties, for the purpose of solid waste management. The rules shall base the awarding of grants on a project's reflection of the solid waste management policy and

hierarchy established in section 455B.301A, the proposed amount of local matching funds, and community need.

11. A sanitary landfill disposal project operating with a permit shall have a trained, tested, and certified operator. The department shall adopt by rule a certification program.

12. The commission shall adopt rules for the certification of operators of solid waste incinerators. The criteria for certification shall include, but is not limited to, an operator's technical competency and operation and maintenance of solid waste incinerators.

13. Notwithstanding the provisions of this chapter regarding the requirement of the equipping of a sanitary landfill with a leachate control system and the establishment and continuation of a postclosure account, the department shall adopt rules which provide for an exemption from the requirements to equip a publicly owned sanitary landfill with a leachate control system and to establish and maintain a postclosure account if the sanitary landfill operator is a public agency, if the sanitary landfill has closed or will close by July 1, 1992, and will no longer accept waste for disposal after that date, and if at the time of closure of the sanitary landfill monitoring of the groundwater does not reveal the presence of leachate. The department shall require postclosure groundwater monitoring and shall establish the requirements for the implementation of leachate collection and control in cases in which leachate is found during postclosure monitoring. The department shall provide for a closure completion period following the date of closure of a sanitary landfill. Notwithstanding the provisions of this paragraph, the public agency shall retain financial responsibility for closure and postclosure requirements applicable to sanitary disposal projects.

14. The commission shall adopt rules providing for the land application of soils resulting from the remediation of underground storage tank releases in the state.

15. The commission shall adopt rules which require all sanitary disposal projects in which the tonnage fee pursuant to section 455B.310 is imposed, to install scales and utilize these scales to calculate payment of the tonnage fee.

16. The commission shall adopt rules which prohibit the land application of petroleum contaminated soils on floodplains.

17. The commission shall adopt rules to establish a special waste authorization program. For purposes of this subsection, "*special waste*" means any industrial process waste, pollution control waste, or toxic waste which presents a threat to human health or the environment or a waste with inherent properties which make the disposal of the waste in a sanitary landfill difficult to manage. Special waste does not include domestic, office, commercial, medical, or industrial waste that does not require special handling or limitations on its disposal. Special waste does not include hazardous wastes which are regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. §6921 – 6934, nor does it include hazardous waste as defined in section 455B.411, except to the extent that the commission has adopted rules allowing the disposal of certain wastes.

18. The commission shall adopt rules for the issuance of a single general permit, after notice and opportunity for a public hearing. The single general permit shall cover numerous facilities to the extent that they are representative of a class of facilities which can be identified and conditioned by a single permit.

19. The commission shall adopt rules for determining when the utilization of a solid by-product, including energy recovery, constitutes beneficial use rather than the disposal of solid waste. Materials approved for beneficial use at a sanitary landfill shall be exempt from the tonnage fee imposed by section 455B.310 to the extent authorized by rule or permit.

[C71, §406.5; C73, 75, 77, 79, 81, §455B.78; 82 Acts, ch 1112, §1, 2]

C83, §455B.304

85 Acts, ch 58, §1; 86 Acts, ch 1174, §1 – 3; 87 Acts, ch 225, §406 – 408; 89 Acts, ch 272, §29; 90 Acts, ch 1235, §16; 90 Acts, ch 1255, §27; 90 Acts, ch 1260, §25; 92 Acts, ch 1215, §5; 94 Acts, ch 1177, §2; 95 Acts, ch 61, §2; 95 Acts, ch 215, §3; 97 Acts, ch 137, §7; 98 Acts, ch 1193, §1; 2006 Acts, ch 1014, §3; 2008 Acts, ch 1118, §2, 3

Referred to in §455B.172, 455B.301

455B.305 Issuance or renewal of permits by director.

1. The director shall issue, revoke, suspend, modify, or deny permits for the construction and operation of sanitary disposal projects.

a. A permit shall be issued by the director or, at the director's direction, by a local board of health for each sanitary disposal project operated in this state. The permit shall be issued in the name of the city or county or, where applicable, in the name of the public or private agency operating the project. Permits issued pursuant to this section are in addition to any other licenses, permits, or variances authorized or required by law, including but not limited to chapter 335.

b. Each sanitary disposal project shall be inspected periodically by the department or a local board of health.

c. A permit may be suspended or revoked by the director if a sanitary disposal project is found not to meet the requirements of this part 1 or the rules adopted pursuant to this part 1. The suspension or revocation of a permit may be appealed to the department.

2. The director shall not issue or renew a permit for a municipal solid waste landfill unless the permit applicant, in conjunction with all local governments using the landfill, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

3. The director shall not issue or renew a permit for a sanitary landfill unless the landfill is equipped with a leachate control system.

4. The director shall not issue or renew a permit for a transfer station operating as part of an agreement between two planning areas pursuant to section 455B.306, subsection 2, unless the applicant, in conjunction with all local governments using the transfer station, has documented its implementation of solid waste disposal methods other than final disposal in a sanitary landfill.

[C71, §406.6; C73, 75, 77, 79, 81, §455B.79]

C83, §455B.305

83 Acts, ch 136, §4; 86 Acts, ch 1175, §2; 86 Acts, ch 1245, §1899, 1899B; 87 Acts, ch 225, §409, 410; 89 Acts, ch 272, §30; 92 Acts, ch 1215, §6; 94 Acts, ch 1177, §3; 2005 Acts, ch 31, §1; 2008 Acts, ch 1118, §4; 2011 Acts, ch 25, §52

Referred to in §331.381, 455B.304, 455B.306

455B.305A Local approval of sanitary landfill and infectious waste incinerator projects.

1. *a.* Prior to the siting of a proposed, new sanitary landfill, incinerator, or infectious medical waste incinerator, a city, county, or private agency, shall submit a request for local siting approval to the city council or county board of supervisors which governs the city or county in which the proposed site is to be located. The requirements of this section do not apply to the expansion of an existing sanitary landfill owned by a private agency which disposes of waste which the agency generates on property owned by the agency. The city council or county board of supervisors shall approve or disapprove the site for each sanitary landfill, or incinerator, or infectious medical waste incinerator.

b. Prior to the siting of a proposed new sanitary landfill or incinerator by a private agency disposing of waste which the agency generates on property owned by the agency which is located outside of the city limits and for which no county zoning ordinance exists, the private agency shall cause written notice of the proposal, including the nature of the proposed facility, and the right of the owner to submit a petition for formal siting of the proposed site, to be served either in person or by mail on the owners and residents of all property within two miles in each direction of the proposed local site area. The owners shall be identified based upon the authentic tax records of the county in which the proposed site is to be located. The private agency shall notify the county board of supervisors which governs the county in which the site is to be located of the proposed siting, and certify that notices have been mailed to owners and residents of the impacted area. Written notice shall be published in the official newspaper, as selected by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, and a description of the right of persons

to comment on the request. If two hundred fifty or a minimum of twenty percent, whichever is less, of the owners and residents of property notified submit a petition for formal review to the county board of supervisors or if the county board of supervisors, on the board's own motion, requires formal review of the proposed siting, the private agency proposal is subject to the formal siting procedures established pursuant to this section.

2. An applicant for siting approval shall submit information to the city council or county board of supervisors to demonstrate compliance with the requirements prescribed by this chapter regarding a sanitary landfill or infectious waste incinerator. Siting approval shall be granted only if the proposed project meets all of the following criteria:

a. The project is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

b. The project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property. The city council or county board of supervisors shall consider the advice of the appropriate planning and zoning commission regarding the application.

d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents.

e. The traffic patterns to or from the project are designed in order to minimize the impact on existing traffic flows.

f. Information regarding the previous operating experience of a private agency applicant and its subsidiaries or parent corporation in the area of solid waste management or related activities are made available to the city council or county board of supervisors.

g. The department of natural resources has been consulted by the city council or board of supervisors prior to the approval.

3. *a.* No later than fourteen days prior to a request for siting approval, the applicant shall cause written notice of the request to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant, and on the owners of all property within one thousand feet in each direction of the lot line of the proposed local site property if the proposed local site is within the city limits, or within two miles in each direction of the lot line of the proposed local site property if the proposed local site is outside of the city limits. The owners shall be identified based upon the authentic tax records of the county in which the project is to be located.

b. Written notice shall be published in the official newspaper of the county in which the site is located. The notice shall state the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on the request.

4. *a.* An applicant shall file a copy of its request with the department and with the city council or the county board of supervisors in which the proposed site is located. The request shall include the substance of the applicant's proposal and all documents, if any, submitted as of that date to the department pertaining to the proposed project. All documents or other materials pertaining to the proposed project on file with the city council or county board of supervisors shall be made available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction.

b. Any person may file written comment with the city council or county board of supervisors concerning the appropriateness of the proposed site for its intended purpose. The city council or county board of supervisors shall consider any comment received or postmarked not later than thirty days after the date of the last public hearing.

5. At least one public hearing shall be held by the city council or county board of supervisors no sooner than ninety days but no later than one hundred twenty days from receipt of the request for siting approval. A hearing shall be preceded by published notice in an official newspaper of the county of the proposed site, including in any official newspaper located in the city of the proposed site.

6. *a.* Decisions of the city council or the county board of supervisors shall be in writing, specifying the reasons for the decision. The written decision of the city council or the county board of supervisors shall be available for public inspection at the office of the city council or county board of supervisors and may be copied upon payment of the actual cost of reproduction. Final action shall be taken by the city council or the county board of supervisors within one hundred eighty days after the filing of the request for site approval.

b. At any time prior to completion by the applicant of the presentation of the applicant's factual evidence and an opportunity for questioning by the city council or the county board of supervisors and members of the public, the applicant may file not more than one amended application upon payment of additional fees pursuant to subsection 9. The time limitation for final action on an amended application shall be extended for an additional ninety days.

7. Construction of a project which is granted local siting approval under this section shall commence within one calendar year from the date upon which it was granted or the permit shall be nullified.

8. The local siting approval, criteria, and other procedures provided for in this section are the exclusive local siting procedures. Local zoning, ordinances, or other local land use requirements may be considered in such siting decisions.

9. A city council or a county board of supervisors shall charge an applicant for siting approval, under this section, a fee to cover the reasonable and necessary costs incurred by the city or county in the siting approval process.

10. An applicant shall not file a request for local siting approval which is substantially the same as a request which was denied within the preceding two years pursuant to a finding against the applicant under the established criteria.

90 Acts, ch 1191, §1; 92 Acts, ch 1182, §2, 3; 94 Acts, ch 1023, §55; 2011 Acts, ch 25, §143

455B.305B Pyrolysis or gasification material ownership.

Preprocessed and postprocessed post-use polymers and recoverable feedstocks stored at a pyrolysis facility or gasification facility are the sole property of the pyrolysis facility or gasification facility. Within sixty days of termination of operations at the facility, all unused preprocessed and postprocessed post-use polymers and recoverable feedstocks must be sold or disposed of by the pyrolysis facility or gasification facility in compliance with applicable laws.

2019 Acts, ch 14, §3
NEW section

455B.306 Plans filed.

1. A city, county, or private agency operating, or planning to operate, a municipal solid waste sanitary disposal project shall file with the director one of two types of comprehensive plans detailing the method by which the city, county, or private agency will comply with this part 1. The first type is a comprehensive plan in which solid waste is disposed of in a sanitary landfill within the planning area. The second type is a comprehensive plan in which all solid waste is consolidated at, and transported from, a transfer station for disposal at a sanitary landfill in another comprehensive planning area or state.

a. All cities and counties shall also file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents.

b. A public agency managing the waste stream for cities or counties pursuant to chapter 28E shall file one comprehensive plan on behalf of its members. Filing of a comprehensive plan constitutes full compliance by the public agency's members with the filing requirements of this section.

c. If both a public agency managing the waste stream for a city or county pursuant to chapter 28E, and one or more of the public agency's member cities or counties file a comprehensive plan under this subsection, the director shall, following notice to the agency, make a determination that any plan filed by a member city or county is compatible with the comprehensive plan of the chapter 28E public agency. If the director determines that a city's or county's comprehensive plan is not compatible with the comprehensive

plan of a public agency, as defined in chapter 28E, the director shall require the city or county to provide justification for the approval of the comprehensive plan based upon the following factors: the innovative nature of the comprehensive plan, the urgency of the plan's implementation, any unique features of the city's or county's comprehensive plan, and whether the plan otherwise complies with the provisions of this chapter.

d. This subsection does not prevent the director from approving pilot projects which otherwise comply with the provisions of this chapter.

e. The director shall review each comprehensive plan submitted and may reject, suggest modification, or approve the proposed plan. The director shall aid in the development of comprehensive plans for compliance with this part. The director shall make available to cities, counties, and private agencies the forms appropriate for the submission of comprehensive plans, and the director may hold hearings for the purpose of implementing this part.

f. The director, and any governmental agencies with primary responsibility for the development and conservation of energy resources, shall provide research and assistance when cities and counties operating, or planning to operate, sanitary disposal projects request aid in planning and implementing resource recovery systems.

g. A comprehensive plan filed by a private agency operating, or planning to operate, a sanitary disposal project required by section 455B.302 shall be developed in cooperation and consultation with the city or county responsible for establishing and operating a sanitary disposal project.

h. The director shall review a completed plan for the control and treatment of leachate, to meet the requirements of subsection 7, paragraph "*b*", and shall reject the plan, suggest modifications, or approve it within six months of the time the plan was submitted. If the director has not acted on the plan within those six months, the plan shall be considered approved. However, the director, upon a request to renew or reissue a previously issued permit may require that the plan be updated.

2. A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses instead to use a municipal solid waste sanitary landfill in another planning area may choose to retain its autonomy as long as the sanitary landfill in the other planning area complies with all the requirements of this chapter, and all solid waste generated within the planning area closing its landfills is consolidated at, and transported from, a permitted transfer station. For purposes of this subsection, a planning area closing its own landfills that chooses to retain its autonomy shall not be required to join the planning area that contains the landfill it is using for final disposal of its solid waste.

a. If a planning area chooses to retain autonomy pursuant to this subsection, the planning area receiving solid waste from the planning area sending it shall not be required to include the sending planning area in its comprehensive plan provided that no services other than the acceptance of solid waste for disposal are shared between the two planning areas. A planning area receiving solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs within that planning area.

b. If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station, the department may establish permit conditions to address the transport and disposal of the solid waste. A planning area sending solid waste for disposal in another planning area may retain autonomy under this subsection only if both comprehensive planning areas enter into an agreement pursuant to chapter 28E that includes all of the following:

(1) A detailed methodology of the manner in which solid waste will be tracked and reported between the two planning areas.

(2) A detailed methodology of the manner in which the receiving sanitary landfill will collect, remit, and report tonnage fees, pursuant to section 455B.310, paid by the planning area that is transporting the solid waste. The methodology shall include both the remittances of tonnage fees to the state and the retained tonnage fees.

3. The plan required by subsection 1 for sanitary disposal projects shall be filed with the department at the time of initial application for the construction and operation of a sanitary disposal project and at a minimum shall be updated and refiled with the department at the time of each subsequent application for renewal or reissuance of a previously issued permit.

The department may, consistent with rules of the commission, require filing or updating of a plan at other times.

4. A city or county required to file with the director a comprehensive plan detailing the method by which the city or county will comply with the requirements of section 455B.302 to establish and implement a comprehensive solid waste reduction program for its residents and which seeks approval of the inclusion of refuse-derived fuel as a component of its percentage of waste reduction, shall file an annual report with the director regarding the percentage of reduction attributable to refuse-derived fuel and the justification for such inclusion. The director shall approve or reject the inclusion. The percentage of reduction attributable to refuse-derived fuel and allowable for inclusion shall not exceed fifty percent.

5. A comprehensive plan filed pursuant to this section shall incorporate and reflect the waste management hierarchy of the state solid waste management policy and shall at a minimum address the following general topics:

a. The extent to which solid waste is or can be recycled.

b. The economic and technical feasibility of using other existing sanitary disposal project facilities in lieu of initiating or continuing the sanitary landfill currently used.

c. The expected environmental impact of alternative solid waste disposal methods, including the use of sanitary landfills.

d. A specific plan and schedule for implementing technically and economically feasible solid waste disposal methods that will result in minimal environmental impact.

6. The comprehensive plan shall provide details of a local recycling program which shall contain a methodology for meeting the state volume reduction goal pursuant to section 455D.3, and a methodology for implementing a program of separation of wastes including but not limited to glass, plastic, paper, and metal.

7. In addition to the above requirements, the following specific areas must be addressed in detail in a comprehensive plan filed in conjunction with the issuance, renewal, or reissuance of a permit for a sanitary disposal project:

a. A closure and postclosure plan detailing the schedule for and the methods by which the operator will meet the conditions for proper closure and postclosure adopted by rule by the commission. The plan shall include, but is not limited to, the proposed frequency and types of actions to be implemented prior to and following closure of an operation, the proposed postclosure actions to be taken to return the area to a condition suitable for other uses, and an estimate of the costs of closure and postclosure and the proposed method of meeting these costs. The postclosure plan shall reflect the thirty-year time period requirement for postclosure responsibility.

b. A plan for the control and treatment of leachate, including financial considerations proposed in meeting the costs of control and treatment in order to meet the requirements of section 455B.305, subsection 3.

c. A financial plan detailing the actual cost of the sanitary disposal project and including the funding sources of the project. In addition to the submittal of the financial plan filed pursuant to this subsection, the operator of an existing sanitary landfill shall submit an annual financial statement to the department.

d. An emergency response and remedial action plan including established provisions to minimize the possibility of fire, explosion, or any release to air, land, or water of pollutants that could threaten human health and the environment, and the identification of possible occurrences that may endanger human health and environment.

e. A description of the planning area and service area to be served by the city, county, or private agency under the comprehensive plan. Except as provided in subsection 2, a comprehensive plan shall not include a planning area or service area, any part of which is included in another comprehensive plan.

8. When a proposed plan is subject to review and approval by several state and local agencies, if the plan is substantially modified after approval by an agency, the plan shall be resubmitted as a new proposal to all other agencies to ensure that all agencies have approved the same plan.

9. In addition to the comprehensive plan filed pursuant to subsection 1, a person operating, or proposing to operate, a sanitary disposal project shall provide a financial

assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility beginning July 1, 1988.

a. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Following the cessation of operation or the closure of a sanitary disposal project, neither the guarantor nor the operator shall cancel, revoke, or disburse the financial assurance instrument or allow the instrument to terminate until the operator is released from closure, postclosure, and monitoring responsibilities.

b. The operator of a sanitary landfill shall maintain closure and postclosure accounts. The commission shall adopt by rule the amounts to be contributed to the accounts based upon the amount of solid waste received by the facility. The accounts established shall be specific to the facility.

(1) Money in the accounts shall not be assigned for the benefit of creditors with the exception of the state.

(2) Money in an account shall not be used to pay any final judgment against a licensee arising out of the ownership or operation of the site during its active life or after closure.

(3) Conditions under which the department may gain access to the accounts and circumstances under which the accounts may be released to the operator after closure and postclosure responsibilities have been met, shall be established by the commission.

c. The commission shall adopt by rule the minimum amounts of financial responsibility for sanitary disposal projects.

d. Financial assurance instruments may include any of the instruments described in section 455B.301, subsection 9.

e. The annual financial statement submitted to the department pursuant to subsection 7, paragraph "*c*", shall include the current amounts established in each of the accounts and the projected amounts to be deposited in the accounts in the following year.

10. If a city, county, or private agency does not incorporate the elements of the solid waste hierarchy of the state solid waste management policy in a proposed initial or adopted comprehensive plan, the city council or county board of supervisors governing the city or county in which the sanitary landfill is proposed to be located or is located shall hold a public hearing to address the basis for not including any of the elements in the plan.

11. A city council or county board of supervisors governing the area in which a sanitary disposal project is proposed to be located or is located shall hold a public hearing to address the issue of including or not including local curbside recycling in the comprehensive plan.

12. This section shall not apply to a sanitary landfill project owned by an electric generating facility and used exclusively for the disposal of coal combustion residue. A utility under this subsection may demonstrate financial assurance by any of the instruments described in section 455B.301, subsection 9, or by an alternative method acceptable to the department. The financial assurance instrument submitted must ensure the facility's financial capability to provide reasonable and necessary response during the lifetime of the project and for a specified period of time following closure as required by rules adopted by the commission.

[C71, §406.7; C73, 75, 77, 79, 81, §455B.80]

C83, §455B.306

86 Acts, ch 1175, §3; 86 Acts, ch 1245, §1899; 87 Acts, ch 225, §411 – 414; 89 Acts, ch 272, §31, 32; 90 Acts, ch 1255, §24; 92 Acts, ch 1213, §1; 92 Acts, ch 1215, §7 – 9; 2004 Acts, ch 1078, §1; 2005 Acts, ch 31, §2 – 4; 2006 Acts, ch 1030, §42; 2007 Acts, ch 215, §115; 2008 Acts, ch 1118, §5 – 7

Referred to in §28G.1, 28G.2, 331.381, 455B.305, 455B.310, 455F.8A

455B.306A Annexation of territory — expansion of services.

1. A city which annexes an area pursuant to chapter 368, or plans to operate or expand solid waste collection services into an area where the collection of solid waste is presently being provided by a private entity, shall notify the private entity by certified mail at least sixty days before its annexation or expansion of its intent to provide solid waste collection services in the area.

2. A city shall not commence alternative solid waste collection in such an area for one year from the effective date of the annexation or one year from the effective date of the notice that the city intends to operate or expand solid waste collection services in the area, unless the city contracts with the private entity to continue the services for that period.

3. A private entity providing solid waste collection services pursuant to this section shall provide solid waste collection services in the area in accordance with the city's comprehensive plan.

92 Acts, ch 1174, §6

455B.307 Dumping — where prohibited — penalty.

1. A private agency or public agency shall not dump or deposit or permit the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director unless the agency has been granted a permit by the department which allows the dumping or depositing of solid waste on land owned or leased by the agency. The department shall adopt rules regarding the permitting of this activity which shall provide that the public interest is best served, but which may be based upon criteria less stringent than those regulating a public sanitary disposal project provided that the rules adopted meet the groundwater protection goal specified in section 455E.4. The comprehensive plans for these facilities may be varied in consideration of the types of sanitary disposal practices, hydrologic and geologic conditions, construction and operations characteristics, and volumes and types of waste handled at the disposal site. The director may issue temporary permits for dumping or disposal of solid waste at disposal sites for which an application for a permit to operate a sanitary disposal project has been made and which have not met all of the requirements of part 1 of this division and the rules adopted by the commission if a compliance schedule has been submitted by the applicant specifying how and when the applicant will meet the requirements for an operational sanitary disposal project and the director determines the public interest will be best served by granting such temporary permit.

2. The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this part 1 of division IV or the rules adopted pursuant to the part. The attorney general shall, on request of the department, institute any legal proceedings necessary in obtaining compliance with an order of the commission or the director or prosecuting any person for a violation of the provisions of the part or rules issued pursuant to the part.

3. Any person who violates any provision of part 1 of this division or any rule or any order adopted or the conditions of any permit or order issued pursuant to part 1 of this division shall be subject to a civil penalty, not to exceed five thousand dollars for each day of such violation.

[C71, §406.9; C73, 75, 77, 79, 81, §455B.82]

C83, §455B.307

86 Acts, ch 1245, §1899; 87 Acts, ch 225, §415; 88 Acts, ch 1169, §5; 89 Acts, ch 281, §1

Referred to in §455B.304

455B.307A Discarding of solid waste — prohibitions — penalty.

1. For the purposes of this section, *"discard"* means to place, cause to be placed, throw, deposit, or drop.

2. A person shall not discard solid waste onto or in any water or land of the state, or into areas or receptacles provided for such purposes which are under the control of or used by a person who has not authorized the use of the receptacle by the person discarding the solid waste.

3. A person who violates this section is subject to a civil penalty of one thousand dollars for a first offense, two thousand dollars for a second offense, and three thousand dollars for a third or subsequent offense. The revenue from the penalty provided in this subsection shall be remitted to the treasurer of state for deposit in the general fund of the state. Fifty percent of such moneys are appropriated to the state department of transportation for purposes of the cleanup of litter and illegally discarded solid waste. The remaining fifty percent of such

moneys shall be deposited in the general fund of the county in which the violation occurred to be used exclusively for the cleanup and prevention of illegal dumping.

4. This section shall not apply to the discarding of litter regulated under chapter 455B, division IV, part 3, and local littering ordinances.

92 Acts, ch 1215, §10; 2006 Acts, ch 1087, §1; 2016 Acts, ch 1076, §1, 2
Referred to in §455B.307B

455B.307B Illegal dumping enforcement officer.

1. For purposes of this section, *"officer"* means the illegal dumping enforcement officer in a county.

2. The board of supervisors of each county may annually appoint an illegal dumping enforcement officer for the county. The board of supervisors may appoint the officer from recommendations by the county board of health or may select a person outside the recommendations made by the county board of health. The board of supervisors shall appoint a person who is a citizen of the United States, is of good moral character, and has not previously been convicted of a felony.

3. An illegal dumping enforcement officer shall take an oath of office prescribed by the board of supervisors. An officer's appointment shall be effective March 1 and shall continue for a term at the discretion of the board of supervisors.

4. An illegal dumping enforcement officer, subject to direction and control by the county board of supervisors, shall only be empowered to enforce the provisions of sections 455B.307A and 455B.363 and local littering ordinances. An officer shall not have the duty to enforce any other traffic or criminal laws of the state, county, or a municipality. An officer may enter upon any public land in the county, excluding land within the limits of cities, unless otherwise authorized by a city, and any private property with the permission of the landowner at any time for the performance of the officer's duties, and may hire the labor and equipment necessary subject to the approval of the board of supervisors.

5. A person shall not willfully obstruct, resist, impede, or interfere with an illegal dumping enforcement officer in connection with the officer's enforcement of sections 455B.307A and 455B.363 and local littering ordinances. A person shall not willfully retaliate or discriminate in any manner against an officer as a reprisal for any act or omission of the officer. A person violating this subsection is guilty of a simple misdemeanor.

2004 Acts, ch 1128, §1

455B.308 Appeal from order.

Any person aggrieved by an order of the director may appeal the order by filing a written notice of appeal with the director in accordance with section 455B.110. The director shall schedule a hearing for the purpose of hearing the arguments of the aggrieved person within thirty days of the filing of the notice of appeal. The hearing may be held before the commission or its designee. A complete record shall be made of the proceedings. The director shall issue the findings in writing to the aggrieved person within thirty days of the conclusion of the hearing. Judicial review may be sought of actions of the commission in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of the Act, petitions for judicial review may be filed in the district court of the county where the acts in issue occurred.

[C71, §406.10; C73, 75, 77, 79, 81, §455B.83]
C83, §455B.308
86 Acts, ch 1245, §1899; 2003 Acts, ch 44, §114; 2019 Acts, ch 97, §6
Section amended

455B.309 Reserved.

455B.310 Tonnage fee imposed — appropriations — exemptions.

1. Except as provided in subsection 5, the operator of a sanitary landfill shall pay a tonnage fee to the department for each ton or equivalent volume of solid waste received and disposed of at the sanitary landfill during the preceding reporting period. The department shall determine by rule the volume which is equivalent to a ton of waste.

2. The tonnage fee is four dollars and twenty-five cents per ton of solid waste, except as provided in section 455J.5, subsection 1, paragraph *"b"*.

3. If a sanitary landfill required to pay a tonnage fee under this section has an updated comprehensive plan approved by the department, the sanitary landfill operator shall retain, in addition to the ninety-five cents retained pursuant to subsection 4, twenty-five cents of the tonnage fee per ton of solid waste in the fiscal year beginning July 1, 1998, and every year thereafter. In the fiscal year beginning July 1, 1999, and every year thereafter, any planning area which meets the statewide average, as determined by the department on July 1, 1999, shall retain, in addition to the twenty-five cents retained pursuant to this subsection, ten cents of the tonnage fee per ton of solid waste regardless of whether the planning area subsequently fails to meet the statewide average. Any tonnage fees retained pursuant to this subsection shall be used for waste reduction, recycling, or small business pollution prevention purposes. Any tonnage fee retained pursuant to this subsection shall be taken from that portion of the tonnage fee which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1).

4. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, ninety-five cents of the tonnage fee shall be retained by a city, county, or public or private agency. If the fifty percent waste reduction goal has not been met, one dollar and twenty cents of the tonnage fee shall be retained by a city, county, or public or private agency. Moneys retained by a city, county, or public or private agency shall be used as follows:

a. To meet comprehensive planning requirements of section 455B.306, the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, and the preparation of a financial plan.

b. If a planning area achieves the fifty percent waste reduction goal provided in section 455D.3, forty-five cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. If the fifty percent waste reduction goal has not been met, seventy cents of the retained funds shall be used for implementing waste volume reduction and recycling requirements of comprehensive plans filed under section 455B.306. The funds shall be distributed to a city, county, or public agency served by the sanitary disposal project. Fees collected by a private agency which provides for the final disposal of solid waste shall be remitted to the city, county, or public agency served by the sanitary disposal project. However, if a private agency is designated to develop and implement the comprehensive plan pursuant to section 455B.306, fees under this paragraph shall be retained by the private agency.

c. For other environmental protection activities.

d. Each sanitary landfill owner or operator shall submit a return to the department identifying the use of all fees retained under this section including the manner in which the fees were distributed. A planning area entering into an agreement pursuant to section 455B.306, subsection 2, shall submit such information to the department and a planning area receiving the solid waste under such an agreement shall, in addition, submit evidence to the department demonstrating that required retained fees were returned in a timely manner to other planning areas under the agreement. The return shall be submitted concurrently with the return required under subsection 7.

5. Solid waste disposal facilities with special provisions which limit the site to disposal of construction and demolition waste, landscape waste, coal combustion waste, cement kiln dust, foundry sand, and solid waste materials approved by the department for lining or capping, or for construction berms, dikes, or roads in a sanitary disposal project or sanitary landfill are exempt from the tonnage fees imposed under this section. However, solid waste disposal facilities under this subsection are subject to the fees imposed pursuant to section 455B.105, subsection 11, paragraph *"a"*. Notwithstanding the provisions of section 455B.105, subsection 11, paragraph *"b"*, the fees collected pursuant to this subsection shall be deposited in the solid waste account as established in section 455E.11, subsection 2, paragraph *"a"*, to be used by the department for the regulation of these solid waste disposal facilities.

6. All tonnage fees received by the department under this section shall be deposited in the solid waste account of the groundwater protection fund created under section 455E.11.

7. Fees imposed by this section shall be paid to the department on a quarterly basis with payment due by no more than ninety days following the quarter during which the fees were collected. The payment shall be accompanied by a return which shall identify the amount of fees to be allocated to the landfill alternative financial assistance program, the amount of fees, in terms of cents per ton, retained for meeting waste reduction and recycling goals under section 455D.3, and additional fees imposed for failure to meet the twenty-five percent waste reduction and recycling goal under section 455D.3. Sanitary landfills serving more than one planning area shall submit separate reports for each planning area.

8. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section or who fails or refuses to provide the return required by this section shall be assessed a penalty of two percent of the fee due for each month the fee or return is overdue. The penalty shall be paid in addition to the fee due.

9. Foundry sand used by a sanitary landfill as daily cover, road base, or berm material or for other purposes defined as beneficial uses by rule of the department is exempt from imposition of the tonnage fee under this section. Sanitary landfills shall use foundry sand as a replacement for earthen material, if the foundry sand is generated by a foundry located within the state and if the foundry sand is provided to the sanitary landfill at no cost to the sanitary landfill.

85 Acts, ch 241, §4; 86 Acts, ch 1175, §5; 87 Acts, ch 225, §416 – 418; 88 Acts, ch 1169, §6 – 8; 90 Acts, ch 1070, §1; 91 Acts, ch 257, §2 – 5; 92 Acts, ch 1215, §11, 12; 92 Acts, ch 1239, §47; 92 Acts, ch 1244, §44; 93 Acts, ch 176, §45; 95 Acts, ch 80, §1; 98 Acts, ch 1018, §1; 98 Acts, ch 1193, §2; 2001 Acts, ch 124, §1, 6; 2005 Acts, ch 31, §5, 6; 2008 Acts, ch 1109, §1

Referred to in §455B.304, 455B.306, 455D.3, 455E.11, 455J.5

455B.311 Grants.

The director, with the approval of the commission, may make grants to cities, counties, or central planning agencies representing cities and counties or combinations of cities, counties, or central planning agencies from funds reserved under and for the purposes specified in section 455E.11, subsection 2, paragraph *"a"*, subject to all of the following conditions:

1. Application for grants shall be in a form and contain information as prescribed by rule of the department.

2. Grants shall only be awarded to a city or a county; however, a grant may be made to a central planning agency representing more than one city or county or combination of cities or counties for the purpose of planning and implementing regional solid waste management facilities or may be made to private or public agencies working in cooperation with a city or county. The department shall award grants, in accordance with the rules adopted by the commission, based upon a proposal's reflection of the solid waste management policy and hierarchy established in section 455B.301A. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants may be awarded at a maximum cost-share level of ninety percent with a preference given for regional or shared projects and a preference given to projects involving environmentally fragile areas which are particularly subject to groundwater contamination. Grants shall be awarded in a manner which will distribute the grants geographically throughout the state.

3. Grants shall be awarded only for an amount determined by the department to be reasonable and necessary to conduct the work as set forth in the grant application. Grants for less than a countywide planning area shall be limited to twenty-five percent state funds, for a single-county planning area the state funds shall be limited to fifty percent, and for a two-county planning area the state funds shall be limited to seventy-five percent. For each additional county above a two-county planning area, the maximum allowable state funds shall be increased by an additional five percent, up to a maximum of ninety percent state funds.

4. Grants shall not be awarded to a city, county, or central planning agency if the entity has not submitted a completed hydrogeological plan to the department.

5. A city, county, or central planning agency on behalf of a city or county may not receive more than one grant under this section in any three-year period.

6. The director, with the approval of the commission, may deny a grant application if in the judgment of the director the applicant could not reasonably be expected to adequately and properly complete the plan for which the grant is requested or the applicant could not reasonably be expected to implement a planned sanitary disposal project.

86 Acts, ch 1175, §6; 87 Acts, ch 225, §115, 419; 92 Acts, ch 1215, §13; 2018 Acts, ch 1041, §95

455B.312 Waste abatement program. Repealed by 2011 Acts, ch 9, §10.

455B.313 Beverage container connectors — prohibition.

1. A distributor as defined in section 455C.1, subsection 9, shall not sell or offer to sell any beverage container if the beverage container is connected to another beverage container by a device constructed of a material which is not biodegradable or photodegradable.

2. A distributor violating subsection 1 is guilty of a serious misdemeanor.

88 Acts, ch 1182, §2

455B.314 Incineration at sanitary disposal projects.

Beginning January 1, 1990, a sanitary disposal project that includes incineration as a part of its disposal process shall separate from the materials to be incinerated recyclable and reusable materials, materials which will result in uncontrolled toxic or hazardous air emissions when burned, and hazardous or toxic materials which are not rendered nonhazardous or nontoxic by incineration. The removed materials shall be recycled, reused, or treated and disposed in a manner approved by the department. Separation of waste includes magnetic separation.

89 Acts, ch 272, §33

455B.315 Radioactive materials — prohibited deposit in sanitary landfills.

A person shall not dispose of, and a sanitary landfill shall not accept for final disposal, radioactive materials, as defined as of January 1, 1990, pursuant to section 136C.1.

90 Acts, ch 1191, §3

455B.316 Penalty. Repealed by 2011 Acts, ch 9, §10.

455B.317 through 455B.330 Reserved.

PART 2

RADIOACTIVE WASTE

Referred to in §455B.104

455B.331 Definitions.

As used in this part 2 of division IV, unless the context otherwise requires:

1. *"Nuclear waste disposal site"* means all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, leased, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of radioactive waste without creating a significant hazard to the public health or safety, and which are approved by the director.

2. *"Radiation"* means any ionizing radiation including, but not limited to, high-speed electrons, neutrons, protons and other nuclear particles, but not sound waves.

3. *"Radioactive material"* means any solid, liquid, or gaseous material which emits radiation spontaneously.

[C73, 75, 77, 79, 81, §455B.85]

C83, §455B.331

86 Acts, ch 1245, §1899

455B.332 and 455B.333 Repealed by 2006 Acts, ch 1014, §10.

455B.334 Waste disposal site.

The commission may approve or prohibit the establishment and operation of a nuclear waste disposal site in this state by a private person. In determining whether to grant or deny a permit to establish and operate a nuclear waste disposal site, the commission shall consider the need for a nuclear waste disposal site and the existing physical conditions, topography, soils and geology, climate, transportation, and land use at the proposed site. If the commission decides to issue a permit to establish and operate a nuclear waste disposal site, it shall establish, by rule, standards and procedures for the safe operation and maintenance of the proposed site. The commission shall also require the permittee to provide a sufficient surety bond or other financial commitment to insure the perpetual maintenance and monitoring of the nuclear waste disposal site.

[C73, 75, 77, 79, 81, §455B.88]
C83, §455B.334
83 Acts, ch 136, §5

455B.335 Director's duties.

The director:

1. Shall enforce any rules adopted under this part 2 of division IV and furnish a copy of the rules to each applicant for a permit required under this part.
2. May require the maintenance of records relating to the receipt, storage, transfer, or disposal of radioactive material.
3. May issue, modify, or revoke orders in accordance with the provisions of this part 2 of division IV or the rules adopted under said part.
4. May require the submission of plans and specifications for the design, construction, maintenance, and monitoring of nuclear waste disposal sites for review and appraisal.

[C73, 75, 77, 79, 81, §455B.89]
C83, §455B.335
83 Acts, ch 136, §6; 86 Acts, ch 1245, §1899; 2006 Acts, ch 1014, §4

455B.335A Pathological waste incineration facilities — radioactive materials — requirements.

1. The director shall require that a person who operates or proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials conduct dispersion modeling, under the direction of the Iowa department of public health, for radiological isotopes to measure the emission levels of alpha and gamma rays. The director shall allow a three-month period during which time the operator or person proposing operation of such an incinerator shall conduct the required dispersion modeling. In order to initiate or continue such incineration, the results of the modeling shall provide that the existing incinerator meets or the proposed incinerator will meet the emission standards established by the United States environmental protection agency for a selected isotope.
2. The department shall conduct a public hearing following submission to the director of the results of the dispersion modeling conducted by an operator or person proposing operation of a waste incinerator which provides for or will provide for the incineration of pathological radioactive materials.
3. If the dispersion modeling results do not meet the standards for emission limitations prescribed under subsection 1, the director shall require the operator or the person who proposes to operate a waste incinerator which provides for the incineration of pathological radioactive materials to employ or conduct an additional dispersion modeling test employing the best available control technology. Following employment of the best available control technology or the conducting of the additional dispersion modeling, if the incinerator or proposed incinerator does not or will not meet the standards prescribed under subsection 2, the operator's permit for incineration of pathological radioactive materials shall be revoked or the permit for such proposed incineration shall be denied.

91 Acts, ch 242, §2

455B.336 Notice to violators.

If the director determines that there are reasonable grounds to believe a violation of this part 2 of division IV or of the rules issued under said part has occurred, the director shall give written notice by certified mail to the alleged violator specifying the alleged violations involved and specifying a period of time in which to eliminate the violation. If the alleged violator fails to comply within such specified time, the director shall schedule a hearing and give written notice to the alleged violator by certified mail. In connection with the hearings, the director may issue subpoenas requiring the attendance of witnesses and the production of records pertinent to such hearing. On the basis of the findings, the director shall issue a final order which shall be forwarded to the alleged violator by certified mail.

[C73, 75, 77, 79, 81, §455B.90]
C83, §455B.336
86 Acts, ch 1245, §1899

455B.337 Emergency action.

1. Whenever the director finds that an emergency exists requiring immediate action to protect the public health and safety, the director may, without notice or hearing, issue an emergency order reciting that an emergency exists and requiring that such action be taken as the director deems necessary to meet the emergency. The order may be issued orally to the person whose operation constitutes the emergency by the director and confirmed by a copy of such order to be sent by certified mail within twenty-four hours after the issuance of the oral order. The emergency order shall be effective immediately. Any person receiving an emergency order may request a hearing before the commission within thirty days following the receipt of the order. The commission shall schedule a hearing within fourteen days after receipt of the request for a hearing and give written notice to the alleged violator by certified mail. The commission may also schedule a hearing in the absence of a request by the alleged violator. On the basis of the findings, the commission shall issue a final order which shall be forwarded to the alleged violator by certified mail.

2. The director may, if an emergency exists, impound or order the impounding of any radioactive material in the possession of any person who is not equipped to observe, or fails to observe, the provisions of this part 2 of division IV or any rules adopted under this part.

[C73, 75, 77, 79, 81, §455B.91]
C83, §455B.337
86 Acts, ch 1245, §1899; 2018 Acts, ch 1041, §96

455B.338 Judicial review.

Judicial review of the actions of the commission may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. Notwithstanding the terms of chapter 17A, a petition for judicial review may be filed in the district court of the county in which the alleged violation was committed or in which a final order was entered.

[C73, 75, 77, 79, 81, §455B.92]
C83, §455B.338
2003 Acts, ch 44, §114; 2019 Acts, ch 24, §59
Section amended

455B.339 Injunction.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this part 2 of division IV or any rule or order promulgated under this part 2, the director may request the attorney general to make application in the name of the state to the district court of the county in which such acts or practices may be performed, for an order enjoining such acts or practices notwithstanding the existence or pursuit of any other remedy, and the attorney general shall make such application.

[C73, 75, 77, 79, 81, §455B.93]
C83, §455B.339
86 Acts, ch 1245, §1899; 2019 Acts, ch 24, §60
Section amended

455B.340 Penalty.

Any person who violates any provisions of this part 2 of division IV or rules adopted under this part 2, or any order of the department or director issued pursuant to said part, shall be guilty of a serious misdemeanor and, in addition, the person may be enjoined from continuing such violation. Each day of continued violation after notice that a violation is being committed shall constitute a separate violation.

[C73, 75, 77, 79, 81, §455B.94]
C83, §455B.340
86 Acts, ch 1245, §1899, 1899B; 2019 Acts, ch 24, §61
Section amended

455B.341 through 455B.360 Reserved.

PART 3

DEBRIS

Referred to in §455B.104, 455B.307A

455B.361 Definitions.

As used in this part 3 of division IV, unless the context otherwise requires:

1. *"Discard"* means to place, cause to be placed, throw, deposit, or drop.
2. *"Litter"* means any garbage, rubbish, trash, refuse, waste materials, or debris not exceeding ten pounds in weight or fifteen cubic feet in volume. Litter includes but is not limited to empty beverage containers, cigarette butts, food waste packaging, other food or candy wrappers, handbills, empty cartons, or boxes.

[C73, 75, 77, 79, 81, §455B.95]
C83, §455B.361
2016 Acts, ch 1076, §3

455B.362 Director's duties.

1. The director, at the direction of the commission, shall establish programs to encourage the active support of business, industry, and the general public for litter control.
2. The director, at the direction of the commission, shall coordinate and encourage the cooperation of state and local public agencies in the administration of this part 3 of division IV.

[C73, 75, 77, 79, 81, §455B.96]
C83, §455B.362
86 Acts, ch 1245, §1899; 2018 Acts, ch 1041, §127

455B.363 Litter.

No person shall discard any litter onto or in any water or land of this state, except that nothing in this section shall be construed to affect the authorized collection and discarding of such litter in or on areas or receptacles provided for such purpose.

[C73, 75, 77, 79, 81, §455B.97]
C83, §455B.363
Referred to in §455B.307B, 455B.364
See §321.369

455B.364 Penalty.

Any person violating the provisions of section 455B.363, upon conviction, shall be guilty of a simple misdemeanor. The court, in lieu of or in addition to any other sentence imposed, may direct and supervise a labor of litter gathering.

[C73, 75, 77, 79, 81, §455B.98]
C83, §455B.364

455B.365 through 455B.380 Reserved.

PART 4

HAZARDOUS CONDITIONS

Referred to in §101.10, 455B.104, 455B.423, 455H.102

455B.381 Definitions.

As used in this part 4 of division IV, unless the context otherwise requires:

1. *"Cleanup"* means actions necessary to contain, collect, control, identify, analyze, clean up, treat, disperse, remove, or dispose of a hazardous substance.

2. *"Cleanup costs"* means costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision in the prevention or mitigation of damages from a hazardous condition or the cleanup of a hazardous substance involved in a hazardous condition.

3. *"Corrosive"* means causing or producing visible destruction or irreversible alterations in human skin tissue at the site of contact, or in the case of leakage of a hazardous substance from its packaging, causing or producing a severe destruction or erosion of other materials through chemical processes.

4. *"Hazardous condition"* means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment. For purposes of this division, a site which is a hazardous waste or hazardous substance disposal site as defined in section 455B.411, subsection 4, is a hazardous condition.

5. *"Hazardous substance"* means any substance or mixture of substances that presents a danger to the public health or safety and includes but is not limited to a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat, or other means. *"Hazardous substance"* may include any hazardous waste identified or listed by the administrator of the United States environmental protection agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act.

6. *"Irritant"* means a substance causing or producing dangerous or intensely irritating fumes upon contact with fire or when exposed to air.

7. *a. "Person having control over a hazardous substance"* means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance.

b. "Person having control over a hazardous substance" does not include a person who holds indicia of ownership in a hazardous condition site, if the person satisfies all of the following:

(1) Holds indicia of ownership primarily to protect that person's security interest in the hazardous condition site, where the indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term *"primarily to protect that person's security interest"* includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the hazardous condition site, where the exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by the interest. The person holding indicia of ownership in a hazardous condition site and who acquires title or a right to title to the site upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold the indicia of ownership primarily to protect that person's security interest so long as the subsequent

actions of the person with respect to the site are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) Does not exhibit managerial control of, or managerial responsibility for, the daily operation of the hazardous condition site through the actual, direct, and continual or recurrent exercise of managerial control over the hazardous condition site in which that person holds a security interest, which managerial control materially divests the borrower, debtor, or obligor of control.

(3) Has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

8. *"Political subdivision"* means any municipality, township, or county, or district, or authority, or any portion, or combination of two or more thereof, including but not limited to any emergency services and emergency management agency established pursuant to chapter 28E or 29C, and any municipal fire departments and ambulance services and agents thereof.

9. *"Release"* means a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state unless one of the following applies:

a. The release is done in compliance with the conditions of a federal or state permit.

b. The hazardous substance is confined and expected to stay confined to property owned, leased or otherwise controlled by the person having control over the hazardous substance.

c. In the use of pesticides, the application is done in accordance with the product label.

10. *"Toxic"* means causing or producing a dangerous physiological, anatomic, or biochemical change in a biological system.

11. *"Waters of the state"* means rivers, streams, lakes, and any other bodies of surface and subsurface water lying within or forming a part of the boundaries of the state which are not entirely confined and located completely upon lands owned, leased or otherwise controlled by a single person or by two or more persons jointly or as tenants in common. *"Waters of the state"* includes waters of the United States lying within the state.

[C79, 81, §455B.110]

C83, §455B.381

84 Acts, ch 1108, §1; 86 Acts, ch 1025, §1; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §1; 93 Acts, ch 42, §2; 2009 Acts, ch 16, §1, 2; 2017 Acts, ch 54, §56

Referred to in §124C.1, 455B.171, 455B.191, 455B.392, 455B.751, 455B.752, 455H.103, 455H.301, 459.506

455B.382 Administrative agency.

The department shall be the agency of the state to prevent, abate, and control the exposure of the citizens of the state to hazardous conditions as defined in this part 4 of division IV.

[C79, 81, §455B.111]

C83, §455B.382

Referred to in §459.506

455B.383 Powers and duties of department.

The department shall:

1. Establish such rules pursuant to the provisions of chapter 17A as are necessary to protect the public from unnecessary exposure to hazardous substances.

2. Develop a comprehensive plan for the prevention, abatement and control of hazardous conditions within the state.

[C79, 81, §455B.112]

C83, §455B.383

86 Acts, ch 1245, §1899B

Referred to in §459.506

455B.384 Powers and duties of the executive director.

The director shall:

1. Provide technical advice and assistance to other state agencies, to political subdivisions

of the state and to other persons upon request for the control, abatement, and prevention of hazardous conditions.

2. Collect and disseminate such information, publish such guidelines or reports, and conduct such educational programs deemed necessary to implement the provisions of this part 4 of division IV. Educational programs may be conducted in cooperation with other public or private agencies through agreements concluded pursuant to chapter 28E.

3. Exercise such other powers consistent with the Code and the provisions of this part 4 as the commission may direct.

[C79, 81, §455B.113]

C83, §455B.384

86 Acts, ch 1245, §1899

Referred to in §459.506

455B.385 State hazardous condition contingency plan.

All public agencies, as defined in chapter 28E, shall cooperate in the development and implementation of a state hazardous condition contingency plan. The plan shall detail the manner in which public agencies shall participate in the response to a hazardous condition. The director may enter into agreements, with approval of the commission, with any state agency or unit of local government or with the federal government, as necessary to develop and implement the plan. The plan shall be coordinated with the department of homeland security and emergency management and any joint emergency management agencies established pursuant to chapter 29C.

[C79, 81, §455B.114]

C83, §455B.385

86 Acts, ch 1245, §1899; 92 Acts, ch 1139, §31; 2003 Acts, ch 179, §157; 2013 Acts, ch 29, §57

Referred to in §459.506

455B.386 Notification of spills — penalty.

A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the department and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. A sheriff or police chief who has been notified of a hazardous condition shall immediately notify the department. The department, upon receiving notice of a hazardous condition, shall immediately notify the operator of any public water supply system or private water supply system which may be affected by the hazardous condition. If requested, a person shall submit within thirty days of the department's request a written report of particulars of the incident. A person violating this section is subject to a civil penalty of not more than one thousand dollars.

[C79, 81, §455B.115]

C83, §455B.386

84 Acts, ch 1108, §2; 90 Acts, ch 1032, §1

Referred to in §29C.8A, 321.266, 331.653, 459.506

455B.387 Removal of hazardous substances.

1. When any hazardous condition exists, the director may remove or provide for the removal and disposal of the hazardous substance at any time, unless the director determines such removal will be properly and promptly accomplished by the owner or operator of the vessel, vehicle, container, pipeline or other facility.

2. The director may use any resources available under the hazardous condition contingency plan to provide for the removal of hazardous substances. If the director finds that public agencies cannot provide the necessary labor or equipment or if the director determines that emergency conditions exist, the director may contract with a private person or agency for removal of the hazardous substance. In those cases where equipment or services are obtained from a public or private person or agency under emergency conditions, section 455B.105, subsection 6 does not apply.

3. An action taken by a person to abate, control, or clean up a hazardous substance involved in a hazardous condition shall not be construed as an admission of liability for a hazardous condition.

[C79, 81, §455B.116]
C83, §455B.387
83 Acts, ch 101, §94; 84 Acts, ch 1108, §3; 86 Acts, ch 1245, §1899
Referred to in §459.506

455B.388 Injunctions and emergency orders.

1. If it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. Any such order shall be binding and effective immediately and until such order is modified or vacated at a contested case hearing before the commission or by a court.

2. The director may request that the attorney general institute legal proceedings for a temporary or permanent injunction pursuant to section 455B.391 for purposes of enforcing an emergency order.

[C79, 81, §455B.117]
C83, §455B.388
86 Acts, ch 1245, §1899
Referred to in §459.506

455B.389 Judicial review.

Judicial review of any order or other action of the commission or of the director may be sought in accordance with the terms of chapter 17A. Notwithstanding the provisions of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged hazardous condition occurred.

[C79, 81, §455B.118]
C83, §455B.389
86 Acts, ch 1245, §1899
Referred to in §459.506

455B.390 Jurisdiction limited.

Nothing contained in this part 4 of division IV shall be deemed to grant to the department any authority or jurisdiction under this part 4 with respect to the following:

1. Hazardous conditions existing solely within and which will probably continue to exist solely within commercial and industrial plants, works, or shops under the jurisdiction of chapters 88 and 91.

2. Relations between employers and employees with respect to hazardous conditions except that where such hazardous conditions extend to or affect areas within the scope of the authority granted by this part 4 of division IV, the department may take any action consistent with this part 4 to abate such hazardous condition.

3. The storage, transportation, handling, or use of flammable liquids, combustibles, and explosives, control over which is exercised by the state fire marshal under chapter 100.

4. The storage, transportation, handling or use of pesticides over which control is exercised by the state secretary of agriculture under chapter 206, except when spillage of pesticides creates a hazardous condition.

5. The storage, transportation, handling or use of fertilizers over which control is exercised by the state secretary of agriculture under chapter 200, except when spillage of fertilizers creates a hazardous condition.

[C79, 81, §455B.119]
C83, §455B.390
92 Acts, ch 1163, §94
Referred to in §101.10, 459.506

455B.391 Duties of attorney general.

1. The attorney general shall, at the request of the department, institute any legal

proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this part 4 of division IV. In any legal proceedings any previous findings of fact of the director or the department after due notice and hearing shall be conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

2. The attorney general shall, at the request of the director, take appropriate action against the person having control over a hazardous substance to recover for the liabilities resulting under section 455B.392.

[C79, 81, §455B.120]

C83, §455B.391

86 Acts, ch 1158, §1; 86 Acts, ch 1245, §1899, 1899B

Referred to in §455B.388, 459.506

455B.392 Liability for cleanup costs.

1. *a.* A person having control over a hazardous substance is strictly liable to the state or a political subdivision for all of the following:

(1) The reasonable cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision as a result of the failure of the person to clean up a hazardous substance involved in a hazardous condition caused by that person.

(2) The reasonable costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision to evacuate people from the area threatened by a hazardous condition caused by the person.

(3) The reasonable damages to the state for the injury to, destruction of, or loss of natural resources resulting from a hazardous condition caused by that person including the costs of assessing the injury, destruction, or loss.

(4) The excessive and extraordinary cost incurred by the state or its political subdivisions or the agents of the state or a political subdivision in responding at and to the scene of a hazardous condition caused by that person.

b. If the failure is willful, the person is liable for punitive damages not to exceed triple the cleanup costs incurred by the state or its political subdivisions or the agents of the state or a political subdivision. Prompt and good faith notification to the state or a political subdivision by the person having control over a hazardous substance that the person does not have the resources or managerial capability to begin or continue cleanup, or a good faith effort to clean up, relieves the person of liability for punitive damages, but not for actual cleanup costs.

c. Claims under this subsection shall be made by the state agency or the political subdivision that incurred costs or damages under this subsection, and such costs or damages will be subject to administrative and judicial review, including the terms of chapter 17A when appropriate. If administrative or judicial review is sought, a political subdivision making a claim shall submit an advisory request to the department to determine whether the cleanup actions serving as the basis for the cleanup costs were consistent with this chapter. The department shall respond in writing to a request within thirty days of receiving the request.

2. Liability under subsection 1 is limited to the following maximum dollar limitations:

a. Five million dollars for any vehicle, boat, aircraft, pipeline, or other manner of conveyance which transports a hazardous substance.

b. Fifty million dollars for any facility generating, storing, or disposing of a hazardous substance.

3. There is no liability under this section for a person otherwise liable if the hazardous condition is solely resulting from one or more of the following:

a. An act of God.

b. An act of war.

c. (1) An act or omission of a third party if the person establishes both of the following:

(a) That taking into consideration the characteristics of the hazardous substance, the person otherwise liable exercised due care with respect to the hazardous substance.

(b) That the person otherwise liable took precautions against the foreseeable acts or omissions of the third party and the foreseeable consequences.

(2) As used in this paragraph, "*third party*" does not include an employee or agent of the

person otherwise liable or a third party whose act or omission occurs directly or indirectly in connection with a contractual relationship with the person otherwise liable.

4. There is no liability under this section for a person otherwise liable if all of the following conditions exist:

a. The liability arises during the transportation of a hazardous substance.

b. The fact that the hazardous substance is a hazardous substance has been misrepresented to the person transporting the hazardous substance.

c. The person transporting the hazardous substance does not know or have reason to know that the misrepresentation has been made.

5. Money collected by the department pursuant to this section shall be deposited in the hazardous waste remedial fund created in section 455B.423. Moneys shall be used in the manner permitted for the fund. Moneys collected by a state agency other than the department of natural resources pursuant to this section are appropriated to that agency for purposes of reimbursing costs of the agency for emergency response activities described in subsection 1. Moneys collected by a political subdivision pursuant to this section shall be retained by the political subdivision and shall be used for purposes of reimbursing costs of the political subdivision for emergency response activities described in subsection 1.

6. This section does not deny any person any legal or equitable rights, remedies, or defenses or affect any legal relationship other than the legal relationship between the state or a political subdivision and a person having control over a hazardous substance pursuant to subsection 1.

7. *a.* There is no liability under this section for a person who has satisfied the requirements of section 455B.381, subsection 7, paragraph *"b"*, regardless of when that person acquired title or right to title to the hazardous condition site, except that a person otherwise exempt from liability under this subsection shall be liable to the state or a political subdivision for the lesser of:

(1) The total reasonable cleanup costs incurred by the state to clean up a hazardous substance at the hazardous condition site; or

(2) The amount representing the postcleanup fair market value of the property comprising the hazardous condition site.

b. Liability under this subsection shall only be imposed when the person holds title to the hazardous condition site at the time the state or a political subdivision incurs reasonable cleanup costs.

c. For purposes of this subsection, *"postcleanup fair market value"* means the actual amount of consideration received by such person upon sale or transfer of the hazardous condition site which has been cleaned up by the state or a political subdivision to a bona fide purchaser for value.

d. Cleanup expenses incurred by the state or a political subdivision shall be a lien upon the real estate constituting the hazardous condition site, recordable and collectible in the same manner as provided for in section 424.11, Code 2016, subject to the terms of this subsection. The lien shall attach at the time the state or a political subdivision incurs expenses to clean up the hazardous condition site. The lien shall be valid as against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, only when a notice of the lien is filed with the recorder of the county in which the property is located. Upon payment by the person to the state or a political subdivision, of the amount specified in this subsection, the state or a political subdivision shall release the lien. If no lien has been recorded at the time the person sells or transfers the property, then the person shall not be liable for any cleanup costs incurred by the state or a political subdivision.

84 Acts, ch 1108, §4; 86 Acts, ch 1158, §2, 3; 86 Acts, ch 1245, §1899; 93 Acts, ch 42, §3; 94 Acts, ch 1157, §1, 2; 2009 Acts, ch 16, §3; 2016 Acts, ch 1105, §4, 15

Referred to in §455B.391, 459.506, 481A.151

455B.393 Liability of state employees or persons providing assistance.

1. A person employed by the state is not liable for damages incurred as a result of actions taken by the person when acting in the person's official capacity pursuant to this part, rules adopted pursuant to this part and the hazardous condition contingency plan.

2. A person who provides assistance at the request of the department or by previous agreement with the department in the event of a hazardous condition is not liable in a civil action for damages as a result of that person's acts or omissions in rendering the assistance. This section does not relieve a person from civil damages in any of the following circumstances:

a. If the person providing assistance is also the person having control over the hazardous substance which created the hazardous condition.

b. If the person rendered assistance for payment beyond reimbursement for out-of-pocket expenses or with the expectation of such payment.

c. For acts or omissions which result from intentional wrongdoing or gross negligence.

84 Acts, ch 1108, §5
Referred to in §459.506

455B.394 Right of entry.

A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the department who seeks entry or access for the purpose of investigating or responding to a hazardous condition. The representative shall present appropriate credentials. Upon a showing of probable cause in writing and made under oath, a judge or magistrate having proper jurisdiction shall issue a suitably restricted search warrant to the representative of the department for the purposes of enabling the representative to investigate or respond to a hazardous condition.

84 Acts, ch 1108, §6
Referred to in §459.506

455B.395 Public information.

Information obtained under this part or a rule, order or condition adopted or issued under this part, or an investigation authorized thereby, shall be available to the public unless the information constitutes trade secrets or information which is entitled to confidential treatment in order to protect a plan, process, tool, mechanism, or compound which is known only to the person claiming confidential treatment and confidential treatment is necessary to protect the person's trade, business or manufacturing process.

84 Acts, ch 1108, §7
Referred to in §459.506

455B.396 Claim of state.

1. Liability to the state under this part or part 5 of this division is a debt to the state. Liability to a political subdivision under this part of this division is a debt to the political subdivision. The debt, together with interest on the debt at the maximum lawful rate of interest permitted pursuant to section 535.2, subsection 3, paragraph "*a*", from the date costs and expenses are incurred by the state or a political subdivision is a lien on real property, except single and multifamily residential property, on which the department incurs costs and expenses creating a liability and owned by the persons liable under this part or part 5. To perfect the lien, a statement of claim describing the property subject to the lien must be filed within one hundred twenty days after the incurrence of costs and expenses by the state or a political subdivision. The statement shall be filed with, accepted by, and recorded by the county recorder in the county in which the property subject to the lien is located. The statement of claim may be amended to include subsequent liabilities. To be effective, the statement of claim shall be amended and filed within one hundred twenty days after the occurrence of the event resulting in the amendment.

2. The lien may be dissolved by filing with the appropriate recording officials a certificate that the debt for which the lien is attached, together with interest and costs on the debt, has been paid or legally abated.

86 Acts, ch 1115, §1; 2009 Acts, ch 16, §4
Referred to in §459.506

455B.397 Financial disclosure.

Immediately upon the incurrence of any liability to the state under this part, the debtor shall submit to the director a report consisting of documentation of the debtor's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the life of the debt. These reports shall be kept confidential and shall not be available to the public.

86 Acts, ch 1115, §2; 90 Acts, ch 1205, §12

Referred to in §459.506

455B.398 Reserved.

455B.399 Cleanup assistance — liability.

1. A person who provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened hazardous condition or in preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of a hazardous condition is not liable for damages resulting from the assistance or advice.

2. Subsection 1 does not apply to a person who receives compensation other than reimbursement for out-of-pocket expenses for services in rendering the assistance or advice.

3. This section does not limit the liability of a person for damages resulting from the person's gross negligence or reckless, wanton or intentional misconduct.

84 Acts, ch 1059, §1

Referred to in §459.506

455B.400 through 455B.410 Reserved.

PART 5

HAZARDOUS WASTE AND SUBSTANCE MANAGEMENT

Referred to in §455B.104, 455B.396, 455H.102

455B.411 Definitions.

As used in this part 5, unless the context otherwise requires:

1. *"Disposal"* means the discharge, deposit, injection, dumping, spilling, leaking, or placing of a hazardous waste or hazardous substance into or on land or water so that the hazardous waste or hazardous substance or a constituent of the hazardous waste or hazardous substance may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

2. *"Hazardous substance"* means a hazardous substance as defined in 42 U.S.C. §9601 of the federal Comprehensive Environmental Response, Compensation, and Liability Act and any element, compound, mixture, solution, or substance designated pursuant to 40 C.F.R. §302.4.

3. *a.* *"Hazardous waste"* means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either of the following effects:

(1) Causes, or significantly contributes to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Poses a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed. *"Hazardous waste"* may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

b. *"Hazardous waste"* does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979.

4. *"Hazardous waste or hazardous substance disposal site"* means real property which has been used for the disposal of hazardous waste or hazardous substances either illegally or prior to regulation as a hazardous waste or a hazardous substance under this part and any adjoining real property and groundwater affected by the disposal activities.

[C81, §455B.130; 81 Acts, ch 151, §1]

C83, §455B.411

84 Acts, ch 1108, §8; 84 Acts, ch 1157, §1; 84 Acts, ch 1158, §2; 86 Acts, ch 1025, §2, 3; 91 Acts, ch 155, §2; 2011 Acts, ch 9, §3

Referred to in §124C.1, 455B.191, 455B.301, 455B.304, 455B.381, 455B.482, 455B.751, 455F.1, 558.69, 716B.1

455B.412 through 455B.421 Repealed by 2011 Acts, ch 9, §10.

455B.422 Reserved.

455B.423 Hazardous substance remedial fund.

1. A hazardous substance remedial fund is created within the state treasury. Moneys received from fees, penalties, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the state treasury to the credit of the fund. Any unexpended balance in the remedial fund at the end of each fiscal year shall be retained in the fund.

2. *a.* The director may use the fund for any of the following purposes:

(1) Administrative services for the identification, assessment and cleanup of hazardous waste or hazardous substance disposal sites.

(2) Payments to other state agencies for services consistent with the management of hazardous waste or hazardous substance disposal sites.

(3) Emergency response activities as provided in part 4 of this division.

(4) Financing the nonfederal share of the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs, pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(5) Financing the cost of cleanup and site rehabilitation activities as well as postclosure operation and maintenance costs of hazardous waste or hazardous substance disposal sites that do not qualify for federal cost sharing pursuant to the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(6) Through agreements or contracts with other state agencies, to work with private industry to develop alternatives to land disposal of hazardous waste or hazardous substances including but not limited to resource recovery, recycling, neutralization, and reduction.

(7) For the administration of the waste tire collection or processing site permit program.

b. However, at least seventy-five percent of the fund shall be used for the purposes stated in paragraph *"a"*, subparagraphs (4) and (5).

3. Neither the state nor its officers, employees, or agents are liable for an injury caused by a dangerous condition at a hazardous waste or hazardous substance disposal site unless the condition is the result of gross negligence on the part of the state, its officers, employees, or agents.

4. The director may contract with any person to perform the acts authorized in this section.

5. Moneys shall not be used from the fund for hazardous waste or hazardous substance disposal site cleanup unless the director has made all reasonable efforts to secure voluntary agreement to pay the costs of necessary remedial actions from owners or operators of hazardous waste or hazardous substance disposal sites or other responsible persons.

6. The director shall make all reasonable efforts to recover the full amount of moneys expended from the fund through litigation or cooperative agreements with responsible

persons. Moneys recovered pursuant to this subsection shall be deposited with the treasurer of state and credited to the remedial fund.

84 Acts, ch 1108, §9; 86 Acts, ch 1025, §5; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §3 – 5; 92 Acts, ch 1218, §2; 2004 Acts, ch 1101, §63; 2011 Acts, ch 25, §105; 2012 Acts, ch 1023, §58

Referred to in §455B.392, 455B.432, 455D.11B

455B.424 Hazardous waste fees.

1. The person who generates hazardous waste or the owner or operator of a hazardous waste disposal facility who transports hazardous wastes off of the site where the hazardous waste was generated or off the disposal facility site shall pay a fee of ten dollars for each ton up to two thousand five hundred tons of hazardous waste transported off the site, excluding the water content of any waste that is transported to another facility under the ownership of the generator for the purposes of waste treatment or recycling.

2. A person who generates hazardous waste or owns or operates a facility which treats or disposes of hazardous waste at the facility shall pay the following fees:

a. Forty dollars for each ton of hazardous wastes placed, deposited, dumped or disposed of onto or into the land at a disposal facility in Iowa.

b. Two dollars for each ton up to five hundred tons of hazardous waste destroyed or treated at the generator's site or at the disposal facility to render the hazardous waste nonhazardous.

3. Fees specified in subsections 1 and 2 shall not be imposed on the state or any of its political subdivisions.

4. Fees specified in subsections 1 and 2 shall not be imposed on any of the following:

a. Hazardous waste that is reclaimed or reused for energy or materials.

b. Hazardous waste that is transformed into new products which are not wastes.

c. Hazardous wastes created or retrieved as a result of remedial actions at a hazardous waste or hazardous substance disposal site.

d. Influent waste water to a treatment facility which is subject to regulation under either 33 U.S.C. §1317(b) or 33 U.S.C. §1342.

e. A hazardous waste which due to its intrinsic physical, chemical or biological composition degrades, decomposes or changes physical characteristics so as to be rendered or considered nonhazardous without any form of external mechanical, physical or chemical treatment being introduced. However, such change to a nonhazardous nature must occur within twenty-four hours of the generation of the hazardous waste before the exemption granted in this paragraph is applicable.

5. In addition to other fees imposed by this section, a person that is required to obtain a United States environmental protection agency identification number shall pay the following fees:

a. If the person generates more than one thousand kilograms of hazardous waste per month, a fee of two hundred fifty dollars.

b. If the person generates hazardous waste but does not generate more than one thousand kilograms of hazardous waste per month, a fee of twenty-five dollars.

c. If the person is a transporter of hazardous waste, a fee of twenty-five dollars.

d. If the person operates a hazardous waste treatment, storage, or disposal facility, a fee of twenty-five dollars.

6. Fees imposed by this section shall be paid to the department on an annual basis. Fees are due on April 15 for the previous calendar year. The payment shall be accompanied by a return in the form prescribed by the department.

7. A person required to pay fees by this section who fails or refuses to pay the fees imposed by this section shall be assessed a penalty of fifteen percent of the fee due. The penalty shall be paid in addition to the fee due.

8. Moneys collected or received by the department pursuant to this section shall be transmitted to the treasurer of state for deposit in the hazardous waste remedial fund.

9. The fees imposed by this section shall be suspended if after collection of the fees due from the previous quarter, the hazardous waste remedial fund has a balance in excess of six

million dollars. If the balance falls below three million dollars, the fees shall be reimposed commencing the beginning of the next calendar quarter.

84 Acts, ch 1108, §10; 88 Acts, ch 1115, §1; 91 Acts, ch 155, §6; 98 Acts, ch 1178, §11, 12
Referred to in §455B.432

455B.425 Annual report on hazardous substance remedial fund.

The director shall annually on January 1 give a full accounting of moneys received, moneys expended, sources and recipients, and purposes of the expenditures for the preceding fiscal year in the hazardous substance remedial fund to the general assembly and the governor.

84 Acts, ch 1108, §11; 86 Acts, ch 1025, §6; 86 Acts, ch 1245, §1899
Referred to in §455B.432

455B.426 Registry of hazardous waste or hazardous substance disposal sites.

1. The director shall maintain and make available for public inspection a registry of confirmed hazardous waste or hazardous substance disposal sites in the state. The director shall take all necessary action to ensure that the registry provides a complete listing of all sites. The registry shall contain the exact location of each site and identify the types of waste found at each site.

2. The director shall investigate all known or suspected hazardous waste or hazardous substance disposal sites and determine whether each site should be included in the registry. In the evaluation of known or suspected hazardous waste or hazardous substance disposal sites, the director may enter private property and perform tests and analyses.

3. Beginning July 1, 2011, a new site shall not be placed on the registry of confirmed hazardous waste or hazardous substance disposal sites.

4. A site placed on the registry of confirmed hazardous waste or hazardous substance disposal sites prior to July 1, 2011, shall be removed upon the execution of a uniform environmental covenant pursuant to the provisions of chapter 455I relating to the contaminated portions of the property listed on the registry. A site may also be removed from the registry pursuant to section 455B.427, subsection 4.

5. If no sites remain listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, the department shall recommend to the general assembly the repeal of this section and sections 455B.427 through 455B.432.

84 Acts, ch 1108, §12; 86 Acts, ch 1025, §7; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §7; 2011 Acts, ch 9, §4, 5
Referred to in §455B.429, 455B.430, 455B.431, 455B.432, 455H.509

455B.427 Annual report on hazardous waste or hazardous substance disposal sites.

1. The director shall annually on January 1 transmit a report to the general assembly and the governor identifying all hazardous waste or hazardous substance disposal sites in the state listed on the registry. A copy of the report shall also be sent to the board of supervisors of every county containing a site.

2. The annual report shall include, but is not limited to, the following information for each site:

a. A general description of the site, including the name and address of the site, the type and quantity of the hazardous waste or hazardous substance disposed of at the site and the name of the current owners of the site.

b. A summary of significant environmental problems at or near the site.

c. A summary of serious health problems in the immediate vicinity of the site and health problems deemed by the director in cooperation with the Iowa department of public health to be related to conditions at the site.

d. The status of testing, monitoring, or remedial actions in progress or recommended by the director.

e. The status of pending legal actions and federal, state, or local government permits concerning the site.

f. The relative priority for remedial action at each site.

g. The proximity of the site to private residences, public buildings or property, school facilities, places of work, or other areas where individuals may be regularly present.

3. In developing and maintaining the annual report, the director shall assess the relative priority of the need for action at each site to remedy environmental and health problems resulting from the presence of hazardous wastes or hazardous substances at the sites. In making assessments of relative priority, the director, in cooperation with the Iowa department of public health on matters relating to public health, shall place every site in one of the following classifications:

a. Causing or presenting an imminent danger of causing irreversible or irreparable damage to the public health or environment — immediate action required.

b. Significant threat to the environment — action required.

c. Not a significant threat to the public health or environment — action may be deferred.

d. Site properly closed — requires continued management.

e. Site properly closed, no evidence of present or potential adverse impact — no further action required.

4. A site classified as properly closed under subsection 3, paragraph "*e*", shall be removed from all subsequent annual reports and the register of hazardous waste or hazardous substance disposal sites.

5. The director shall work with the Iowa department of public health when assessing the effects of a hazardous waste or hazardous substance disposal site on human health.

84 Acts, ch 1108, §13; 86 Acts, ch 1025, §8; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §8
Referred to in §455B.426, 455B.431, 455B.432

455B.428 Investigation of sites.

1. The director shall investigate each hazardous waste or hazardous substance disposal site listed in the registry to determine its relative priority.

2. The director shall identify each hazardous waste or hazardous substance disposal site by providing all of the following:

a. The address and site boundaries.

b. The time period of use for disposal of hazardous waste or hazardous substances.

c. The name of the current owner and operator and names of reported owners and operators during the time period of use for disposal of hazardous waste or hazardous substances.

d. The names of persons responsible for the generation and transportation of the hazardous waste or hazardous substances disposed of at the site.

e. The type, quantity and manner of hazardous waste or hazardous substances disposal.

3. When preliminary evidence suggests further assessment is necessary, the director may assess any of the following:

a. The depth of the water table at the site.

b. The nature of soils at the site.

c. The location, nature, and size of aquifers at the site.

d. The direction of present and historic groundwater flows at the site.

e. The location and nature of surface waters at and near the site.

f. The levels of contaminants in groundwater, surface water, air, and soils at and near the site resulting from hazardous wastes or hazardous substances disposed of at the site.

g. The current quality of all drinking water drawn from or distributed through the area in which the site is located, if the director determines that water quality may have been affected by the site.

4. The director shall maintain a site assessment file for each site listed in the registry. The file shall contain all information obtained pursuant to this section and shall be open to the public. Information in the file may be reproduced by any person at a charge not to exceed the actual cost of reproduction for copies of file information.

84 Acts, ch 1108, §14; 86 Acts, ch 1025, §9; 86 Acts, ch 1245, §1899; 91 Acts, ch 155, §9
Referred to in §455B.426, 455B.432

455B.429 Notification to owners — appeals.

1. Within sixty days after July 1, 1984, the director shall notify the owner of any part of a site to be included in the registry required by section 455B.426. The notice shall be sent

by certified mail to the owner's last known address. Thirty days before a site is added to the registry, the director shall notify the owner of any part of the site by certified mail of the proposed addition to the registry. The notice shall be sent by certified mail to the owner's last known address.

2. An owner or operator of a site proposed for listing in the registry or listed in the registry pursuant to section 455B.426, may petition the director for deletion of the site, modification of the site classification, or modification of any information regarding the site. A site shall not be listed on the registry until a final determination has been made on any appeal initiated under this section. An appeal is a contested case for the purposes of chapter 17A.

3. Within ninety days after the submission of an appeal, the department shall conduct a hearing to review the determination. At least thirty days prior to the hearing the department shall publish a notice of hearing in a newspaper of general circulation in the county in which the site is located. The department shall also notify in writing the owner or operator of the site at least thirty days prior to the hearing.

4. At least thirty days following the hearing, the department shall provide the owner or operator with a written determination accompanied by reasons for the determination on the appeal.

5. Within ten days of a determination, the director shall notify the local governments with jurisdiction over the site whenever a change is made in the registry pursuant to this section.

84 Acts, ch 1108, §15; 86 Acts, ch 1245, §1899

Referred to in §455B.426, 455B.430, 455B.432

455B.430 Use and transfer of sites — penalty — financial disclosure.

1. A person shall not substantially change the manner in which a hazardous waste or hazardous substance disposal site on the registry pursuant to section 455B.426 is used without the written approval of the director.

2. A person shall not sell, convey, or transfer title to a hazardous waste or hazardous substance disposal site which is on the registry pursuant to section 455B.426 without the written approval of the director. The director shall respond to a request for a change of ownership within thirty days of its receipt.

3. Decisions of the director concerning the use or transfer of a hazardous waste or hazardous substance disposal site may be appealed in the manner provided in section 455B.429.

4. If the director has reason to believe this section has been violated, or is in imminent danger of being violated, the director may institute a civil action in district court for injunctive relief to prevent the violation and for the assessment of a civil penalty not to exceed one thousand dollars per day for each day of violation. Moneys collected under this subsection shall be deposited in the remedial fund.

5. Immediately upon the listing of real property in the registry of hazardous waste or hazardous substance disposal sites, a person liable for cleanup costs shall submit to the director a report consisting of documentation of the responsible person's liabilities and assets, including if filed, a copy of the annual report submitted to the secretary of state pursuant to chapter 490. A subsequent report pursuant to this section shall be submitted annually on April 15 for the period the site remains on the registry.

84 Acts, ch 1108, §16; 86 Acts, ch 1025, §10; 86 Acts, ch 1245, §1899; 86 Acts, ch 1115, §3; 90 Acts, ch 1205, §13; 91 Acts, ch 155, §10

Referred to in §455B.426, 455B.432

455B.431 Recording of site designation.

When the director places a site on the registry as provided in section 455B.426, then the director shall file with the county recorder a statement disclosing the period during which the site was used as a hazardous waste or hazardous substances disposal area. When the director finds that a site on the registry has been properly closed under section 455B.427, subsection 3, paragraph "*e*", with no evidence of potential adverse impact, this finding shall be filed with the county recorder. The finding shall state that the director's finding does not warrant to

a future purchaser of the site that the site will be free from any future adverse impacts as a result of use of the site as a hazardous waste or hazardous substances disposal site.

84 Acts, ch 1108, §17; 86 Acts, ch 1025, §11; 86 Acts, ch 1245, §1899

Referred to in §455B.426, 455B.432

455B.432 Liability.

Acts or omissions of the director or the department in carrying out the duties imposed by sections 455B.423 through 455B.431 shall not be cause for a claim against the state within the meaning of chapter 669.

84 Acts, ch 1108, §18; 86 Acts, ch 1245, §1899

Referred to in §455B.426

455B.433 Physical infrastructure assistance — funding — liability. Repealed by 2012 Acts, ch 1126, §26.

455B.434 through 455B.440 Reserved.

PART 6

HAZARDOUS WASTE SITES AND FACILITIES

455B.441 through 455B.455 Repealed by 2011 Acts, ch 9, §10.

455B.456 through 455B.460 Reserved.

PART 7

DISPOSAL OF HAZARDOUS WASTE ON LAND

455B.461 through 455B.463 Repealed by 2011 Acts, ch 9, §10.

455B.464 Additional hazardous or restricted waste listed. Repealed by 2006 Acts, ch 1014, §10.

455B.465 through 455B.468 Repealed by 2011 Acts, ch 9, §10.

455B.469 and 455B.470 Reserved.

PART 8

UNDERGROUND STORAGE TANKS

Referred to in §455E.11, 455H.102, 455H.107, 455H.204

455B.471 Definitions.

As used in this part unless the context otherwise requires:

1. *"Board"* means the Iowa comprehensive petroleum underground storage tank fund board.

2. *"Corrective action"* means an action taken to reduce, minimize, eliminate, clean up, control, or monitor a release to protect the public health and safety or the environment. *"Corrective action"* includes but is not limited to excavation of an underground storage tank for purposes of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, and site management practices. *"Corrective action"* does not include replacement of an underground storage tank. *"Corrective action"* specifically excludes third-party liability.

3. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

4. *"Nonoperational storage tank"* means an underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after July 1, 1985.

5. *"Operator"* means a person in control of, or having responsibility for, the daily operation of the underground storage tank.

6. *a.* *"Owner"* means:

(1) In the case of an underground storage tank in use on or after July 1, 1985, a person who owns the underground storage tank used for the storage, use, or dispensing of regulated substances.

(2) In the case of an underground storage tank in use before July 1, 1985, but no longer in use on that date, a person who owned the tank immediately before the discontinuation of its use.

b. To the extent consistent with the federal Resource Conservation and Recovery Act, as amended to January 1, 1994, 42 U.S.C. §6901 et seq., *"owner"* does not include a person who holds indicia of ownership in the underground storage tank or the tank site property if all of the following apply:

(1) The person holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or tank site property, where such indicia of ownership was acquired either for the purpose of securing payment of a loan or other indebtedness, or in the course of protecting the security interest. The term *"primarily to protect that person's security interest"* includes but is not limited to ownership interests acquired as a consequence of that person exercising rights as a security interest holder in the underground storage tank or tank site property, where such exercise is necessary or appropriate to protect the security interest, to preserve the value of the collateral, or to recover a loan or indebtedness secured by such interest. The person holding indicia of ownership in the underground storage tank or tank site property and who acquires title or a right to title to such underground storage tank or tank site property upon default under the security arrangement, or at, or in lieu of, foreclosure, shall continue to hold such indicia of ownership primarily to protect that person's security interest so long as subsequent actions taken by that person with respect to the underground storage tank or tank site property are intended to protect the collateral secured by the interest, and demonstrate that the person is seeking to sell or liquidate the secured property rather than holding the property for investment purposes.

(2) The person does not exhibit managerial control of, or managerial responsibility for, the daily operation of the underground storage tank or tank site property through the actual, direct, and continual or recurrent exercise of managerial control over the underground storage tank or tank site property in which that person holds a security interest, which managerial control materially divests the borrower, debtor, owner or operator of the underground storage tank or tank site property of such control.

(3) The person has taken no subsequent action with respect to the site which causes or exacerbates a release or threatened release of a hazardous substance.

7. *"Petroleum"* means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

8. *"Regulated substance"* means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. *"Regulated substance"* includes substances designated in 40 C.F.R., pts. 61 and 116, and 40 C.F.R. §401.15, and petroleum including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute). However, *"regulated substance"* does not include a substance regulated as a hazardous waste under the Resource Conservation and Recovery Act of 1976. Substances may be added or deleted as regulated substances by rule of the commission pursuant to section 455B.474.

9. *"Release"* means spilling, leaking, emitting, discharging, escaping, leaching, or

disposing of a regulated substance, including petroleum, from an underground storage tank into groundwater, surface water, or subsurface soils.

10. *"Tank site"* means a tank or grouping of tanks within close proximity of each other located on the facility for the purpose of storing regulated substances.

11. *a.* *"Underground storage tank"* means one or a combination of tanks, including underground pipes connected to the tanks which are used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes, is ten percent or more beneath the surface of the ground.

b. (1) *"Underground storage tank"* does not include:

(a) Farm or residential tanks of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(b) Tanks used for storing heating oil for consumptive use on the premises where stored.

(c) Residential septic tanks.

(d) Pipeline facilities regulated under the Natural Gas Pipeline Safety Act of 1968, as amended to January 1, 1985, codified at 49 U.S.C. §1671 et seq., the Hazardous Liquid Pipeline Safety Act of 1979, as amended to January 1, 1985, codified at 49 U.S.C. §2001 et seq., or an intrastate pipeline facility regulated under chapter 479.

(e) A surface impoundment, pit, pond, or lagoon.

(f) A storm water or wastewater collection system.

(g) A flow-through process tank.

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(i) A storage tank situated in an underground area including but not limited to a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor.

(2) *"Underground storage tank"* does not include pipes connected to a tank described in paragraph *"b"*, subparagraph (1).

85 Acts, ch 162, §1; 89 Acts, ch 131, §33 – 35; 93 Acts, ch 42, §5; 94 Acts, ch 1067, §1; 95 Acts, ch 215, §4; 2011 Acts, ch 25, §106; 2012 Acts, ch 1023, §59; 2014 Acts, ch 1026, §99

Referred to in §101.1, 101.21, 455B.473, 455B.474, 455B.751, 455B.752, 455G.13, 558.69

455B.472 Declaration of policy.

The general assembly finds that the release of regulated substances from underground storage tanks constitutes a threat to the public health and safety and to the natural resources of the state, and that existing regulatory programs of the department and other agencies do not adequately or appropriately address this substantial public concern.

85 Acts, ch 162, §2

455B.473 Report of existing and new tanks — fee.

1. Except as provided in subsection 2, the owner or operator of an underground storage tank existing on or before July 1, 1985, shall notify the department in writing by May 1, 1986, of the existence of each tank and specify the age, size, type, location and uses of the tank.

2. The owner of an underground storage tank taken out of operation between January 1, 1974 and July 1, 1985, shall notify the department in writing by July 1, 1986, of the existence of the tank unless the owner knows the tank has been removed from the ground. The notice shall specify to the extent known to the owner, the date the tank was taken out of operation, the age of the tank on the date taken out of operation, the size, type and location of the tank, and the type and quantity of substances left stored in the tank on the date that it was taken out of operation.

3. An owner or operator which brings into use an underground storage tank after July 1, 1985, shall notify the department in writing within thirty days of the existence of the tank and specify the age, size, type, location and uses of the tank.

4. An owner or operator of a storage tank described in section 455B.471, subsection 11, paragraph *"b"*, subparagraph (1), subparagraph division (a), which brings the tank into use after July 1, 1987, shall notify the department of the existence of the tank within thirty days. The registration of the tank shall be accompanied by a fee of ten dollars to be deposited in

the storage tank management account. A tank which is existing before July 1, 1987, shall be reported to the department by July 1, 1989. Tanks under this section installed on or following July 1, 1987, shall comply with underground storage tank regulations adopted by rule by the department.

5. The notice of the owner or operator to the department under subsections 1 through 3 shall be accompanied by a fee of ten dollars for each tank included in the notice. All moneys collected shall be deposited in the storage tank management account of the groundwater protection fund created in section 455E.11. All moneys collected pursuant to this section prior to July 1, 1987, which have not been expended, shall be deposited in the storage tank management account.

6. Subsections 1 to 3 do not apply to an underground storage tank for which notice was given pursuant to section 103, subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980.

7. A person who sells, installs, modifies, or repairs a tank used or intended to be used as an underground storage tank shall notify the purchaser and the owner or operator of the tank in writing of the owner's notification requirements pursuant to this section including the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A person who installs an underground storage tank and the owner or operator of the underground storage tank shall, prior to installing an underground storage tank, notify the department in writing regarding the intent to install a tank.

8. *a.* It shall be unlawful to deposit or accept a regulated substance in an underground storage tank which has not been registered and issued permanent and annual tank management fee renewal tags pursuant to subsections 1 through 6. A person shall not deposit a regulated substance in an underground storage tank after receiving notice from the department that the underground storage tank is not covered by an approved form of financial responsibility in accordance with section 455B.474, subsection 2.

b. The department shall furnish the owner or operator of an underground storage tank with a registration tag for each underground storage tank registered with the department. The owner or operator shall affix the tag to the fill pipe of each registered underground storage tank. If an owner or operator fails to register or obtain annual renewal tags for the underground storage tank, the owner or operator shall pay an additional fee of two hundred fifty dollars upon registration of the tank. A fee imposed pursuant to this subsection shall not preclude the department from assessing an administrative penalty pursuant to section 455B.476.

9. The department may deny issuance of a registration or annual tank management fee renewal tag for failure of the owner or operator to provide proof the underground storage tank is covered by an approved form of financial responsibility as provided in section 455B.474, subsection 2.

85 Acts, ch 162, §3; 87 Acts, ch 225, §604, 605; 2001 Acts, ch 51, §1, 2; 2002 Acts, ch 1119, §60; 2011 Acts, ch 25, §136, 143; 2012 Acts, ch 1023, §150

Referred to in §455B.474, 455B.477, 455E.11

455B.473A Petroleum underground storage tank registration amnesty program. Repealed by 2011 Acts, ch 34, §164.

455B.474 Duties of commission — rules.

The commission shall adopt rules pursuant to chapter 17A relating to:

1. *a.* Release detection, prevention, and correction as may be necessary to protect human health and the environment, applicable to all owners and operators of underground storage tanks. The rules shall include but are not limited to requirements for:

(1) Maintaining a leak detection system, an inventory control system with a tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment.

(2) Maintaining records of any monitoring or leak detection system, inventory control

system, tank testing or comparable system, and periodic underground storage tank facility compliance inspections conducted by inspectors certified by the department.

(3) Reporting of any releases and corrective action taken in response to a release from an underground storage tank.

(4) Establishing criteria for classifying sites according to the release of a regulated substance in connection with an underground storage tank.

(a) The classification system shall consider the actual or potential threat to public health and safety and to the environment posed by the contaminated site and shall take into account relevant factors, including the presence of contamination in soils, groundwaters, and surface waters, and the effect of conduits, barriers, and distances on the contamination found in those areas according to the following factors:

(i) Soils shall be evaluated based upon the depth of the existing contamination and its distance from the ground surface to the contamination zone and the contamination zone to the groundwater; the soil type and permeability, including whether the contamination exists in clay, till or sand and gravel; and the variability of the soils, whether the contamination exists in soils of natural variability or in a disturbed area.

(ii) Groundwaters shall be evaluated based upon the depth of the contamination and its distance from the ground surface to the groundwater and from the contamination zone to the groundwater; the flow pattern of the groundwater, the direction of the flow in relation to the contamination zone and the interconnection of the groundwater with the surface or with surface water and with other groundwater sources; the nature of the groundwater, whether it is located in a high yield aquifer, an isolated, low yield aquifer, or in a transient saturation zone; and use of the groundwater, whether it is used as a drinking water source for public or private drinking water supplies, for livestock watering, or for commercial and industrial processing.

(iii) Surface water shall be evaluated based upon its location, its distance in relation to the contamination zone, the groundwater system and flow, and its location in relation to surface drainage.

(iv) The effect of conduits, barriers, and distances on the contamination found in soils, groundwaters, and surface waters. Consideration should be given to the following: the effect of contamination on conduits such as wells, utility lines, tile lines and drainage systems; the effect of conduits on the transport of the contamination; whether a well is active or abandoned; what function the utility line serves, whether it is a sewer line, a water distribution line, telephone line, or other line; the existence of barriers such as buildings and other structures, pavement, and natural barriers, including rock formations and ravines; and the distance which separates the contamination found in the soils, groundwaters, or surface waters from the conduits and barriers.

(b) A site shall be classified as either high risk, low risk, or no action required, as determined by a certified groundwater professional.

(i) A site shall be considered high risk when a certified groundwater professional determines that contamination from the site presents an unreasonable risk to public health and safety or the environment under any of the following conditions:

(A) Contamination is affecting or likely to affect groundwater which is used as a source water for public or private water supplies, to a level rendering them unsafe for human consumption.

(B) Contamination is actually affecting or is likely to affect surface water bodies to a level where surface water quality standards, under section 455B.173, will be exceeded.

(C) Harmful or explosive concentrations of petroleum substances or vapors affecting structures or utility installations exist or are likely to occur.

(ii) A site shall be considered low risk when a certified groundwater professional determines that low risk conditions exist as follows:

(A) Contamination is present and is affecting groundwater, but high risk conditions do not exist and are not likely to occur.

(B) Contamination is above action level standards, but high risk conditions do not exist and are not likely to occur.

(iii) A site shall be considered no action required and a no further action certificate shall

be issued by the department when a certified groundwater professional determines that contamination is below action level standards and high or low risk conditions do not exist and are not likely to occur.

(iv) For purposes of classifying a site as either low risk or no action required, the department shall rely upon the example tier one risk-based screening level look-up table of ASTM (American society for testing and materials) international's emergency standard, ES38-94, or other look-up table as determined by the department by rule.

(v) A site cleanup report which classifies a site as either high risk, low risk, or no action required shall be submitted by a groundwater professional to the department with a certification that the report complies with the provisions of this chapter and rules adopted by the department. The report shall be determinative of the appropriate classification of the site and the site shall be classified as indicated by the groundwater professional unless, within ninety days of receipt by the department, the department identifies material information in the report that is inaccurate or incomplete, and based upon inaccurate or incomplete information in the report the risk classification of the site cannot be reasonably determined by the department based upon industry standards. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within ninety days of receipt of the report and shall work with the groundwater professional to obtain correct information or additional information necessary to appropriately classify the site. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in a mistaken classification of a site shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

(5) The closure of tanks to prevent any future release of a regulated substance into the environment. If consistent with federal environmental protection agency technical standard regulations, state tank closure rules shall include, at the tank owner's election, an option to fill the tank with an inert material. Removal of a tank shall not be required if the tank is filled with an inert material pursuant to department of natural resources rules. A tank closed, or to be closed and which is actually closed, within one year of May 13, 1988, shall be required to complete monitoring or testing as required by the department to ensure that the tank did not leak prior to closure, but shall not be required to have a monitoring system installed.

(6) Establishing corrective action response requirements for the release of a regulated substance in connection with an underground storage tank. The corrective action response requirements shall include but not be limited to all of the following:

(a) A requirement that the site cleanup report do all of the following:

(i) Identify the nature and level of contamination resulting from the release.

(ii) Provide supporting data and a recommendation of the degree of risk posed by the site relative to the site classification system adopted pursuant to paragraph "*a*", subparagraph (4).

(iii) Provide supporting data and a recommendation of the need for corrective action.

(iv) Identify the corrective action options which shall address the practical feasibility of implementation, costs, expected length of time to implement, and environmental benefits.

(b) To the fullest extent practicable, allow for the use of generally available hydrological, geological, topographical, and geographical information and minimize site specific testing in preparation of the site cleanup report.

(c) Require that at a minimum the source of a release be stopped either by repairing, upgrading, or closing the tank and that free product be removed or contained on site.

(d) High risk sites shall be addressed pursuant to a corrective action design report, as submitted by a groundwater professional and as accepted by the department. The corrective action design report shall determine the most appropriate response to the high risk conditions presented. The appropriate corrective action response shall be based upon industry standards and shall take into account the following:

(i) The extent of remediation required to reclassify the site as a low risk site.

(ii) The most appropriate exposure scenarios based upon residential, commercial, or industrial use or other predefined industry accepted scenarios.

(iii) Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

(iv) Affected human or environmental receptors and exposure scenarios based on current and projected use scenarios.

(v) Risk-based corrective action assessment principles which identify the risks presented to the public health and safety or the environment by each release in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with ASTM (American society for testing and materials) international's emergency standard, ES38-94.

(vi) Other relevant site specific factors such as the feasibility of available technologies, existing background contaminant levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of engineering and institutional controls, including an environmental covenant as established by chapter 455I.

(vii) Remediation shall not be required on a site that does not present an increased cancer risk at the point of exposure of one in one million for residential areas or one in ten thousand for nonresidential areas.

(e) A corrective action design report submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within ninety days of receipt of a corrective action design report, the department identifies material information in the corrective action design report that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based upon industry standards, the department shall notify the groundwater professional that the corrective action design report is not accepted, and the department shall work with the groundwater professional to correct the material information or to obtain the additional information necessary to appropriately determine the corrective action response requirements as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have one hundred twenty days to notify the certified groundwater professional when a corrective action design report is not accepted based on material information that is found to be inaccurate or incomplete. A groundwater professional who knowingly or intentionally makes a false statement or misrepresentation which results in an improper or incorrect corrective action response shall be guilty of a serious misdemeanor and shall have the groundwater professional's certification revoked under this section.

(f) Low risk sites shall be monitored as deemed necessary by the department consistent with industry standards. Monitoring shall not be required on a site which has received a no further action certificate. A site that has maintained less than the applicable target level for four consecutive sampling events shall be reclassified as a no action required site regardless of exit monitoring criteria and guidance.

(g) An owner or operator may elect to proceed with additional corrective action on the site. However, any action taken in addition to that required pursuant to this subparagraph (6), shall be solely at the expense of the owner or operator and shall not be considered corrective action for purposes of section 455G.9, unless otherwise previously agreed to by the board and the owner or operator pursuant to section 455G.9, subsection 7. Corrective action taken by an owner or operator due to the department's failure to meet the time requirements provided in subparagraph division (e) shall be considered corrective action for purposes of section 455G.9.

(h) Notwithstanding other provisions to the contrary and to the extent permitted by federal law, the department shall allow for bioremediation of soils and groundwater. For purposes of this subparagraph division, "*bioremediation*" means the use of biological organisms, including microorganisms or plants, to degrade organic pollutants to common natural products.

(i) Replacement or upgrade of a tank on a site classified as a high or low risk site shall be equipped with a secondary containment system with monitoring of the space between

the primary and secondary containment structures or other board approved tank system or methodology.

(j) The commission and the board shall cooperate to ensure that remedial measures required by the corrective action rules adopted pursuant to this subparagraph (6) are reasonably cost-effective and shall, to the fullest extent possible, avoid duplicating and conflicting requirements.

(k) The director may order an owner or operator to immediately take all corrective actions deemed reasonable and necessary by the director if the corrective action is consistent with the prioritization rules adopted under this subparagraph (6). Any order taken by the director pursuant to this subparagraph division shall be reviewed at the next meeting of the environmental protection commission.

(7) Specifying an adequate monitoring system to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources for regulated tanks installed prior to January 14, 1987. The effective date of the rules adopted shall be January 14, 1989. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Unless the federal environmental protection agency adopts final rules to the contrary, rules adopted pursuant to this section shall not apply to hydraulic lift reservoirs, such as for automobile hoists and elevators, containing hydraulic oil.

(8) Issuing a no further action certificate or a monitoring certificate to the owner or operator of an underground storage tank site.

(a) A no further action certificate shall be issued by the department for a site which has been classified as a no further action site or which has been reclassified pursuant to completion of a corrective action plan or monitoring plan to be a no further action site by a groundwater professional, unless within ninety days of receipt of the report submitted by the groundwater professional classifying the site, the department notifies the groundwater professional that the report and site classification are not accepted and the department identifies material information in the report that is inaccurate or incomplete which causes the department to be unable to accept the classification of the site. An owner or operator shall not be responsible for additional assessment, monitoring, or corrective action activities at a site that is issued a no further action certificate unless it is determined that the certificate was issued based upon false material statements that were knowingly or intentionally made by a groundwater professional and the false material statements resulted in the incorrect classification of the site.

(b) A monitoring certificate shall be issued by the department for a site which does not require remediation, but does require monitoring of the site.

(c) A certificate shall be recorded with the county recorder. The owner or operator of a site who has been issued a certificate under this subparagraph (8), or a subsequent purchaser of the site shall not be required to perform further corrective action because action standards are changed at a later date. A certificate shall not prevent the department from ordering corrective action of a new release.

(9) Establishing a certified compliance inspector program administered by the department for underground storage tank facility compliance inspections.

(a) The certified compliance inspector program shall provide for, but not be limited to, all of the following:

(i) Mandatory periodic underground storage tank facility compliance inspections by owners and operators using inspectors certified by the department.

(ii) Compliance inspector qualifications, certification procedures, certification and renewal fees sufficient to cover administrative costs, continuing education requirements, inspector discipline standards including certification suspension and revocation for good cause, compliance inspection standards, professional liability bonding or insurance requirements, and any other requirements as the commission may deem appropriate. Certification and renewal fees received by the department are appropriated to the department for purposes of the administration of the certified compliance inspector program.

(b) The department shall continue to conduct independent inspections as provided in section 455B.475 as deemed appropriate to assure effective compliance and enforcement and for the purpose of auditing the accuracy and completeness of inspections conducted by certified compliance inspectors.

(c) Acts or omissions by a certified compliance inspector, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions, rules, or regulations arising out of the certification, inspections, or duties imposed by this section shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Iowa Code.

b. In adopting the rules under this subsection, the commission may distinguish between types, classes, and ages of underground storage tanks. In making the distinctions, the commission may take into consideration factors including but not limited to location of the tanks, compatibility of a tank material with the soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the degree of risk presented by the regulated substance, the technical and managerial capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the underground storage tank is fabricated.

c. The department may issue a variance, which includes an enforceable compliance schedule, from the mandatory monitoring requirement for an owner or operator who demonstrates plans for tank removal, replacement, or filling with an inert material pursuant to a department approved variance. A variance may be renewed for just cause.

2. The maintenance of evidence of financial responsibility as the director determines to be feasible and necessary for taking corrective action and for compensating third parties for bodily injury and property damage caused by release of a regulated substance from an underground storage tank.

a. (1) (a) Financial responsibility required by this subsection may be established in accordance with rules adopted by the commission by any one, or any combination, of the following methods:

(i) Insurance.

(ii) Guarantee.

(iii) Surety bond.

(iv) Letter of credit.

(v) Qualification as a self-insurer.

(b) In adopting requirements under this subsection, the commission may specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing the evidence of financial responsibility.

(2) A person who establishes financial responsibility by self-insurance shall not require or shall not enforce an indemnification agreement with an operator or owner of the tank covered by the self-insurance obligation, unless the owner or operator has committed a substantial breach of a contract between the self-insurer and the owner or operator, and that substantial breach relates directly to the operation of the tank in an environmentally sound manner. This subparagraph applies to all contracts between a self-insurer and an owner or operator entered into on or after May 5, 1989.

b. If the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal bankruptcy law or if jurisdiction in any state court or federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing the evidence of financial responsibility. In the case of action pursuant to this paragraph, the guarantor is entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

c. The total liability of a guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this subsection. This subsection does not limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This subsection does not diminish the liability of any person under section 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or other applicable law.

d. For the purpose of this subsection, the term *"guarantor"* means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

e. If an owner or operator is required to uncover or remove an underground storage tank based upon a determination of the department that the underground storage tank presents a hazard to the public health, safety, or the environment, and if upon inspection of the tank the determination is unfounded, the state may reimburse reasonable costs incurred in the inspection of the tank. Claims for reimbursement shall be filed on forms provided by the commission. The commission shall adopt rules pursuant to chapter 17A relating to determinations of reasonableness in approval or rejection of claims in cases of dispute. Claims shall be paid from the general fund of the state. When any one of the tanks or the related pumps and piping at a multiple tank facility are found to be leaking, the state shall not reimburse costs for uncovering or removing any of the other tanks, piping, or pumps that are not found to be leaking.

3. Standards of performance for new underground storage tanks which shall include but are not limited to design, construction, installation, release detection, and compatibility standards. Until the effective date of the standards adopted by the commission and after January 1, 1986, a person shall not install an underground storage tank for the purpose of storing regulated substances unless the tank, whether of single or double wall construction, meets all the following conditions:

a. The tank will prevent release due to corrosion or structural failure for the operational life of the tank.

b. The tank is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance.

c. The material used in the construction or lining of the tank is compatible with the substance to be stored. If soil tests conducted in accordance with ASTM (American society for testing and materials) international's standard G57-78 or another standard approved by the commission show that soil resistivity in an installation location is twelve thousand ohm/cm or more, unless a more stringent soil resistivity standard is adopted by rule of the commission, a storage tank without corrosion protection may be installed in that location until the effective date of the standards adopted by the commission and after January 1, 1986.

d. Rules adopted by the commission shall specify adequate monitoring systems to detect the presence of a leaking underground storage tank and to provide for protection of the groundwater resources from regulated tanks installed after January 14, 1987. In the event that federal regulations are adopted by the United States environmental protection agency after the commission has adopted state standards pursuant to this subsection, the commission shall immediately proceed to adopt rules consistent with those federal regulations adopted. Tanks installed on or after January 14, 1987, shall continue to be considered new tanks for purposes of this chapter and are subject to state monitoring requirements unless federal requirements are more restrictive.

4. The form and content of the written notices required by section 455B.473.

5. The duties of owners or operators of underground storage tanks to locate and abate the source of release of regulated substances, when in the judgment of the director, the local hydrology, geology and other relevant factors reasonably include a tank as a potential source.

6. Reporting requirements necessary to enable the department to maintain an accurate inventory of underground storage tanks.

7. Designation of regulated substances subject to this part, consistent with section 455B.471, subsection 8. The rules shall be at least as stringent as the regulations of the federal government pursuant to section 311, subsection b, paragraph 2, subparagraph A of the federal Water Pollution Control Act, 33 U.S.C. §1321(b)(2)(A), pursuant to section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9602, pursuant to section 307, subsection a of the federal Water Pollution Control Act, 33 U.S.C. §1317(a), pursuant to section 112 of the Clean Air Act, 42 U.S.C. §7412, or pursuant to section 7 of the Toxic Substances Control Act, 15 U.S.C. §2606.

8. Requirements as may be necessary to maintain state program approval and which are consistent with applicable provisions of the federal Energy Policy Act of 2005, Pub. L. No. 109-58, Tit. XV, Subtit. B, Underground Storage Tank Compliance, as codified in 42 U.S.C. §6991 et seq.

a. The commission shall adopt rules establishing a training program applicable to owners and operators of underground storage tanks. The rules may include provisions for department certification of operators, self-certification by owners and operators, education and training requirements, owner requirements to assure operator qualifications, and assessment of education, training, and certification fees. The rules shall be consistent with and sufficient to comply with the operator training requirements as provided in 42 U.S.C. §6991i, guidance adopted pursuant to that provision by the administrator of the United States environmental protection agency, and state program approval requirements under 42 U.S.C. §6991i(b).

b. The commission shall adopt rules related to the prohibition on the delivery of regulated substances consistent with and sufficient to comply with the provisions of 42 U.S.C. §6991k, guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision, and state program approval requirements under 42 U.S.C. §6991k(a)(3).

c. The commission shall adopt rules applicable to secondary containment requirements consistent with and sufficient to comply with the provisions of Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and guidance adopted by the administrator of the United States environmental protection agency pursuant to that provision. Each new underground storage tank or piping connected to any such new tank installed after July 1, 2007, or any existing underground storage tank or existing piping connected to such existing underground storage tank that is replaced after August 1, 2007, shall be secondarily contained if the installation is within one thousand feet of any existing community water system or any existing potable drinking water well as provided in Pub. L. No. 109-58, Tit. XV, §1530(a), as codified at 42 U.S.C. §6991b(i)(1), and in guidance adopted by the United States environmental protection agency pursuant to that provision. Rules adopted under this paragraph shall not amend or modify the secondary containment requirements in subsection 1, paragraph "*a*", subparagraph (6), subparagraph division (i).

9. *a.* Groundwater professionals shall be certified. The commission shall adopt rules pursuant to chapter 17A for such certifications, and the rules shall include provisions for certification suspension or revocation for good cause.

b. A groundwater professional is a person who provides subsurface soil contamination and groundwater consulting services or who contracts to perform remediation or corrective action services and is one or more of the following:

(1) A person certified by the American institute of hydrology, the national water well association, the American board of industrial hygiene, or the association of groundwater scientists and engineers.

(2) A professional engineer licensed in Iowa.

(3) A professional geologist certified by a national organization.

(4) Any person who has five years of direct and related experience and training as a groundwater professional or in the field of earth sciences.

(5) Any other person with a license, certification, or registration to practice hydrogeology or groundwater hydrology issued by any state in the United States or by any national organization, provided that the license, certification, or registration process requires, at a minimum, all of the following:

(a) Possession of a bachelor's degree from an accredited college.

(b) Five years of related professional experience.

c. The department of natural resources may provide for a civil penalty of no more than fifty dollars for failure to obtain certification. An interested person may obtain a list of certified groundwater professionals from the department of natural resources. The department may impose and retain a fee for the certification of persons under this subsection sufficient to cover the costs of administration.

d. The certification of groundwater professionals shall not impose liability on the board, the department, or the fund for any claim or cause of action of any nature, based on the action or inaction of a groundwater professional certified pursuant to this subsection.

e. A person who requests certification under this subsection shall be required to attend a course of instruction and pass a certification examination. An applicant who successfully passes the examination shall be certified as a groundwater professional.

f. All groundwater professionals shall be required to complete continuing education requirements as adopted by rule by the commission.

g. The commission may provide for exemption from the certification requirements of this subsection and rules adopted hereunder for a professional engineer licensed pursuant to chapter 542B, if the person is qualified in the field of geotechnical, hydrological, environmental groundwater, or hydrogeological engineering.

h. Notwithstanding the certification requirements of this subsection, a site cleanup report or corrective action design report submitted by a certified groundwater professional shall be accepted by the department in accordance with subsection 1, paragraph "*a*", subparagraph (4), subparagraph division (b), subparagraph subdivision (v), and paragraph "*a*", subparagraph (6), subparagraph division (e).

10. Requirements that persons and companies performing or providing services for underground storage tank installations, installation inspections, testing, permanent closure of underground storage tanks by removal or filling in place, and other closure activities as defined by rules adopted by the commission be certified by the department. This provision does not apply to persons performing services in their official capacity and as authorized by the state fire marshal's office or fire departments of political subdivisions of the state. The rules adopted by the commission shall include all of the following:

a. Establishing separate certification criteria applicable to underground storage tank installers and installation inspectors, underground storage tank testers, and persons conducting underground storage tank closure activities as required by commission rules.

b. Establishing minimum qualifications for certification including but not limited to considerations based on education, character, professional ethics, experience, manufacturer or other private agency certification, training and apprenticeship, and field demonstration of competence. The rules may provide for exemption from education, experience, and training requirements for a licensed engineer for whom underground storage tank installation is within the scope of their license and practice but shall require compliance with other certification requirements.

c. Requiring a written examination developed and administered by the department or by some other qualified public or private entity identified by the department. The department may contract with a public or private entity to administer the department's examination or a department-approved third party examination. The examination shall, at a minimum, be sufficient to establish knowledge of all applicable underground storage tank rules adopted under this section, private industry standards, federal standards, and other applicable standards adopted by the state fire marshal's office pursuant to chapter 101.

d. Providing for a minimum two-year renewable certification period. A person may apply for a combined certificate applicable to underground storage tank installer and installer inspector certification, tester certification, and closure certification.

e. Providing that certificate holders obtain and provide proof of financial responsibility for environmental liability with minimum liability limits of one million dollars per occurrence and in the aggregate. The rules may provide exemptions where the certificate holder is employed by the owner or operator of the underground storage tank system and the

underground storage tank system is covered by a financial responsibility mechanism under subsection 2.

f. Providing criteria for the department to take disciplinary action including issuance of warnings, reprimands, suspension and probation, and revocation. Any certificate holder subject to suspension or revocation shall be entitled to notice and an opportunity for an evidentiary hearing as provided in section 17A.18.

g. Providing for certification reciprocity between states upon demonstration that the out-of-state certification criteria is substantially equivalent to rules adopted by the commission.

h. Providing for assessment of fees sufficient to cover the costs of administration of the certification program. A separate fee may be established for persons applying for a combination of installer and installer inspector, testing, or closure certifications. Fees received by the department pursuant to this subsection are appropriated to the department for purposes of the administration of activities under this subsection.

i. Notwithstanding subsection 7, the commission may adopt rules requiring that all underground storage tank installations, installation inspections, testing, and closure activities be conducted by persons certified in accordance with this subsection.

j. Acts or omissions of a person certified under this subsection, the state, or the department regarding certification, renewal, oversight of the certification process, continuing education, discipline, inspection standards, or any other actions including department onsite supervision of certified activities, rules, or regulations arising out of the certification, shall not be cause for a claim against the state or the department within the meaning of chapter 669 or any other provision of the Code.

85 Acts, ch 162, §4; 86 Acts, ch 1245, §1899A; 87 Acts, ch 225, §606; 88 Acts, ch 1244, §4 – 7, 9; 89 Acts, ch 131, §36, 37; 91 Acts, ch 252, §5, 6; 92 Acts, ch 1163, §95; 95 Acts, ch 215, §5 – 10; 2000 Acts, ch 1058, §44, 45; 2004 Acts, ch 1086, §106; 2005 Acts, ch 102, §2; 2007 Acts, ch 171, §1 – 6; 2009 Acts, ch 41, §263; 2010 Acts, ch 1069, §57; 2010 Acts, ch 1193, §169 – 174; 2011 Acts, ch 25, §107, 137, 138, 143; 2012 Acts, ch 1023, §60 – 62; 2016 Acts, ch 1011, §79; 2017 Acts, ch 54, §57, 58; 2017 Acts, ch 170, §38

Referred to in §159A.14, 455B.471, 455B.473, 455B.474A, 455G.9, 455H.105

455B.474A Rules consistent with federal regulations.

The rules adopted by the commission under section 455B.474 shall be consistent with and shall not exceed the requirements of federal regulations relating to the regulation of underground storage tanks except as provided in section 455B.474, subsection 1, paragraph "*a*", subparagraph (6), and section 455B.474, subsection 3, paragraph "*d*". It is the intent of the general assembly that state rules adopted pursuant to section 455B.474, subsection 1, paragraph "*a*", subparagraph (6), and section 455B.474, subsection 3, paragraph "*d*", be consistent with and not more restrictive than federal regulations adopted by the United States environmental protection agency when those rules are adopted.

2010 Acts, ch 1069, §58; 2011 Acts, ch 25, §139; 2013 Acts, ch 30, §101

455B.475 Duties and powers of the director.

The director shall:

1. Inspect and investigate the facilities and records of owners and operators of underground storage tanks as may be necessary to determine compliance with this part and the rules adopted pursuant to this part. An inspection or investigation shall be concluded subject to section 455B.103, subsection 4. For purposes of developing a rule, maintaining an accurate inventory or enforcing this part, the department may:

a. Enter at reasonable times any establishment or other place where an underground storage tank is located.

b. Inspect and obtain samples from any person of a regulated substance and conduct monitoring or testing of the tanks, associated equipment, contents or surrounding soils, air, surface water and groundwater. Each inspection shall be commenced and completed with reasonable promptness.

(1) If the director obtains a sample, prior to leaving the premises, the director shall give the

owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each sample equal in volume or weight to the portion retained. If the sample is analyzed, a copy of the results of the analysis shall be furnished promptly to the owner, operator, or agent in charge.

(2) Documents or information obtained from a person under this subsection shall be available to the public except as provided in this subparagraph. Upon a showing satisfactory to the director by a person that public disclosure of documents or information, or a particular part of the documents or information to which the director has access under this subsection would divulge commercial or financial information entitled to protection as a trade secret, the director shall consider the documents or information or the particular portion of the documents or information confidential. However, the document or information may be disclosed to officers, employees or authorized representatives of the United States charged with implementing the federal Solid Waste Disposal Act, to employees of the state of Iowa or of other states when the document or information is relevant to the discharge of their official duties, and when relevant in any proceeding under the federal Solid Waste Disposal Act or this part.

2. Maintain an accurate inventory of underground storage tanks.

3. Take any action allowed by law which, in the director's judgment, is necessary to enforce or secure compliance with this part or any rule adopted under this part.

85 Acts, ch 162, §5; 86 Acts, ch 1245, §1899A
Referred to in §455B.474

455B.476 Violations — orders.

1. If there is substantial evidence that a person has violated or is violating a provision of this part or a rule adopted under this part the director may issue an order directing the person to desist in the practice which constitutes the violation, and to take corrective action as necessary to ensure that the violation will cease, and may impose appropriate administrative penalties pursuant to section 455B.109. The person to whom the order is issued may appeal the order to the commission as provided in chapter 17A. On appeal, the commission may affirm, modify, or vacate the order of the director. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110.

2. However, if it is determined by the director that an emergency exists respecting any matter affecting or likely to affect the public health, the director may issue any order necessary to terminate the emergency without notice and without hearing. The order is binding and effective immediately and until the order is modified or vacated at a hearing before the commission or by a district court.

3. The director, with the approval of the commission, may request the attorney general to institute legal proceedings pursuant to section 455B.477.

85 Acts, ch 162, §6; 86 Acts, ch 1245, §1899A; 2019 Acts, ch 97, §7
Referred to in §455B.473
Subsection 1 amended

455B.477 Penalties — burden of proof.

1. A person who violates a provision of this part or a rule or order issued under this part is subject to a civil penalty not to exceed five thousand dollars for each day during which the violation continues. The civil penalty is an alternative to a criminal penalty provided under this part.

2. A person who knowingly fails to notify or makes a false statement, representation, or certification in a record, report, plan or other document filed or required to be maintained under this part or who falsifies, tampers with or knowingly renders inaccurate a monitoring device or method required to be maintained under this part or by a rule or order issued under this part, is guilty of an aggravated misdemeanor.

3. The attorney general, at the request of the director with approval of the commission, shall institute any legal proceedings, including an action for an injunction, necessary to enforce the penalty provisions of this part or to obtain compliance with the provisions of this part or rules adopted or order issued under this part. In any action, previous findings of

fact of the director or the commission after notice and hearing are conclusive if supported by substantial evidence in the record when the record is viewed as a whole.

4. In all proceedings with respect to an alleged violation of a provision of this part or a rule adopted or order issued by the commission, the burden of proof is upon the commission or the department.

5. If the attorney general has instituted legal proceedings in accordance with this section, all related issues which could otherwise be raised by the alleged violator in a proceeding for judicial review under section 455B.478 shall be raised in the legal proceedings instituted in accordance with this section.

6. The penalty for intentional failure of an owner or operator to register a petroleum underground storage tank under section 455B.473 shall be a minimum of seven thousand five hundred dollars up to a maximum of ten thousand dollars after October 1, 1989.

7. The civil penalties or other damages or moneys recovered by the state or the petroleum underground storage tank fund in connection with a petroleum underground storage tank under this part of this division or chapter 455G shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget. Any federal moneys, including but not limited to federal underground storage tank trust fund moneys, received by the state or the department of natural resources in connection with a release occurring on or after May 5, 1989, or received generally for underground storage tank programs on or after May 5, 1989, shall be credited to the fund created in section 455G.3 and allocated between fund accounts according to the fund budget, unless such use would be contrary to federal law. The department shall cooperate with the board of the Iowa comprehensive petroleum underground storage tank fund to maximize the state's eligibility for and receipt of federal funds for underground storage tank related purposes.

85 Acts, ch 162, §7; 86 Acts, ch 1245, §1899A; 88 Acts, ch 1244, §10; 89 Acts, ch 131, §39
Referred to in §29C.8A, 455B.476, 455B.478

455B.478 Judicial review.

Except as provided in section 455B.477, subsection 5, judicial review of an order or other action of the commission or the director may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, the Iowa administrative procedure Act, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed or the final order was entered.

85 Acts, ch 162, §8; 86 Acts, ch 1245, §1899A
Referred to in §455B.477

455B.479 Storage tank management fee.

An owner or operator of an underground storage tank shall pay an annual storage tank management fee of sixty-five dollars per tank of over one thousand one hundred gallons capacity. The fees collected shall be deposited in the storage tank management account of the groundwater protection fund.

87 Acts, ch 225, §607; 89 Acts, ch 131, §38; 2010 Acts, ch 1193, §175
Referred to in §455E.11

PART 9

WASTE MANAGEMENT ASSISTANCE

Legislative findings and purpose; 87 Acts, ch 180, §2

455B.480 Short title.

This part may be cited as the "*Waste Management Assistance Act*".

87 Acts, ch 180, §1; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §4; 2002 Acts, ch 1162, §46

455B.481 Waste management policy.

1. The purpose of this part is to promote the proper management of solid, hazardous, and low-level radioactive wastes in Iowa.

2. The department, in cooperation with the Iowa waste reduction center for safe and economic management of solid waste and hazardous substances established in section 268.4, shall work with generators of hazardous wastes in the state to develop and implement aggressive waste minimization programs. The department shall provide and promote educational and informational programs, provide confidential, voluntary technical assistance to hazardous waste generators, promote assistance by the Iowa waste reduction center, and promote other voluntary activities by the public and private sectors that support the following pollution prevention hierarchy, in descending order of preference:

a. Source reduction for waste elimination.

b. Reuse.

c. On-site recycling.

d. Off-site recycling.

e. Waste treatment.

f. Combustion with energy recovery.

g. Land disposal.

87 Acts, ch 180, §3; 89 Acts, ch 242, §2; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §5; 2002 Acts, ch 1162, §47; 2013 Acts, ch 12, §1, 2

Referred to in §455B.484, 455D.5

455B.482 Definitions.

As used in this part unless the context otherwise requires:

1. *"Disposal"* means the isolation of waste from the biosphere in a permanent facility designed for that purpose.

2. *"Facilities"* means land and improvements on land, buildings and other structures, and other appurtenances used for the management of solid, toxic, hazardous, or low-level radioactive wastes, including but not limited to waste collection sites, waste transfer stations, waste reclamation and recycling centers, waste processing centers, waste treatment centers, waste storage sites, waste reduction and compaction centers, waste incineration centers, waste detoxification centers, and waste disposal sites.

3. *"Hazardous waste"* means hazardous waste as defined in section 455B.411, subsection 3.

4. *"Long-term monitoring and maintenance"* means the continued observation and care of a facility after closure in order to ensure that the site poses no threat to the public health, the groundwater, and the environment. In the case of a low-level radioactive waste facility, the time period constituting *"long-term"* is the number of years of monitoring and maintenance based upon the half-life properties of the wastes, and in the case of a hazardous waste facility is the number of years based upon the projected active toxicity of the waste.

5. *"Low-level radioactive waste"* means low-level radioactive waste as defined in section 457B.1, article II, paragraph *"m"*, and as defined in the federal Low-Level Radioactive Waste Policy Amendments Act, 42 U.S.C. §2021.

6. *"Management of waste"* means the storage, transportation, treatment, or disposal of waste.

7. *"Person"* means person as defined in section 4.1.

8. *"Pollution prevention"* means employment of a practice that reduces the industrial use of toxic substances or reduces the environmental and health hazards associated with an environmental waste without diluting or concentrating the waste before the release, handling, storage, transport, treatment, or disposal of the waste.

9. *"Regulatory agency"* means a federal, state, or local agency that issues a license or permit required for the siting, construction, operation, or maintenance of a facility pursuant to federal or state statute or rule, or local ordinance or resolution.

10. *"Site"* means the geographic location of a facility.

11. *"Solid waste"* means solid waste as defined in section 455B.301.

12. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

13. *"Storage"* means the temporary holding of waste for treatment or disposal.

14. *"Treatment"* means any method, technique, or process designed to change the physical, chemical, or biological characteristics or composition of any waste in order to render the waste safer for transport or management, amenable to recovery, convertible to another usable material, or reduced in volume.

15. *"Waste"* means solid waste, hazardous waste, and low-level radioactive waste as defined in this section.

87 Acts, ch 180, §4; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §6; 2002 Acts, ch 1162, §48; 2006 Acts, ch 1014, §7; 2008 Acts, ch 1032, §201; 2013 Acts, ch 12, §3

Section not amended; internal reference change applied

455B.483 Waste management assistance.

The director of the department of natural resources shall provide for administration of the provisions of this part.

87 Acts, ch 180, §5; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §7; 2002 Acts, ch 1162, §49

455B.484 Duties of the department.

The department shall:

1. Recommend to the commission the adoption of rules necessary to implement this part.
2. Implement the waste management policy provided in section 455B.481.
3. Represent the state in all matters pertaining to plans, procedures, negotiations, and agreements for interstate compacts or public-private compacts relating to the ownership, operation, management, or funding of a facility. Any agreement is subject to the approval of the commission.
4. Develop, sponsor, and assist in the implementation of public education and information programs on proper and safe management of waste in cooperation with other public and private agencies as deemed appropriate.

87 Acts, ch 180, §6; 88 Acts, ch 1134, §87; 89 Acts, ch 242, §3, 4; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §8, 9; 2002 Acts, ch 1050, §41; 2002 Acts, ch 1119, §61; 2002 Acts, ch 1162, §50 – 52; 2003 Acts, ch 108, §75; 2006 Acts, ch 1014, §8; 2013 Acts, ch 12, §4, 5

455B.484A Confidentiality for assistance programs.

1. As used in this section:

a. *"Applicant"* means a person, acting in good faith, who seeks the services of an assistance program.

b. *"Assistance information"* means all information voluntarily supplied to or obtained by an assistance program for the sole purpose of providing assistance to an applicant and which constitutes information not otherwise available to an assistance program.

c. *"Assistance program"* means the pollution prevention program of the department or of the Iowa waste reduction center for safe and economic management of solid waste and hazardous substances conducted pursuant to section 268.4.

2. Assistance information in the possession of an assistance program or an employee or agent of an assistance program is privileged and confidential, is not subject to discovery, subpoena, or other means of legal compulsion, and is not admissible evidence in an administrative or judicial proceeding. However, assistance information discoverable from sources other than an assistance program or prohibited from being made confidential pursuant to federal or state law does not become privileged or confidential merely because it has been made available to or is in the custody of an assistance program or an employee or agent of an assistance program.

3. Assistance information shall not be used by an employee or agent of the state in determining whether to initiate an enforcement action or investigation by the state.

92 Acts, ch 1214, §1; 2013 Acts, ch 12, §6

Referred to in §455K.3

455B.485 Powers and duties of the commission.

The commission shall:

1. Establish policy for the implementation of this part.

2. Adopt, modify, or repeal rules necessary to implement this part pursuant to chapter 17A.

3. Recommend legislative action which may be required for the safe and proper management of waste, for the acquisition or operation of a facility, for the funding of a facility, to enter into interstate agreements for the management of a facility, and to improve the operation of the department relating to waste management assistance.

87 Acts, ch 180, §7; 92 Acts, ch 1239, §21; 2001 Acts, ch 7, §10; 2002 Acts, ch 1162, §53; 2013 Acts, ch 12, §7

455B.486 Facility siting.

The commission shall adopt rules establishing criteria for the identification of sites which are suitable for the operation of low-level radioactive waste disposal facilities. The department shall apply these criteria, once adopted, to identify and recommend to the commission sites suitable for locating facilities for the disposal of low-level radioactive waste. The commission shall accept or reject the recommendation of the department. If the commission rejects the recommendation of the department, the commission shall state its reasons for rejecting the recommendation.

87 Acts, ch 180, §8; 92 Acts, ch 1239, §21; 2002 Acts, ch 1162, §54; 2013 Acts, ch 12, §8

455B.487 Facility acquisition and operation.

1. The commission shall adopt rules establishing criteria for the identification of land areas or sites which are suitable for the operation of facilities for the management of low-level radioactive wastes. Upon request, the department shall assist in locating suitable sites for the location of a facility. The commission may purchase or condemn land to be leased or used for the operation of a facility subject to chapter 6A. Consideration for a contract for purchase of land shall not be in excess of funds appropriated by the general assembly for that purpose. The commission may lease land purchased under this section to any person including the state or a state agency. This section authorizes the state to own or operate low-level radioactive waste facilities, subject to the approval of the general assembly.

2. The purchase, condemnation, use, or lease of land for the management of wastes, shall be approved by the general assembly prior to the purchase, condemnation, use, or lease of the land.

3. *a.* The terms of the lease or contract shall establish responsibility for long-term monitoring and maintenance of the site. The commission shall require that the lessee or operator post bond or provide proof of sufficient insurance coverage, as determined by the commission to be reasonably necessary to protect the state against liabilities arising from the storage of wastes, abandonment of the facility, facility accidents, failure of the facility, or other liabilities which may arise.

b. The terms of the lease or contract shall also require that the lessee or operator of the facility pay an annual fee to the state, as established by the commission, to cover facility monitoring costs, and shall require that the lessee or operator establish a long-term monitoring and maintenance fund in which the lessee or operator shall deposit annually an amount specified by the commission. The fund shall be used to pay closure, long-term monitoring and maintenance, and contingency costs.

4. The lease agreement or contract shall provide for a local review and monitoring committee established by the county or municipal entity governing the jurisdiction in which the facility is located. Prior to the approval of a lease agreement or contract the local committee shall review the application of the prospective lessee or operator and shall determine the suitability of the proposed site for the facility. The local committee may inspect the facility during operation and may make recommendations regarding the operation and closure of the facility. The commission shall establish a surtax paid by the lessee or operator of a facility to the local governmental entity, and retained by the local governmental entity in which the facility is located. The lessee or operator of the facility shall provide funding for the implementation of the duties of the local committee.

5. The lessee or operator is subject to all applicable permit and licensing requirements.

The leasehold interest, including improvements made to the property, shall be listed, assessed, and valued as any other real property as provided by law.

6. *a.* Facilities acquired or operated pursuant to this section shall comply with applicable federal and state statutes, local ordinances, and regulations adopted by regulatory agencies to the extent required by law.

b. Facilities acquired or operated pursuant to this section may be used for regional, statewide or multistate management of wastes.

c. Facilities acquired or operated pursuant to this section shall not be used for the purpose of shallow land burial of wastes as a means of disposal.

7. An operator of a facility acquired or operated pursuant to this section shall require that a person, prior to the use of the facility, submit proof that reasonable and good faith measures have been taken to reduce the generation of waste.

87 Acts, ch 180, §9; 2012 Acts, ch 1021, §80; 2013 Acts, ch 12, §9, 10

455B.488 Household hazardous waste collection and disposition.

The department shall develop, sponsor, and assist in conducting local, regional, or statewide programs for the receipt or collection and proper management of hazardous wastes from households and farms. In conducting such events the department may establish limits on the types and amounts of wastes that will be collected, and may establish a fee system for acceptance of wastes in quantities exceeding the limits established pursuant to this section.

87 Acts, ch 180, §10; 92 Acts, ch 1239, §21; 2003 Acts, ch 108, §76

455B.489 Reserved.

455B.490 Used storage tank disposal. Repealed by 92 Acts, ch 1018, §3.

DIVISION V

AGRICULTURAL CHEMICALS REGULATION — WASTE MANAGEMENT RESEARCH

455B.491 Restrictions on use of agricultural chemicals.

1. If the commission determines that an agricultural chemical causes an unreasonable, adverse effect on humans or the environment, the commission shall submit to the secretary of agriculture its findings and recommended actions. The secretary of agriculture shall propose rules implementing the recommended actions and shall hold a public hearing to determine the effects of the proposed rules as provided in chapter 206 after review and consideration of the findings as provided in subsection 2 of this section. A rule of the secretary shall be adopted pursuant to chapter 17A.

2. The commission shall submit to the secretary of agriculture its findings on the unreasonable, adverse effect that the agricultural chemical causes to humans or the environment. The department of agriculture and land stewardship shall prepare an estimate of the economic impact of restricting the use of the agricultural chemical. The economic impact statement, the commission's findings and the report of the advisory committee created under section 206.23 shall be available at the time of publication of the intended rule action by the secretary. The secretary of agriculture and the advisory committee shall review the commission's findings and collect, analyze and interpret any other scientific data relating to the agricultural chemical. The secretary and the committee shall consider any official reports, academic studies, expert opinions or testimony, or other matters deemed to have probative value and shall consider the toxicity, hazard, effectiveness, public need for the agricultural chemical or other means of control other than the chemical in question, and the economic impact on the members of the public and agencies affected by it.

3. As used in this section, "*agricultural chemical*" means a pesticide as defined in section

206.2 and also means any feed or soil additive, other than a pesticide, which is designed for and used to promote the growth of plants or animals.

[C71, §206A.2; C73, 75, 77, §455B.100; C79, §455B.130, 455B.131; C81, §455B.150]
C83, §455B.471
CS85, §455B.491

455B.492 through 455B.499 Reserved.

455B.500 Waste management research by persons in conjunction with institutions of higher education.

A person acting in conjunction with a private college, community college, or state board of regents institution, to conduct research relating to waste management, on private property, or on property in which a city or county holds an interest, shall notify the department in writing. The person is not required to obtain authorization, including but not limited to a permit, by the department for one hundred twenty days after submitting the notice. After the end of the one-hundred-twenty-day period the department shall conduct an evaluation of the permit status of the research and may determine whether a permit ought to be issued or modified before the research continues.

90 Acts, ch 1260, §26

DIVISION VI

INFECTIOUS WASTE

455B.501 Regulation of infectious waste.

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

a. "Contaminated animal carcasses" means waste including carcasses, body parts, and bedding of animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

b. "Contaminated sharps" means all discarded sharp items derived from patient care in medical, research, or industrial facilities including glass vials containing materials defined as infectious, hypodermic needles, scalpel blades, and pasteur pipettes.

c. "Cultures and stocks of infectious agents" means specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biological agents, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, or mix cultures.

d. "Human blood and blood products" means human serum, plasma, other blood components, bulk blood, or containerized blood in quantities greater than twenty milliliters.

e. "Infectious" means containing pathogens with sufficient virulence and quantity so that exposure to an infectious agent by a susceptible host could result in an infectious disease when the infectious agent is improperly treated, stored, transplanted, or disposed.

f. "Infectious waste" means waste, which is infectious, including but not limited to contaminated sharps, cultures, and stocks of infectious agents, blood and blood products, pathological waste, and contaminated animal carcasses from hospitals or research laboratories.

g. "Pathological waste" means human tissues and body parts that are removed during surgery or autopsy.

2. The department shall recommend, for adoption by the commission, standards for on-site and off-site treatment of infectious waste. In developing standards, the department shall consider factors affecting the feasibility of alternative methods of treatment and disposal, including but not limited to the volume of infectious waste generated, the availability of treatment facilities within geographic areas, and the costs of transporting infectious wastes to treatment facilities. The standards shall include monitoring requirements for treatment facilities and training requirements for operators of facilities. The standards may

include requirements for management plans dealing with the plans for management of infectious wastes in compliance with adopted standards. In cases in which an individual generator of infectious waste is served by a person treating or disposing of the infectious waste, the person treating or disposing of the waste may prepare the plan for all generators served.

89 Acts, ch 245, §1; 99 Acts, ch 46, §1

Local approval of infectious waste incinerator projects; §455B.305A

455B.502 Infectious medical waste incinerators — regents universities — requirements. Repealed by 99 Acts, ch 46, §3.

455B.503 Infectious waste treatment and disposal facilities — permits required — rules.

The commission shall adopt rules which require a person who owns or operates an infectious waste treatment or disposal facility to obtain an operating permit before initial operation of the facility. The rules shall specify the information required to be submitted with the application for a permit and the conditions under which a permit may be issued, suspended, modified, revoked, or renewed. The rules shall address but are not limited to the areas of operator safety, recordkeeping and tracking procedures, best available appropriate technologies, emergency response and remedial action procedures, waste minimization procedures, and long-term liability. The department shall not grant permits for the construction or operation of a commercial infectious waste treatment or disposal facility until the commission has adopted the required rules.

91 Acts, ch 242, §4; 92 Acts, ch 1182, §4; 93 Acts, ch 103, §1; 99 Acts, ch 46, §2

455B.504 Collection and transportation of infectious medical waste — permits required — rules. Repealed by 2011 Acts, ch 9, §10.

455B.505 Infectious waste treatment and disposal facilities — national register of historic places.

The department of natural resources shall not grant a permit for the construction or operation of a commercial infectious waste treatment or disposal facility within one mile of a site or building which has been placed on the national register of historic places. This section does not apply to hospitals, health care facilities licensed pursuant to chapter 135C, physicians' offices or clinics, and other health service-related entities.

91 Acts, ch 242, §6

455B.506 through 455B.515 Reserved.

DIVISION VII

TOXICS POLLUTION PREVENTION PROGRAM

455B.516 through 455B.518 Repealed by 2013 Acts, ch 12, §26.

455B.519 through 455B.600 Reserved.

DIVISION VIII

CONTAMINATED SITES

455B.601 and 455B.602 Repealed by 2011 Acts, ch 9, §10.

455B.603 through 455B.700 Reserved.

DIVISION IX

OIL SPILLS

455B.701 Oil spill immunity.

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

a. *"Damages"* means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or relating to the discharge or threatened discharge of oil.

b. *"Discharge"* means any emission, other than natural seepage, intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

c. *"Federal on-scene coordinator"* means the federal official designated by the federal agency in charge of the removal efforts or by the United States environmental protection agency or the United States coast guard to coordinate and direct responses under the national contingency plan.

d. *"National contingency plan"* means the national contingency plan prepared and published under 33 U.S.C. §1321(d).

e. *"Oil"* means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

f. *"Remove"* or *"removal"* means containment and removal of oil or a hazardous substance from water and shorelines or the taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

g. *"Removal costs"* means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

h. *"Responsible party"* means a responsible party as defined under 33 U.S.C. §2701.

2. *Exemption from liability.*

a. Notwithstanding any other provisions of law, a person is not liable for removal costs or damages which result from acts or omissions taken or made in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the state official with responsibility for oil spill response.

b. Paragraph *"a"* does not apply to the following:

(1) A responsible party.

(2) When the damage involves personal injury or wrongful death.

(3) If the person is grossly negligent or engages in willful misconduct.

c. A responsible party is liable for any removal costs and damages that another person is relieved of under paragraph *"a"*.

d. This section does not affect the liability of a responsible party for oil spill response under state law.

95 Acts, ch 15, §1

455B.702 through 455B.750 Reserved.

DIVISION X

CONTAMINATED PROPERTY — FINANCIAL LIABILITY

455B.751 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Acquired"* means purchased, leased, obtained by inheritance or descent and distribution, or obtained by foreclosure sale under chapter 654, nonjudicial voluntary

foreclosure under section 654.18, deed in lieu of foreclosure under section 654.19, foreclosure without redemption under section 654.20, or nonjudicial foreclosure of nonagriculture mortgages under chapter 655A.

2. *"Hazardous substance"* means the same as defined in section 455B.381 or 455B.411.

3. *"Hazardous waste"* means the same as defined in section 455B.411.

4. *"Potentially responsible party"* means a person whose acts or omissions were a proximate cause of the contamination of the acquired property, or a person whose negligent acts or omissions are a proximate cause of injury or damages resulting from exposure to such contamination. Injury or damages to persons or property arising by reason of contamination that migrates from the acquired property shall not be deemed to be caused by an act or omission of the person that acquired the property, except to the extent that the act or omission of such person exacerbated the release of such contamination.

5. *"Regulated substance"* means the same as defined in section 455B.471.

6. *"Response action"* means any action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release of hazardous substances, hazardous waste, or regulated substances to protect the public health, safety, or the environment.

7. *"Third party"* means any person other than a person that holds indicia of title to property or that has acquired property as identified in section 455B.752.

8. *"Third-party liability"* means any liability or obligation, other than contractual obligations that specifically waive all or part of the immunity provided by section 455B.752, arising out of or resulting from contamination of property by a hazardous substance, hazardous waste, or a regulated substance, including without limitation, claims for illness, personal injury, death, consequential damages, exemplary damages, lost profits, trespass, loss of use of property, loss of rental value, reduction in property value, property damages, or statutory or common law nuisance.

2004 Acts, ch 1141, §75, 79; 2005 Acts, ch 19, §58

455B.752 Immunity from third-party liability.

A person that holds indicia of ownership of property contaminated by a hazardous substance, hazardous waste, or regulated substance, and that satisfies all of the conditions provided in section 455B.381, subsection 7, paragraph *"b"*, or section 455B.471, subsection 6, paragraph *"b"*, subparagraphs (1), (2), and (3), or a person that has acquired property contaminated by a hazardous substance, hazardous waste, or regulated substance, shall not be liable to any third party for any third-party liability arising from such contamination provided that all of the following apply:

1. The person does not knowingly cause or permit a new or additional hazardous substance, hazardous waste, or regulated substance to arise on or from the acquired property that injures a third party or contaminates property owned or leased by a third party.

2. The person is not a potentially responsible party or affiliated with any potentially responsible party by reason of any of the following:

a. Any direct or indirect familial relationship.

b. Any contractual, corporate, or financial relationship, other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the property is conveyed or financed or by a contract for the sale of goods or services.

c. A reorganization of a business entity that is or was a potentially responsible party.

2004 Acts, ch 1141, §76, 79

Referred to in §455B.751, 455B.753

455B.753 Access to property.

A person that holds indicia of title to property or a person that has acquired property as identified in section 455B.752 shall provide reasonable access to the acquired property to any potentially responsible party or to any authorized regulatory authority for the purpose of investigating or evaluating any contamination, planning, or preparing a remedial plan for any abatement of the contamination, and for any required remediation.

2004 Acts, ch 1141, §77, 79

455B.754 Legal responsibility.

This division shall not be interpreted to affect the legal responsibility to the state to conduct response actions under any applicable state law. This division shall not be interpreted to affect or provide immunity from any criminal liability.

2004 Acts, ch 1141, §78, 79

455B.755 through 455B.800 Reserved.

DIVISION XI

VEHICLE RECYCLING — MERCURY REDUCTION AND REMOVAL

Future repeal of division upon development and implementation of national mercury switch recovery program; conditions; department of natural resources to notify Code editor of federal program implementation; 2006 Acts, ch 1120, §11

455B.801 Short title.

This division shall be known and may be cited as the *"Mercury-Free Recycling Act"*.

2006 Acts, ch 1120, §2

Future repeal of division upon development and implementation of national mercury switch recovery program; conditions; department of natural resources to notify Code editor of federal program implementation; 2006 Acts, ch 1120, §11

455B.802 Definitions.

As used in this division, unless the context otherwise requires:

1. *"Capture rate"* means the amount of mercury removed, collected, and recovered from end-of-life vehicles, expressed as a percentage of the mercury available from mercury-added switches in end-of-life vehicles annually.

2. *"End-of-life vehicle"* means any vehicle which is sold, given, or otherwise conveyed to a vehicle recycler or scrap recycling facility for the purpose of recycling and that does not exceed ten thousand pounds gross vehicle weight.

3. *"Manufacturer"* means any person that is the last person to produce or assemble a new vehicle that utilizes mercury-added switches, or in the case of an imported vehicle, the importer or domestic distributor of such vehicle. *"Manufacturer"* does not include a person that has never utilized a mercury-added switch in the production or assembly of a new vehicle.

4. *"Mercury-added switch"* means a light switch that contains mercury which was installed by a manufacturer in a motor vehicle.

5. *"Scrap recycling facility"* means a fixed location where machinery and equipment are utilized for processing and manufacturing scrap metal into prepared grades and whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap for sale for remelting purposes.

6. *"Vehicle recycler"* means any person engaged in the business of acquiring, dismantling, or destroying six or more vehicles in a calendar year for the primary purpose of resale of the vehicles' parts.

2006 Acts, ch 1120, §3

Referred to in §455B.808

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.803 Plans for removal, collection, and recovery of vehicle mercury-added switches.

1. Within ninety days of July 1, 2006, each manufacturer of vehicles sold in this state shall, individually or as part of a group, develop and publish a plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles that were manufactured by the manufacturer. Publication shall be in accordance with section 455B.807, subsection 2.

2. *a.* The manufacturer shall implement a system to remove, collect, and recover mercury-added switches from end-of-life vehicles within ninety days of publication of the plan.

b. The system developed and implemented pursuant to this section shall provide, at a minimum, all of the following:

(1) Educational materials about the program to inform the public and other stakeholders about the purpose of the collection program and how to participate in the program.

(2) A method for implementing, operating, maintaining, and monitoring the system, in accordance with subsection 3. This may include the use of third-party contractors that are qualified and fully insured to perform these tasks.

(3) Information about mercury-added switches identifying all of the following:

(a) The make, model, and year of vehicles potentially containing mercury-added switches.

(b) A description of the mercury-added switches.

(c) The location of the mercury-added switches.

(d) The safe, cost-effective, and environmentally sound methods for the removal of the mercury-added switches from end-of-life vehicles.

(4) A method to arrange and pay for the transportation of the collected mercury-added switches to permitted facilities.

(5) A method to arrange and pay for the recycling of the mercury-added switches.

(6) A method to track participation and publish the progress of the mercury-added switch collection in accordance with section 455B.807, subsection 2.

(7) A database of participating vehicle recyclers, including all of the following:

(a) Documentation that the vehicle recycler joined the program.

(b) Records of all submissions by a vehicle recycler of any information required pursuant to subparagraph (6).

(c) Confirmation that the vehicle recycler has submitted switches at least once every twelve months since joining the program.

(8) A target mercury-added switch capture rate for vehicles manufactured by the manufacturer of ninety percent. A description of additional or alternative actions that shall be implemented by the manufacturer to improve the system and its operation in the event that the target capture rate is not met shall be published with the required tracking information no less than annually.

(9) The program shall not include inaccessible mercury-added switches from end-of-life vehicles with significant damage to the vehicle in the area surrounding the mercury-added switch location. All accessible mercury-added switches are expected to be collected under the provisions of this division.

c. In developing a removal, collection, and recovery system for end-of-life vehicles, a manufacturer shall, to the extent practicable, utilize the existing end-of-life vehicle recycling infrastructure.

d. If the commission determines that the manufacturer's plan for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles does not comply with this section, the commission may require the manufacturer to make any necessary modification to the plan.

e. On July 1, 2020, the commission shall cease enforcement of the removal, collection, and recovery plans under this section. On or before July 1, 2020, the commission shall review the mercury-added switch removal, collection, and recovery portion of this division and submit a recommendation to the general assembly regarding the necessity of continuing the enforcement of the removal, collection, and recovery plans under this section.

3. The total cost of the removal, collection, and recovery system for mercury-added switches shall be paid by the manufacturer. Costs shall include but not be limited to all of the following:

a. Labor to remove mercury-added switches. Labor shall be reimbursed at a minimum rate of four dollars per mercury-added switch removed, or if the vehicle identification number of the source vehicle is required for reimbursement, at a minimum rate of five dollars.

b. Training.

c. Packaging in which to transport mercury-added switches to recycling, storage, or disposal facilities.

d. Shipping of mercury-added switches to recycling, storage, or disposal facilities.

e. Recycling, storage, or disposal of the mercury-added switches.

f. Public education materials and presentations.

g. Maintenance of all appropriate systems and procedures to protect the environment from mercury contamination from collected mercury-added switches.

4. A vehicle recycler that performs as required under a removal, collection, and recovery plan shall be afforded the protections provided in section 613.18.

2006 Acts, ch 1120, §4; 2007 Acts, ch 126, §78

Referred to in §455B.808

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.804 Prohibition and proper management of mercury-added vehicle switches.

1. Prior to delivery to a scrap recycling facility, a person who sells, gives, or otherwise conveys ownership of an end-of-life vehicle to the scrap recycling facility for recycling shall remove all mercury-added switches from such end-of-life vehicle unless the mercury-added switch is inaccessible due to significant damage to the end-of-life vehicle in the area where the mercury-added switch is located.

2. A person shall not represent that mercury-added switches have been removed from a vehicle or vehicle hulk being sold, given, or otherwise conveyed for recycling if that person has not removed such mercury-added switches or arranged with another person to remove such switches.

2006 Acts, ch 1120, §5

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.805 General compliance with other provisions.

Except as expressly provided in this division, compliance with this division shall not exempt a person from compliance with any other law.

2006 Acts, ch 1120, §6

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.806 Regulations.

The commission shall adopt rules pursuant to chapter 17A as necessary to implement the provisions of this division.

2006 Acts, ch 1120, §7

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.807 Public notification.

1. The department shall make available to the general public in an electronic format the plan of a manufacturer for a system to remove, collect, and recover mercury-added switches from end-of-life vehicles and any report required under section 455B.808.

2. Publication of all required plans, information, reports, and educational materials under this division shall be through no less than two types of media available to the general public. One medium must be available twenty-four hours per day, seven days per week, and maintained with current information. Acceptable types of media include but are not limited to internet sites, periodicals, journals, and other publicly available media in the state.

2006 Acts, ch 1120, §8; 2013 Acts, ch 90, §257

Referred to in §455B.803

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.808 Reporting.

One year after the implementation of a removal, collection, and recovery system, and annually thereafter, a manufacturer subject to section 455B.803 shall report to the department concerning the performance under the manufacturer's plan. The report shall include statistical information received under section 455B.803. The report shall also include but not be limited to all of the following:

1. The number of mercury-added switches collected.

2. An estimate of the amount of mercury contained in the collected switches.

3. The capture rate as defined in section 455B.802.

4. The estimated number of vehicles manufactured by the manufacturer containing mercury-added switches.

5. The estimated number of vehicles manufactured by the manufacturer that have been processed for recycling by vehicle recyclers.

2006 Acts, ch 1120, §9

Referred to in §455B.807

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.809 State procurement.

Notwithstanding other policies and guidelines for the procurement of vehicles, the state shall, within one year of July 1, 2006, revise its policies, rules, and procedures to give priority and preference to the purchase of vehicles free of mercury-added components taking into consideration competition, price, availability, and performance.

2006 Acts, ch 1120, §10

For future repeal of this section upon development and implementation of national mercury switch recovery program; conditions; see 2006 Acts, ch 1120, §11

455B.810 through 455B.850 Reserved.

DIVISION XII

IOWA CLIMATE CHANGE ADVISORY COUNCIL

455B.851 Iowa climate change advisory council. Repealed by its own terms; 2010 Acts, ch 1031, §259.

CHAPTER 455C

BEVERAGE CONTAINERS CONTROL

Referred to in §123.187, 423.6, 455A.4, 455A.6

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455C.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Beverage"* means wine as defined in section 123.3, subsection 54, alcoholic liquor as defined in section 123.3, subsection 5, beer as defined in section 123.3, subsection 7, mineral water, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

2. *"Beverage container"* means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

3. *"Commission"* means the environmental protection commission of the department.

4. *"Consumer"* means any person who purchases a beverage in a beverage container for use or consumption.

5. *"Dealer"* means any person who engages in the sale of beverages in beverage containers to a consumer.

6. *"Dealer agent"* means a person who solicits or picks up empty beverage containers from a dealer for the purpose of returning the empty beverage containers to a distributor or manufacturer.

7. *"Department"* means the department of natural resources created under section 455A.2.

8. *"Director"* means the director of the department.

9. *"Distributor"* means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

10. *"Geographic territory"* means the geographical area within a perimeter formed by the outermost boundaries served by a distributor.

11. *"Manufacturer"* means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

12. *"Nonrefillable beverage container"* means a beverage container not intended to be refilled for sale by a manufacturer.

13. *"Redemption center"* means a facility at which consumers may return empty beverage containers and receive payment for the refund value of the empty beverage containers.

[C79, 81, §455C.1; 82 Acts, ch 1199, §71, 96]

85 Acts, ch 32, §111; 86 Acts, ch 1245, §1899C, 1899D; 87 Acts, ch 22, §12; 88 Acts, ch 1200, §1; 89 Acts, ch 272, §34, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §433, 442, 443; 92 Acts, ch 1242, §40, 47

Referred to in §455B.313

Section not amended; internal reference change applied

455C.2 Refund values.

1. A refund value of not less than five cents shall be paid by the consumer on each beverage container sold in this state by a dealer for consumption off the premises. Upon return of the empty beverage container upon which a refund value has been paid to the dealer or person operating a redemption center and acceptance of the empty beverage container by the dealer or person operating a redemption center, the dealer or person operating a redemption center shall return the amount of the refund value to the consumer.

2. In addition to the refund value provided in subsection 1 of this section, a dealer, or person operating a redemption center who redeems empty beverage containers or a dealer agent shall be reimbursed by the distributor required to accept the empty beverage containers an amount which is one cent per container. A dealer, dealer agent, or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept the containers.

[C79, 81, §455C.2]

87 Acts, ch 22, §13; 88 Acts, ch 1200, §2; 89 Acts, ch 272, §35, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §434, 442, 443; 92 Acts, ch 1242, §34, 38, 39, 40, 47

Referred to in §123.24, 455C.3, 455C.4, 455C.12

455C.3 Payment of refund value.

Except as provided in section 455C.4:

1. A dealer shall not refuse to accept from a consumer any empty beverage container of the kind, size and brand sold by the dealer, or refuse to pay to the consumer the refund value of a beverage container as provided under section 455C.2.

2. A distributor shall accept and pick up from a dealer served by the distributor or a redemption center for a dealer served by the distributor at least weekly, or when the distributor delivers the beverage product if deliveries are less frequent than weekly, any empty beverage container of the kind, size and brand sold by the distributor, and shall pay to the dealer or person operating a redemption center the refund value of a beverage container and the reimbursement as provided under section 455C.2 within one week following pickup of the containers or when the dealer or redemption center normally pays the distributor for

the deposit on beverage products purchased from the distributor if less frequent than weekly. A distributor or employee or agent of a distributor is not in violation of this subsection if a redemption center is closed when the distributor attempts to make a regular delivery or a regular pickup of empty beverage containers. This subsection does not apply to a distributor selling alcoholic liquor to the alcoholic beverages division of the department of commerce.

3. A distributor shall not be required to pay to a manufacturer a deposit or refund value on a nonrefillable beverage container.

4. A distributor shall accept from a dealer agent any empty beverage container of the kind, size, and brand sold by the distributor and which was picked up by the dealer agent from a dealer within the geographic territory served by the distributor and the distributor shall pay the dealer agent the refund value of the empty beverage container and the reimbursement as provided in section 455C.2.

5. The alcoholic beverages division of the department of commerce shall provide for the disposal of empty beverage containers as required under subsection 2. The division shall give priority consideration to the recycling of the empty beverage containers to the extent possible, before any other appropriate disposal method is considered or implemented.

[C79, 81, §455C.3]

83 Acts, ch 84, §1; 88 Acts, ch 1200, §3; 89 Acts, ch 272, §36, 42; 90 Acts, ch 1261, §43, 44; 91 Acts, ch 268, §442, 443; 92 Acts, ch 1242, §35, 38, 39, 40, 47

Referred to in §455C.12

455C.4 Refusal to accept containers.

1. Except as provided in section 455C.5, subsection 3, a dealer, a person operating a redemption center, a distributor or a manufacturer may refuse to accept any empty beverage container which does not have stated on it a refund value as provided under section 455C.2.

2. A dealer may refuse to accept and to pay the refund value of any empty beverage container if the place of business of the dealer and the kind and brand of empty beverage containers are included in an order of the department approving a redemption center under section 455C.6.

3. A dealer or a distributor may refuse to accept and to pay the refund value of an empty wine or alcoholic liquor container which is marked to indicate that it was sold by a state liquor store. The alcoholic beverages division shall not reimburse a dealer or a distributor the refund value on an empty wine or alcoholic liquor container which is marked to indicate that the container was sold by a state liquor store.

4. A class "E" liquor control licensee may refuse to accept and to pay the refund value on an empty alcoholic liquor container from a dealer or a redemption center or from a person acting on behalf of or who has received empty alcoholic liquor containers from a dealer or a redemption center.

5. A manufacturer or distributor may refuse to accept and to pay the refund value and reimbursement as provided in section 455C.2 on any empty beverage container that was picked up by a dealer agent from a dealer outside the geographic territory served by the manufacturer or distributor.

[C79, 81, §455C.4]

85 Acts, ch 32, §112; 87 Acts, ch 22, §14, 15; 88 Acts, ch 1200, §4; 89 Acts, ch 161, §9

Referred to in §455C.3

455C.5 Refund value stated on container — exceptions.

1. Each beverage container sold or offered for sale in this state by a dealer shall clearly indicate by embossing or by a stamp, label or other method securely affixed to the container, the refund value of the container. The department shall specify, by rule, the minimum size of the refund value indication on the beverage containers.

2. A person, except a distributor, shall not import into this state after July 1, 1979 a beverage container which does not have securely affixed to the container the refund value indication. The provisions of this subsection do not apply if:

a. For beverage containers containing alcoholic liquor as defined in section 123.3,

subsection 5, the total capacity of the containers is not more than one quart or, in the case of alcoholic liquor personally obtained outside the United States, one gallon.

b. For beverage containers containing beer as defined in section 123.3, subsection 7, the total capacity of the containers is not more than two hundred eighty-eight fluid ounces.

c. For all other beverage containers, the total capacity of the containers is not more than five hundred seventy-six fluid ounces.

3. The provisions of subsections 1 and 2 of this section do not apply to a refillable glass beverage container which has a brand name permanently marked on it and which has a refund value of not less than five cents, to any other refillable beverage container which has a refund value of not less than five cents and which is exempted by the director under rules adopted by the commission, or to a beverage container sold aboard a commercial airliner or passenger train for consumption on the premises.

[C79, 81, §455C.5]

85 Acts, ch 32, §113; 87 Acts, ch 22, §16

Referred to in §123.26, 455C.4, 455C.12, 455C.14

455C.6 Redemption centers.

1. To facilitate the return of empty beverage containers and to serve dealers of beverages, any person may establish a redemption center, subject to the approval of the department, at which consumers may return empty beverage containers and receive payment of the refund value of such beverage containers.

2. An application for approval of a redemption center shall be filed with the department. The application shall state the name and address of the person responsible for the establishment and operation of the redemption center, the kind and brand names of the beverage containers which will be accepted at the redemption center, and the names and addresses of the dealers to be served by the redemption center. The application shall contain such other information as the director may reasonably require.

3. The department shall approve a redemption center if it finds that the redemption center will provide a convenient service to consumers for the return of empty beverage containers. The order of the department approving a redemption center shall state the dealers to be served by the redemption center and the kind and brand names of empty beverage containers which the redemption center must accept. The order may contain such other provisions to ensure that the redemption center will provide a convenient service to the public as the director may determine.

4. The department may review the approval of any redemption center at any time. After written notice to the person responsible for the establishment and operation of the redemption center, and to the dealers served by the redemption center, the commission may, after hearing, withdraw approval of a redemption center if the commission finds there has not been compliance with the department's order approving the redemption center, or if the redemption center no longer provides a convenient service to the public.

5. All approved redemption centers shall meet applicable health standards.

[C79, 81, §455C.6]

2019 Acts, ch 59, §138

Referred to in §455C.4

Subsection 3 amended

455C.7 Unapproved redemption centers.

Any person may establish a redemption center which has not been approved by the department, at which a consumer may return empty beverage containers and receive payment of the refund value of the beverage containers. The establishment of an unapproved redemption center shall not relieve any dealer from the responsibility of redeeming any empty beverage containers of the kind and brand sold by the dealer.

[C79, 81, §455C.7]

455C.8 Snap-top cans prohibited. Repealed by 2013 Acts, ch 12, §26.

455C.9 Rules adopted.

The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this chapter, subject to the provisions of chapter 17A.

[C79, 81, §455C.9]

455C.10 Appeal.

Any person aggrieved by an order of the department relating to the approval or withdrawal of approval for a redemption center may seek judicial review of such order as provided in chapter 17A.

[C79, 81, §455C.10]

455C.11 Reserved.

455C.12 Penalties.

1. Any person violating the provisions of section 455C.2, 455C.3, or 455C.5, or a rule adopted under this chapter, shall be guilty of a simple misdemeanor.

2. A distributor who collects or attempts to collect a refund value on an empty beverage container when the distributor has paid the refund value on the container to a dealer, redemption center, or consumer is guilty of a fraudulent practice.

3. Any person who does any of the following acts is guilty of a fraudulent practice:

a. Collects or attempts to collect the refund value on the container a second time, with the knowledge that the refund value has once been paid by the distributor to a dealer, redemption center or consumer.

b. Manufactures, sells, possesses or applies a false or counterfeit label or indication which shows or purports to show a refund value for a beverage container, with intent to use the false or counterfeit label or indication.

c. Collects or attempts to collect a refund value on a container with the use of a false or counterfeit label or indication showing a refund value, knowing the label or indication to be false or counterfeit.

4. As used in this section, a false or counterfeit label or indication means a label or indication purporting to show a valid refund value which has not been initially applied as authorized by a distributor.

5. Subsection 2 and subsection 3, paragraph "*a*" of this section have no application to empty beverage containers which are intended to be refillable and are in a standard of condition except for sanitization to be refillable by the manufacturer.

[C79, 81, §455C.12]

2013 Acts, ch 12, §11

Fraudulent practices, see §714.8 – 714.14

455C.13 Distributors' agreements authorized.

A distributor may enter into a contract or agreement with any other distributor, manufacturer or person for the purpose of collecting or paying the refund value on, or disposing of, beverage containers as provided in this chapter.

[C81, §455C.13]

455C.14 Redemption of refused nonrefillable metal beverage containers.

1. If the refund value indication required under section 455C.5 on an empty nonrefillable metal beverage container is readable but the redemption of the container is lawfully refused by a dealer or person operating a redemption center under other sections of this chapter or rules adopted pursuant to these sections, the container shall be accepted and the refund value paid to a consumer as provided in this section. Each beer distributor selling nonrefillable metal beverage containers in this state shall provide individually or collectively by contract or agreement with a dealer, person operating a redemption center or another person, at least one facility in the county seat of each county where refused empty nonrefillable metal beverage containers having a readable refund value indication as required by this chapter are accepted and redeemed. In cities having a population of twenty-five thousand or more, the number of

the facilities provided shall be one for each twenty-five thousand population or a fractional part of that population.

2. A beer distributor violating this section is guilty of a simple misdemeanor.

[C81, §455C.14]

455C.15 Plastic cans prohibited. Repealed by 2013 Acts, ch 12, §26.

455C.16 Beverage containers — disposal at sanitary landfill prohibited.

Beginning July 1, 1990, the final disposal of beverage containers by a dealer, distributor, or manufacturer, or person operating a redemption center, in a sanitary landfill, is prohibited. Beginning September 1, 1992, the final disposal of beverage containers used to contain alcoholic liquor as defined in section 123.3, subsection 5, by a dealer, distributor, or manufacturer, or person operating a redemption center in a sanitary landfill, is prohibited.

89 Acts, ch 272, §37; 91 Acts, ch 268, §435; 92 Acts, ch 1215, §14

455C.17 Grants for independent redemption centers. Repealed by 2018 Acts, ch 1023, §17.

CHAPTER 455D

WASTE VOLUME REDUCTION AND RECYCLING

Referred to in §364.22, 455H.303

455D.1 Definitions.
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455D.11B Permitting of waste tire collection or processing sites — fees.
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455D.12 Plastic container labeling.
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455D.14 Products manufactured with chlorofluorocarbons prohibited.
455D.15 Waste volume reduction and recycling fund.
455D.15A Permitting of waste conversion technologies operations — fees. Repealed by 2019 Acts, ch 14, §4.
455D.16 Mercury — thermostats.
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455D.19 Packaging — heavy metal content.
455D.20 Refuse-derived fuel — calculation as portion of waste reduction goal. Repealed by 2004 Acts, ch 1078, §3.
455D.21 Local ordinance — curbside collection.
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455D.25 Civil actions for compliance — penalties.
455D.26 Green advisory committee. Repealed by its own terms; 2010 Acts, ch 1166, §2.

455D.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the environmental protection commission.

2. *"Department"* means the department of natural resources created pursuant to section 455A.2.

3. *"Director"* means the director of the department.

4. *"Pollution prevention techniques"* means any of the following practices employed by the user of a toxic substance:

a. Input substitution, which is the replacement of a toxic substance or raw material used in a production process with a nontoxic or less toxic substance.

b. Product reformulation, which is the substitution of an end product which is nontoxic or less toxic upon use or release for an existing end product.

c. Production process redesign or modification, which is the development and use of production processes of a different design other than those currently in use.

d. Production process modernization, which is the upgrading or replacing of existing production process equipment or methods with other equipment or methods based on the same production process.

e. Improved operation and maintenance of existing production process equipment and methods, which is the modification or addition to existing equipment or methods, including but not limited to such techniques as improved housekeeping practices, system adjustments, product and process inspections, and production process control equipment or methods.

f. Recycling, reuse, or extended use of toxic substances by using equipment or methods that become an integral part of the production process.

5. *"Recycling"* means any process by which waste, or materials that would otherwise become waste, are collected, separated, or processed and revised or returned to use in the form of raw materials or products pursuant to section 455D.4A. *"Recycling"* includes but is not limited to the composting of yard waste which has been previously separated from other waste, but does not include any form of energy recovery.

6. *"Scrap metal"* means any ferrous or nonferrous metal suitable for reprocessing into a viable market commodity grade specification.

7. *"Waste reduction"* means practices which reduce, avoid, or eliminate both the generation of solid waste and the use of toxic materials so as to reduce risks to health and the environment and to avoid, reduce, or eliminate the generation of wastes or environmental pollution at the source and not merely achieved by shifting a waste output or waste stream from one environmental medium to another environmental medium.

89 Acts, ch 272, §1; 2013 Acts, ch 12, §12, 13; 2018 Acts, ch 1023, §5, 6
Referred to in §455D.3

455D.2 Findings.

The general assembly finds that:

1. Iowa's environment is precious and no person has the right to pollute Iowa's air, water, or soil. The environment is vulnerable and irreplaceable, and all Iowans have an ongoing responsibility to conserve, preserve, and enhance the state's natural resources to guarantee their continued existence and use by the present and future generations.

2. The land itself is the source of Iowa's livelihood not only for the purposes of an agricultural economy, but for the establishment of manufacturing plants, business offices, and residences. While zoning establishes restrictions on the use of land for social order, a similar system has not been established to maintain environmental order below the ground. Protection of the environment includes not only visible but invisible threats as well.

3. The rapidly rising volume of waste deposited by society threatens the capacity of existing and future landfills. The nature of waste disposal today means that unknown quantities of potentially toxic and hazardous materials are being buried and pose a constant

threat to the groundwater supply. In addition, the nature of the waste and disposal methods utilized allow the waste to remain basically inert for decades, if not centuries, without decomposition.

4. Wastes filling Iowa's landfills may, at best, represent a potential resource. However, without proper management, wastes are hazards to the environment and life itself.

5. The reduction of solid waste at the source and the recycling of reusable waste materials will reduce the flow of waste to sanitary landfills and increase the supply of reusable materials for the use of the public.

89 Acts, ch 272, §2

455D.3 Goals for waste stream reduction — procedures — reductions and increases in fees.

1. *Waste reduction goals.*

a. The goal of the state is to reduce the amount of materials in the waste stream, existing as of July 1, 1988, by an intermediate goal of twenty-five percent, and by a final goal of at least fifty percent, through the practice of waste volume reduction at the source and through recycling. For the purposes of this section, *"waste stream"* means the disposal of solid waste as *"solid waste"* is defined in section 455B.301.

b. Notwithstanding section 455D.1, subsection 5, facilities which employ combustion of solid waste with energy recovery and refuse-derived fuel, which are included in an approved comprehensive plan, may include these processes in the definition of recycling for the purpose of meeting the state goal if at least thirty-five percent of the fifty percent waste reduction goal is met through volume reduction at the source and recycling and reuse, as established pursuant to section 455B.301A, subsection 1, paragraphs *"a"* and *"b"*.

2. *Departmental monitoring.*

a. If at any time the department determines that a planning area has met or exceeded the twenty-five percent goal, but has not met or exceeded the fifty percent goal, a planning area shall subtract sixty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. If at any time the department determines that a planning area has met or exceeded the fifty percent goal, a planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1).

b. If the department determines that a planning area has failed to meet the twenty-five percent goal, the planning area shall remit fifty cents per ton to the department. The moneys shall be deposited in the groundwater protection fund created in section 455E.11, subsection 2, paragraph *"a"*, and credited to the solid waste account of the fund to be used for funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1). Moneys shall continue to be remitted pursuant to this paragraph until such time as evidence of attainment of the twenty-five percent goal is documented in subsequent plans submitted to the department.

c. If at any time the department determines that a planning area has met or exceeded the fifty percent goal, the planning area shall subtract fifty cents from the total amount of the tonnage fee imposed pursuant to section 455B.310. This amount shall be in addition to any amount subtracted pursuant to paragraph *"a"*. The reduction in tonnage fees pursuant to this paragraph shall be taken from that portion of the tonnage fees which would have been allocated to funding alternatives to landfills pursuant to section 455E.11, subsection 2, paragraph *"a"*, subparagraph (1). A planning area failing to meet the fifty percent goal is not required to remit any additional tonnage fees to the department.

3. *Environmental management systems.* A planning area designated as an

environmental management system pursuant to section 455J.7 is exempt from the waste stream reduction goals of this section.

89 Acts, ch 272, §3; 92 Acts, ch 1213, §2; 94 Acts, ch 1177, §4; 95 Acts, ch 80, §2; 95 Acts, ch 209, §25; 98 Acts, ch 1193, §3; 2001 Acts, ch 124, §2, 6; 2006 Acts, ch 1063, §2; 2008 Acts, ch 1109, §2; 2011 Acts, ch 25, §108; 2013 Acts, ch 12, §14, 15

Referred to in §455B.306, 455B.310, 455J.5

455D.4 Waste volume reduction policies.

1. It is the policy of this state to encourage the development of waste volume reduction programs and education at the local government level through incentives, technical assistance, grants, and other practical measures.

2. It is the policy of this state to support and encourage the development of new uses and markets for recycled goods, placing emphasis on the development, in Iowa, of businesses relating to waste reduction and recycling.

3. The provision of education concerning waste volume reduction at the elementary through high school levels and through community organizations will enhance the success of local programs requiring public involvement.

4. This state supports and encourages manufacturing methods which are environmentally sustainable, technologically safe, and ecologically sound. The state shall encourage manufacturing methods which enhance waste reduction by creating products with longer usage life, and by creating products which are adaptable to secondary uses, require less input material, and decrease resource consumption.

5. The people of this state recognize that a variety of benefits result from a comprehensive waste reduction policy including the following environmental, economic, governmental, and public benefits:

a. Not producing waste in the first instance is the most certain means for avoiding the widely recognized health and environmental damage associated with waste. Although waste reduction will never eliminate all wastes, to the extent that waste reduction is achieved it results in the most certain form of direct risk reduction.

b. Waste reduction may result in reduced pollution control costs for industry by stimulating and promoting beneficial technological and management reorganization within industry in place of pollution control strategies which channel capital into nonproductive pollution control expenditures.

c. The government is better able to administer programs which offer a variety of benefits to industry and which reduce the overall cost of government involvement than it is to administer programs which offer few benefits to industry and require increasingly extensive, complex, and costly governmental actions.

d. Public confidence in environmental policies of the government is important for the effectiveness of these policies. Waste reduction poses no adverse environmental and public health effects and does not, therefore, lead to increased public concern. Waste reduction also increases the public confidence that the government and industry are doing all that is possible to protect human health and the environment.

89 Acts, ch 272, §4

455D.4A Recycling.

1. For the purpose of this section, "*recycling facility*" means any facility, business, or operation that has the stated primary purpose of facilitating the recycling of materials that would otherwise be solid waste.

2. Recycling of materials for the purpose of being excluded from the solid waste provisions of chapter 455B, division IV, part 1, must be legitimate. A material that is not legitimately recycled is discarded material and is a solid waste. In determining if recycling is legitimate, a recycling facility must establish all of the following:

a. The material is potentially recyclable and has a feasible means of being recycled into a valuable product.

b. The material is being managed as a valuable commodity while under the facility's control.

c. The material is not being accumulated speculatively pursuant to subsection 7.

3. If the department determines that a facility is not legitimately recycling material, the department may allow the facility owner or operator an opportunity to comply with the criteria in subsection 2, or may immediately deem the facility subject to the solid waste provisions of chapter 455B, division IV, part 1.

4. The criteria in subsection 2 are intended to mitigate the risk posed by facilities that accumulate materials speculatively prior to recycling by preventing materials that are not otherwise regulated under chapter 455B, division IV, part 1, from being stored indefinitely and potentially causing a public health nuisance or adverse environmental impact. In response to enforcement initiated by the department for alleged violations of this section, the burden of proof falls on the recycling facility owner or operator to establish that materials are being legitimately recycled.

5. To establish that a material is potentially recyclable and has a feasible means of being recycled into a valuable product, a recycling facility owner or operator shall maintain with an end user at least one purchase contract, a letter of understanding, or other formal agreement. Such documentation must be provided to the department upon request. In addition, if the material is going to be recycled in an unusual manner, the owner or operator may use technical specifications from the end user or other documentation to prove recycling the material in such manner will result in a valuable product.

6. To establish that a material is being managed as a valuable commodity while under the facility's control, a recycling facility owner or operator shall ensure that stockpiled material is not speculatively accumulated by maintaining current inventory records and is managed in a manner consistent with comparable recyclable materials or products in an equally protective manner.

7. To establish that a material is not being accumulated speculatively, the recycling facility owner or operator must document that, during a given calendar year, the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of material accumulated at the beginning of the period. Materials must be placed in a storage unit with a label indicating the first date that the material began to be accumulated. If placing a label on the storage unit is not practicable, the accumulation period must be documented through an inventory log or other appropriate method.

8. Failure to provide documentation upon request to the department relative to the requirements of this section is grounds for the department to immediately deem the facility not in compliance with this section.

9. Scrap metal is not subject to the provisions of this section.

2018 Acts, ch 1023, §7; 2019 Acts, ch 59, §139 – 141

Referred to in §455B.301, 455D.1, 455D.22, 455D.23, 455D.25

Subsection 2, unnumbered paragraph 1 amended

Subsection 2, paragraph b amended

Subsections 6 and 9 amended

455D.5 Statewide waste reduction and recycling network — established.

1. The department shall establish a statewide waste reduction and recycling network to promote the waste management policy contained in section 455B.481 and the waste management hierarchy contained in section 455B.301A. Programs established shall encourage waste generators to reduce the volume of waste generated and to recycle or properly dispose of the waste that is generated. The network shall utilize existing recycling companies when possible. The programs may utilize financial and legal incentives, education, technical assistance, regulation, and other methods as appropriate to implement the programs. The programs may involve the development of public and private sector initiatives, the development of markets and other opportunities for waste reduction and recycling, and other related efforts.

2. The elements of the network shall include but are not limited to all of the following:

a. Promotion of efforts to increase the amount of recyclable materials used by the public.

b. Promotion of efforts to recover recyclable materials from the waste stream.

c. Promotion of local efforts to implement recycling collection centers located at disposal sites or other convenient local sites.

d. Promotion of local efforts of curbside collection of separated recyclable waste materials.

e. Provision of public education programs which promote public awareness of waste volume reduction and the use of recyclable materials.

f. Promotion of the creation of markets for recyclable materials.

g. Promotion of research, manufacturing processes, and product development, which provide for waste reduction through decreased material input, and resource consumption.

h. Promotion of the concentration of the efforts of the business and industry resource search service by the small business assistance center for the safe and economic management of solid waste and hazardous substances at the university of northern Iowa, to locate existing waste streams and materials from businesses and industries which generate small amounts of waste and to catalyze the reuse of these materials in the production of goods and services.

89 Acts, ch 272, §5; 95 Acts, ch 44, §4

455D.6 Duties of the director.

The director shall:

1. Unless otherwise specified in this chapter, recommend rules to the commission which are necessary to implement this chapter.

2. Administer and coordinate the waste volume reduction and recycling fund created under section 455D.15.

3. Enter into contracts and agreements, with the approval of the commission, for contracts in excess of twenty-five thousand dollars, with local units of government, other state agencies, governments of other states, governmental agencies of the United States, other public and private contractors, and other persons as may be necessary or beneficial in carrying out the department's duties under this chapter.

4. Develop a strategy and recommend to the commission the adoption of rules necessary to implement a strategy for white goods and waste oil.

5. Develop a strategy and recommend to the commission the adoption of rules necessary to implement a strategy for the recycling of electronic goods and the disassembling and removing of toxic parts from electronic goods.

89 Acts, ch 272, §6; 2002 Acts, ch 1162, §59; 2003 Acts, ch 145, §286; 2013 Acts, ch 12, §16, 17

Referred to in §455D.22, 455D.25

455D.7 Duties of the commission.

The commission shall:

1. Unless otherwise specified in this chapter, adopt rules necessary to implement this chapter pursuant to chapter 17A.

2. Prohibit land disposal of specific components of the waste stream for which the department has developed and implemented a strategy for alternative disposal according to the waste management hierarchy.

3. Establish by rule standards for the acceptance of recyclable or rebatable products at redemption centers. The standards may address matters of public health and handling by the redemption center.

89 Acts, ch 272, §7; 2013 Acts, ch 12, §18, 19

455D.8 Deposits, rebates, and waste abatement fees. Repealed by 2011 Acts, ch 9, §11.

455D.9 Land disposal of yard waste — prohibited.

1. Land disposal of yard waste as defined by the department is prohibited. A sanitary landfill may accept yard waste under any of the following circumstances:

a. When the yard waste is separated at its source from other solid waste and is accepted by the sanitary landfill for the purposes of soil conditioning and composting.

b. When the yard waste is collected for disposal as a result of a severe storm and the

yard waste originates in an area declared to be a disaster area in a declaration issued by the president of the United States or the governor.

c. When the yard waste is collected for disposal to control, eradicate, or prevent the spread of insect pests, tree and plant diseases, or invasive plant species problems.

d. When the yard waste is collected for disposal by a sanitary landfill that operates a methane collection system that produces energy.

2. The department shall assist local communities in the development of collection systems for yard waste generated from residences and shall assist in the establishment of local composting facilities. Each city and county shall, by ordinance, require persons within the city or county to separate yard waste from other solid waste generated.

3. The department shall adopt rules which define yard waste and provide for the safe and proper method of composting yard waste and other organic materials.

4. State and local agencies responsible for the maintenance of public lands in the state shall give preference to the use of composted materials in all land maintenance activities.

5. This section does not prohibit the use of yard waste as land cover or as soil conditioning material.

6. This section prohibits the open burning of yard waste within the permitted boundary at a sanitary disposal project.

89 Acts, ch 272, §9; 90 Acts, ch 1191, §4; 92 Acts, ch 1182, §5; 2013 Acts, ch 12, §20; 2014 Acts, ch 1060, §1, 2; 2015 Acts, ch 19, §1

455D.9A Disposal of baled solid waste at a sanitary landfill — prohibited.

Beginning January 1, 1992, a person shall not dispose of baled solid waste at a sanitary landfill and a sanitary landfill shall not accept baled solid waste for final disposal. Solid waste which is baled on-site may be disposed of at the sanitary landfill.

91 Acts, ch 113, §1; 99 Acts, ch 14, §1

455D.10 Land disposal of lead acid batteries — prohibited — collection for recycling.

1. Beginning July 1, 1990, land disposal of lead acid batteries is prohibited.

2. A person offering for sale or selling lead acid batteries at retail in the state shall do all of the following:

a. Accept used lead acid batteries from customers who purchase new lead acid batteries, at the point of sale.

b. Post written notice that land disposal of lead acid batteries is prohibited and that state law requires the retailer to accept lead acid batteries for recycling when new lead acid batteries are purchased.

3. A person offering for sale or selling lead acid batteries at wholesale shall accept used lead acid batteries from retailers who purchase new lead acid batteries for resale to consumers, or from wholesale customers.

89 Acts, ch 272, §10

455D.10A Household batteries — heavy metal content and recycling requirements.

1. *Definitions.* As used in this section and in section 455D.10B unless the context otherwise requires:

a. *"Button cell battery"* means a household battery which resembles a button or coin in size and shape.

b. *"Consumer"* means a person who purchases household batteries for personal or business use.

c. *"Easily removed"* means a battery or battery pack which can be removed from a battery-powered product by the consumer, using common household tools.

d. *"Household battery"* means any type of dry cell battery used by consumers, including but not limited to mercuric oxide, carbon-zinc, zinc air, silver oxide, nickel-cadmium, nickel-hydride, alkaline, lithium, or sealed lead acid batteries.

e. *"Institutional generator"* means a governmental, commercial, industrial, communications, or medical facility which generates waste mercuric oxide, nickel-cadmium, or sealed lead acid rechargeable batteries.

f. *"Rechargeable consumer product"* means a product that is primarily powered by a rechargeable battery and is primarily used or purchased to be used for household purposes.

g. *"Rechargeable household battery"* means a small sealed nickel-cadmium or sealed lead acid battery used for nonvehicular purposes and weighing less than twenty-five pounds, which can be recharged by the consumer and reused.

2. *Mercury content limited.*

a. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese battery that contains more than twenty-five one-thousandths of a percent mercury by weight. A person shall not sell, distribute, or offer for sale at retail in this state an alkaline manganese household battery manufactured on or after January 1, 1996, to which mercury has been added. This paragraph does not apply to alkaline manganese button cell batteries.

b. A person shall not sell, distribute, or offer for retail sale in this state an alkaline manganese button cell battery which contains more than twenty-five milligrams of mercury.

3. *Recycling/disposal requirements for household batteries.*

a. Beginning July 1, 1996, a system or systems shall be in place to protect the health and safety of Iowans, and the state's environment, from the toxic components of used household batteries. The system or systems shall include at least one of the following elements:

(1) Elimination or reduction to the extent established by rule of the department, of heavy metals and other toxic components in nickel-cadmium, mercuric oxide, or sealed lead acid household batteries, to ensure protection of public health, safety, and the environment when placed in or disposed of as part of mixed municipal solid waste.

(2) Establishment of a comprehensive recycling program for each type of battery listed in subparagraph (1) that is sold, distributed, or offered for sale in this state. An institutional generator shall provide for the on-site source separation and collection of used mercuric oxide batteries, nickel-cadmium rechargeable batteries, and sealed lead acid rechargeable batteries. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph *"a"*, subparagraph (3) or (4), shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for the recycling of used batteries in an environmentally sound manner.

(3) Provision for collection, transporting, and proper disposal of used household batteries of the types listed in subparagraph (1) which are distributed, sold, or offered for retail sale in the state. For the purposes of this paragraph, *"proper disposal"* means disposal which complies with all applicable state and federal laws. All participants in the stream of commerce relating to the batteries, which are listed in subparagraph (1) and which are not designated as exempt pursuant to section 455D.10B, subsection 2, paragraph *"a"*, subparagraph (3) or (4), shall, individually or collectively, be responsible for developing and operating a system for collecting and transporting used batteries to the appropriate dry cell battery manufacturer or to a site or facility designated by a manufacturer. Additionally, dry cell battery manufacturers shall be responsible for proper disposal of the used batteries.

b. To meet the recycling and disposal requirements of this subsection, participants in the systems established under this subsection, either individually or collectively, shall do all of the following:

(1) Identify a collection entity, other than a local government collection system, unless the local government agrees otherwise, through which the discarded batteries listed in paragraph *"a"*, subparagraph (1) shall be returned for collection and recycling or disposal.

(2) Inform each customer of the prohibition of disposal of batteries listed in paragraph *"a"*, subparagraph (1), and a safe and convenient return process available to the customer for recycling or proper disposal.

c. After July 1, 1996, nickel-cadmium, sealed lead acid, or mercuric oxide household batteries shall not be sold, distributed, or offered for sale in the state, unless a system required by this section is in operation.

d. The department may make recommendations to the commission to include other types

of household or rechargeable batteries, not enumerated in paragraph *"a"*, subparagraph (1), in the requirements of this subsection.

e. This subsection does not apply to batteries subject to regulation under the federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.

4. *Rules adopted.* The commission shall adopt, upon recommendation of the director, the rules necessary to carry out the provisions of this section pursuant to chapter 17A.

92 Acts, ch 1215, §15; 95 Acts, ch 99, §1; 2007 Acts, ch 151, §1; 2011 Acts, ch 25, §140
Referred to in §455D.10B, 455D.25

455D.10B Batteries used in rechargeable consumer products.

1. A person shall not distribute, sell, or offer for retail sale in the state a rechargeable consumer product manufactured on or after January 1, 1994, unless all of the following conditions are met:

a. The battery can be easily removed by the consumer, or is contained in a battery pack that is separate from the product and can be easily removed.

b. The battery, the instruction manual, and the product package are clearly labeled to indicate that the battery must be recycled or disposed of properly and includes the designation "Cd" or "Ni-Cd" for nickel-cadmium batteries and "Pb" or "Lead" for small lead batteries.

2. *a.* A rechargeable consumer product manufacturer may apply to the department for exemption from the requirements of subsection 1 if any of the following apply:

(1) The product cannot be redesigned or manufactured to comply with the requirements prior to January 1, 1994.

(2) The redesign of the product to comply with the requirements would result in significant danger to public health and safety.

(3) The battery poses no unreasonable hazard to public health, safety, or the environment when placed in and processed or disposed of as part of mixed municipal solid waste, pursuant to section 455D.10A.

(4) The consumer product manufacturer has in operation a program to recycle used batteries in an environmentally sound manner.

b. A manufacturer of a product that is powered by a battery that cannot be easily removed who has been granted an exemption under this subsection shall label the product as required in subsection 1, paragraph *"b"*.

3. An exemption granted by the department under subsection 2, paragraph *"a"*, subparagraph (1), is limited to a maximum of two years, but may be renewed.

92 Acts, ch 1215, §16; 94 Acts, ch 1037, §1, 2; 2011 Acts, ch 25, §109
Referred to in §455D.10A

455D.11 Waste tires — land disposal prohibited.

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

a. *"Permit"* means a permit issued by the department to establish, construct, modify, own, or operate a tire stockpiling facility.

b. *"Processing"* means producing or manufacturing usable materials from waste tires.

c. *"Processing site"* means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

d. *"Tire collector"* means either a person who owns or operates a site used for the storage, collection, or deposit of more than five hundred waste tires or an authorized vehicle recycler who is licensed by the state department of transportation pursuant to section 321H.4 and who owns or operates a site used for the storage, collection, or deposit of more than three thousand five hundred waste tires.

e. *"Tire processor"* means a person engaged in the processing of waste tires.

f. *"Waste tire"* means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. *"Waste tire"* does not include a nonpneumatic tire.

g. *"Waste tire collection site"* means a site which is used for the storage, collection, or deposit of waste tires.

2. Land disposal of waste tires is prohibited beginning July 1, 1991, unless the tire has

been processed in a manner established by the department. A sanitary landfill shall not refuse to accept a waste tire which has been properly processed.

3. The department shall conduct a study and make recommendations to the general assembly by January 1, 1991, concerning a waste tire abatement program which includes but is not limited to the following:

a. The number and geographic distribution of waste tires generated and existing in the state.

b. The development of markets for the recycling and processing of waste tires, in the midwestern states.

c. The methods to establish reliable sources of waste tires for users of waste tires.

d. The permitting of waste tire collection sites, waste tire processing facilities, and waste tire haulers.

e. The methods for the cleanup of existing stockpiles of waste tires.

4. Upon completion of the study pursuant to subsection 3, the department shall determine the number of stockpiling facilities which are necessary and shall develop rules for stockpiling facilities which include but are not limited to the following:

a. The prohibition of burning within one hundred yards of a tire stockpile.

b. The maximum height, width, and length of a tire stockpile.

c. Plans to control mosquitoes and rodents.

d. A facility closure plan.

e. Specifications for fire lanes between stockpiles.

f. Limitations of the total number of tires allowed at a single stockpile site.

5. The department shall develop criteria for the issuance of permits and shall issue permits to qualified stockpiling facilities.

6. The department shall provide financial assistance to persons who establish recycling and processing sites for waste tires, subject to the rules established by the department for the establishment of such sites and subject to the conditions prescribed by the department for application for and awarding of such financial assistance.

7. The commission shall adopt rules which provide the following:

a. That a person who contracts with another person to transport more than forty waste tires is required to contract only with a person registered as a waste tire hauler pursuant to section 455D.11I.

b. That a person who transports waste tires for final disposal is required to only dispose of the tires at a permitted sanitary disposal facility.

8. The department shall adopt rules relating to the storage and disposal of nonpneumatic tires and processed tires.

89 Acts, ch 272, §11; 91 Acts, ch 257, §7; 92 Acts, ch 1218, §3; 96 Acts, ch 1117, §2; 97 Acts, ch 24, §1; 2002 Acts, ch 1121, §2; 2004 Acts, ch 1030, §1; 2007 Acts, ch 151, §2; 2013 Acts, ch 90, §110

Referred to in §455D.22, 455D.25

455D.11A Financial assurance — waste tire collection or processing sites.

1. A person owning or operating a waste tire collection or processing site shall provide a financial assurance instrument to the department prior to the initial approval of a permit or prior to the renewal of a permit for an existing or expanding facility. The financial assurance instrument shall be used to provide for closure of the waste tire collection or processing facility.

2. The financial assurance instrument shall meet all requirements adopted by rule by the commission, and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department.

3. Financial assurance instruments may include instruments such as cash or surety bond, a letter of credit in a form prescribed by the department, a secured trust fund, a corporate guarantee, or a combination of such instruments and guarantees sufficient to satisfy the requirements of subsection 5. The department may request an annual audit, which shall remain confidential, to be performed by a third party.

4. If the owner or operator of a waste tire collection or processing site chooses to provide

financial assurance in the form of a surety bond, the bond shall be executed by a surety company authorized to do business in this state. The bond shall be continuous in nature until canceled by the surety. A surety shall provide at least ninety days' notice in writing to the owner or operator and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon compliance with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from an owner or operator to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state. If a surety bond is canceled which has been provided as financial assurance under this subsection, the owner or operator of the waste tire collection or processing site shall demonstrate to the department within thirty days of the cancellation, a means of continued compliance with the financial assurance requirements of this section. If a means of continued compliance is not demonstrated within the thirty-day period, the department shall suspend the permit for the site, and the owner or operator shall perform proper closure of the site within thirty days. If the owner or operator does not properly close the site within the time period allowed, the department shall file a claim with the surety company, prior to the effective date of cancellation of the bond, to collect the amount of the bond for use in performing proper closure. A person who fails to provide for proper closure, notwithstanding collection by the department of the amount of the bond, is guilty of a serious misdemeanor.

5. Financial assurance shall be provided in the amounts as follows:

a. For a waste tire collection or processing site, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to thirty-five cents per passenger tire equivalent collected by the site prior to July 1, 1998. The financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to thirty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department.

b. For a waste tire collection or processing site, the financial assurance instrument for a waste tire collection site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected by the site on or after July 1, 1998, and the financial assurance instrument for a waste tire processing site shall provide coverage in an amount which is equivalent to eighty-five cents per passenger tire equivalent collected for processing by the site which is above the three-day processing supply of tires for the site as determined by the department.

6. The financial assurance instrument shall not be assigned for the benefit of creditors with the exception of the state, and shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site. The commission shall adopt rules to establish conditions under which the department may gain access to the financial assurance instrument.

7. The requirement for financial assurance shall not apply to waste tire collection or processing sites operated by a city or county, or operated in conjunction with a sanitary landfill.

92 Acts, ch 1218, §4; 94 Acts, ch 1023, §56; 97 Acts, ch 53, §1, 2; 98 Acts, ch 1180, §1, 2; 2015 Acts, ch 30, §134, 135

Referred to in §455D.11C, 455D.22, 455D.25

455D.11B Permitting of waste tire collection or processing sites — fees.

An owner or operator of a waste tire collection or processing site, including an enclosed site, shall obtain a permit from the department prior to operation of the site. The owner or operator shall pay an annual fee of eight hundred fifty dollars to the department. The moneys collected by the department shall be deposited in the hazardous substance remedial fund

established pursuant to section 455B.423 and shall be used for the purposes of administering the waste tire collection or processing site permit program.

92 Acts, ch 1218, §5

Referred to in §455D.22, 455D.25

455D.11C Waste tire management fund.

1. A waste tire management fund is created within the state treasury. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Notwithstanding section 12C.7, any interest or earnings on investments from moneys in the fund shall be credited to the fund. Moneys from the fund that are expended by the department in closing or bringing into compliance a waste tire collection site pursuant to section 455D.11A and later recouped by the department shall be credited to the fund.

2. Moneys in the waste tire management fund are appropriated and shall be used for the following purposes:

a. Thirty percent of the moneys shall be used for all of the following positions:

(1) One full-time equivalent position for the administration of permits and registrations for tire processing, storage, and hauling activities, and tire program initiatives.

(2) One and one-half full-time equivalent positions for waste tire-related compliance checks and inspections. The full-time equivalent positions shall be divided equally between the field offices in the state.

b. Ten percent of the moneys shall be used for a public education and awareness initiative related to the proper tire disposal options and environmental and health hazards posed by improper tire storage.

c. Thirty percent of the moneys shall be used for market development initiatives for waste tires.

d. Thirty percent of the moneys shall be used for waste tire stockpile abatement initiatives which would require a cost-share agreement with the landowner.

96 Acts, ch 1117, §3; 2004 Acts, ch 1173, §1; 2008 Acts, ch 1113, §116; 2011 Acts, ch 34, §103

455D.11D through 455D.11F Repealed by 2004 Acts, ch 1173, §2.

455D.11G Waste tire disposal fees and abatement costs.

1. A retail tire dealer who currently charges a fee relating to disposal of used tires is encouraged to include the fee within the sales price of new tires. The practice by retail tire dealers of adding the fee as a separate charge on sales invoices is discouraged.

2. Notwithstanding any provision in this chapter, any generator of waste tires who is identified as being a contributor to the materials which are the object of an abatement and who can document full compliance with this chapter and administrative rules adopted pursuant to this chapter in disposing of such waste tires shall not be liable for any of the cost of recovery actions of the abatement.

96 Acts, ch 1117, §7; 98 Acts, ch 1180, §5

455D.11H Future repeal. Repealed by 2004 Acts, ch 1173, §2.

455D.11I Registration of waste tire haulers — bond.

1. For the purposes of this section, *"waste tire hauler"* means a person who transports for hire more than forty waste tires in a single load for commercial purposes.

2. A waste tire hauler shall register with, and obtain a certificate of registration from, the department before hauling waste tires in this state. Requirements for registration of a waste tire hauler shall include a provision that waste tire haulers shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler's employee while acting within the scope of employment. The waste tire hauler may apply for a certificate of registration by submitting the forms provided for that purpose and shall provide the name of the applicant

and the address of the applicant's principal place of business and any additional information as deemed appropriate by the department.

3. A certificate of registration issued under this section is valid for one year from the date of issuance. A registered waste tire hauler may renew the certificate by filing a renewal application in the form prescribed by the department, accompanied by any applicable renewal fee.

4. A certificate of registration shall at all times be carried and displayed in the vehicle used for transportation of waste tires and shall be shown to a representative of the department of natural resources or the state department of transportation, upon request. The state department of transportation may inspect vehicles used for the transportation of waste tires and request that the certificate of registration of the waste tire hauler be shown.

5. The department shall establish a reasonable registration fee sufficient to offset expenses incurred in the administration of this section.

6. The department shall require that a waste tire hauler have on file with the department before the issuance or renewal of a registration certificate, a surety bond executed by a surety company authorized to do business in this state in the sum of a minimum of ten thousand dollars, which bond shall be continuous in nature until canceled by the surety. A surety shall provide at least thirty days' notice in writing to the waste tire hauler and to the department indicating the surety's intent to cancel the bond and the effective date of the cancellation. The surety bond shall be for the benefit of the citizens of this state and shall be conditioned upon the waste tire hauler's willingness to comply with this section. The surety's liability under this subsection is limited to the amount of the bond or the amount of the damages or moneys due, whichever is less. However, this subsection does not limit the amount of damages recoverable from a waste tire hauler to the amount of the surety bond. The bond shall be made in a form prescribed by the commissioner of insurance and written by a company authorized by the commissioner of insurance to do business in this state.

7. The department shall adopt rules necessary for the implementation and administration of this section.

2002 Acts, ch 1121, §4; 2003 Acts, ch 44, §69; 2007 Acts, ch 151, §3, 4
Referred to in §455D.11, 455D.22, 455D.25

455D.12 Plastic container labeling.

1. In this section unless the context otherwise requires:

a. *"Label"* means a molded imprint or raised symbol on or near the bottom of a plastic product.

b. *"Plastic"* means any material made of polymeric organic compounds and additives that can be shaped by flow.

c. *"Plastic bottle"* means a plastic container that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure, and has a capacity of sixteen fluid ounces or more, but less than five gallons.

d. *"Rigid plastic container"* means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible infinite shape or form with a capacity of eight ounces or more, but less than five gallons.

2. A person shall not distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the product is labeled with a code indicating the plastic resin used to produce the bottle or container. Rigid plastic bottles or rigid plastic containers with labels and basecups of a different material shall be coded by their basic material. The code shall consist of a number placed within a triangle of arrows and letters placed below the triangle of arrows. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

a. 1 and PETE (polyethylene terephthalate)

b. 2 and HDPE (high density polyethylene)
c. 3 and V (vinyl)
d. 4 and LDPE (low density polyethylene)
e. 5 and PP (polypropylene)
f. 6 and PS (polystyrene)
g. 7 and OTHER (includes multilayer)

3. A container manufacturer or distributor who violates this section is subject to a civil penalty of not more than five hundred dollars for each violation.

89 Acts, ch 272, §12; 2013 Acts, ch 12, §21, 22

455D.13 Land disposal of used oil and used oil filters prohibited — collection and recycling.

1. A sanitary landfill shall not accept used oil for final disposal.

2. A person offering for sale or selling oil or oil filters at retail in the state shall do the following:

a. Accept at the point of sale, used oil and used oil filters from customers, or post notice of locations where a customer may dispose of used oil and used oil filters.

b. Post written notice that it is unlawful to dispose of used oil in a sanitary landfill.

3. A business that generates used oil filters or collects used oil filters from a person shall not dispose of the oil filters in a sanitary landfill and shall source-separate and recycle the oil filters.

89 Acts, ch 272, §13; 2008 Acts, ch 1167, §1, 2

455D.14 Products manufactured with chlorofluorocarbons prohibited.

Beginning January 1, 1990, a person shall not sell, offer for sale, purchase, or use plastic foam packaging products or food service items manufactured with chlorofluorocarbons. Beginning January 1, 1998, a person shall not sell, offer for sale, purchase, or use plastic foam products, not previously prohibited, which are manufactured with fully halogenated chlorofluorocarbons. A person violating this section is guilty of a serious misdemeanor.

89 Acts, ch 272, §14

455D.15 Waste volume reduction and recycling fund.

1. A waste volume reduction and recycling fund is created within the state treasury. Moneys received by the department from fees, including general revenue, federal funds, awards, wills, bequests, gifts, or other moneys designated shall be deposited in the state treasury to the credit of the fund. Notwithstanding section 8.33, any unexpended balance in the fund at the end of each fiscal year shall be retained in the fund. Any interest and earnings on investments from money in the fund shall be credited to the fund, section 12C.7 notwithstanding.

2. The fund shall be utilized by the department for providing technical assistance to Iowa businesses in developing and implementing pollution prevention techniques.

89 Acts, ch 272, §15; 2011 Acts, ch 9, §6; 2013 Acts, ch 12, §23, 24
Referred to in §29C.8A, 455D.6

455D.15A Permitting of waste conversion technologies operations — fees. Repealed by 2019 Acts, ch 14, §4.

455D.16 Mercury — thermostats.

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

a. (1) *"Manufacturer"* means any person, firm, association, partnership, corporation, governmental entity, organization, combination, or joint venture that owns or owned the brand name of the thermostat.

(2) This paragraph *"a"* is repealed on January 1, 2022.

b. *"Mercury-added thermostat"* means a product or device that uses a mercury switch to sense and control room temperature through communication with heating, ventilating, or air-conditioning equipment. *"Mercury-added thermostat"* includes thermostats used

to sense and control room temperature in residential, commercial, industrial, and other buildings but does not include thermostats used to sense and control temperature as part of a manufacturing process.

c. (1) *"Thermostat retailer"* means a person who sells thermostats of any kind directly to homeowners or other nonprofessionals through any selling or distribution mechanism, including but not limited to sales using the internet or catalogues. A thermostat retailer may also be a thermostat wholesaler if it meets the definition of thermostat wholesaler.

(2) This paragraph *"c"* is repealed on January 1, 2022.

d. (1) *"Thermostat wholesaler"* means a person who is engaged in the distribution and wholesale selling of large quantities of heating, ventilation, and air-conditioning components, including thermostats, to contractors who install heating, ventilation, and air-conditioning components, including thermostats.

(2) This paragraph *"d"* is repealed on January 1, 2022.

2. A person shall not sell, offer for sale, or install a mercury-added thermostat in this state.

3. Except as otherwise provided, a person who generates a discarded mercury-added thermostat shall manage the mercury-added thermostat as a hazardous waste or universal hazardous waste, according to all applicable state and federal regulations. A contractor who replaces or removes mercury-added thermostats shall assure that any discarded mercury-added thermostat is subject to proper separation and management as hazardous waste or universal hazardous waste. A contractor who replaces a mercury-added thermostat in a residence shall deliver the mercury-added thermostat to an appropriate collection location for recycling.

4. *a.* Each thermostat manufacturer that has offered for final sale, sold at final sale, or distributed mercury-added thermostats in the state shall individually, or in conjunction with other thermostat manufacturers, do all of the following:

(1) Not later than October 1, 2008, submit a plan to the department for approval describing a collection program for mercury-added thermostats. The program contained in the plan shall ensure that all the following take place:

(a) That an education and outreach program is developed. The program shall be directed toward thermostat wholesalers, thermostat retailers, contractors, and homeowners and ensure a maximum rate of collection of mercury-added thermostats. There shall not be a cost to thermostat wholesalers or thermostat retailers for education and outreach materials.

(b) That handling and recycling of mercury-added thermostats are accomplished in a manner that is consistent with the provisions of the universal waste rules.

(c) That containers for mercury-added thermostat collection are provided to all thermostat wholesalers. The cost to thermostat wholesalers for such containers shall be limited to an initial, reasonable, one-time fee per container as specified in the plan.

(d) That collection points will be established to serve homeowners. The collection points shall include but are not limited to regional collection centers permitted under 567 IAC ch. 123. Collection points may include but are not limited to thermostat retailers.

(e) That collection systems are provided to all collection points. Collection systems may include individual product mail back or multiple collection containers. The costs of collection shall not be passed on to a collection point. The costs to a collection point shall be limited to an initial, reasonable, one-time fee per container as specified in the plan.

(2) Implement a mercury-added thermostat collection plan approved by the department.

(3) Beginning in 2010, submit an annual report to the department by April 1 of each year that includes, at a minimum, all of the following:

(a) The number of mercury-added thermostats collected and recycled by that manufacturer during the previous calendar year.

(b) The estimated total amount of mercury contained in the thermostat components collected by that manufacturer during the previous calendar year.

(c) A list of all participating thermostat wholesalers and all collection points for homeowners.

(d) An evaluation of the effectiveness of the manufacturer's collection program.

(e) An accounting of the administrative costs incurred in the course of administering the collection and recycling program.

b. This subsection is repealed on January 1, 2022.

5. *a.* (1) A thermostat wholesaler shall do all of the following:

(a) Act as a collection site for mercury-added thermostats.

(b) Promote and utilize the collection containers provided by thermostat manufacturers to facilitate a contractor collection program.

(2) A thermostat retailer shall participate in an education and outreach program to educate consumers on the collection program for mercury-added thermostats.

b. This subsection is repealed on January 1, 2022.

6. *a.* All of the following sales prohibitions shall apply to thermostat manufacturers, thermostat wholesalers, and thermostat retailers:

(1) A thermostat manufacturer not in compliance with this section is prohibited from offering any thermostat for final sale in the state. A thermostat manufacturer not in compliance with this section shall provide the necessary support to thermostat wholesalers and thermostat retailers to ensure the manufacturer's thermostats are not offered for final sale.

(2) A thermostat wholesaler or thermostat retailer shall not offer for final sale any thermostat of a manufacturer that is not in compliance with this section.

b. This subsection is repealed on January 1, 2022.

7. *a.* The department shall do all of the following:

(1) Review and grant approval of, deny, or approve with modifications a manufacturer plan required under this section. The department shall not approve a plan unless all elements of subsection 4, paragraph "*a*", subparagraph (1), are adequately addressed and the program outlined in the plan will assure a maximum rate of collection of mercury-added thermostats. In reviewing a plan the department may consider consistency of the plan with collection requirements in other states and consider consistency between thermostat manufacturer collection programs. In reviewing plans, the department shall ensure that education and outreach programs are uniform and consistent to ensure ease of implementation by thermostat wholesalers and thermostat retailers.

(2) The department shall establish a process for public review and comment on all plans submitted by thermostat manufacturers prior to plan approval. The department shall consult with interested persons, including representatives of thermostat manufacturers, environmental groups, thermostat wholesalers, thermostat retailers, contractors, and local government.

b. This subsection is repealed on January 1, 2022.

8. *a.* The goal of the collection and recycling efforts under this section is to collect and recycle as many mercury-added thermostats as reasonably practicable. By January 1, 2009, the department shall determine collection goals for the program in consultation with interested persons, including the national electrical manufacturers association and representatives of thermostat manufacturers, thermostat wholesalers, thermostat retailers, contractors, environmental groups, and local government. If collection efforts fail to meet the collection goals described in this subsection, the department shall, in consultation with the national electrical manufacturers association and other interested persons, consider modifications to collection programs in an attempt to improve collection rates in accordance with these goals.

b. This subsection is repealed on January 1, 2022.

2008 Acts, ch 1168, §1; 2015 Acts, ch 29, §60; 2018 Acts, ch 1023, §8; 2019 Acts, ch 59, §142; 2019 Acts, ch 131, §37

See Code editor's note on simple harmonization at the end of Vol VI

Section amended

455D.17 and 455D.18 Repealed by 92 Acts, ch 1215, §19.

455D.19 Packaging — heavy metal content.

1. The general assembly finds and declares all of the following:

a. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment.

b. Packaging comprises a significant percentage of the overall solid waste stream.

c. The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled.

d. Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern.

e. It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging.

f. The intent of the general assembly is to achieve reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components.

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

a. *"Distributor"* means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering or storing packages or packaging components on behalf of third parties is not a distributor.

b. *"Incidental presence"* means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

c. *"Intentional introduction"* means an act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate, and if the final package or packaging component is in compliance with subsection 4, paragraph *"a"*, subparagraph (3). Intentional introduction also does not include the use of recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with subsection 4, paragraph *"a"*, subparagraph (3).

d. *"Manufacturer"* means a person who produces one or more packages or packaging components.

e. *"Manufacturing"* means physical or chemical modification of one or more materials to produce packaging or packaging components.

f. *"Package"* means a container which provides a means of marketing, protecting, or handling a product including a unit package, intermediate package, or a shipping container. *"Package"* also includes but is not limited to unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

g. *"Packaging component"* means any individual assembled part of a package including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, tin-plated steel that meets ASTM (American society for testing and materials) international specification A-623, electro-galvanized coated steel, or hot-dipped-coated galvanized steel that meets ASTM (American society for testing and materials) international specification A-525 or A-879.

h. *"Regulated metal"* means any metal regulated under this section.

i. *"Reusable entities"* means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in subsection 5, paragraph *"e"*.

3. A manufacturer or distributor shall not offer for sale or sell or offer for promotional purposes a package or packaging component, in this state, which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceed the concentration level established by the department. A distributor shall only be subject to the assessment of a civil penalty pursuant to section 455D.25, subsection 2, for the knowing violation of this section.

Knowledge by the distributor of the violation shall be presumed beginning sixty days from the receipt of notification from the department by certified mail.

4. *a.* The concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

(1) Six hundred parts per million by weight by July 1, 1992.

(2) Two hundred fifty parts per million by weight by July 1, 1993.

(3) One hundred parts per million by weight by July 1, 1994.

b. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM (American society for testing and materials) international test methods, as revised, or United States environmental protection agency test methods for evaluating solid waste, S-W 846, as revised.

5. The following packaging and packaging components are exempt from the requirements of this section:

a. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

b. Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular package or packaging component. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

c. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recycled materials.

d. (1) Packages or packaging components that are reused, but exceed contaminant levels set forth in subsection 4, paragraph "*a*", subparagraph (3), if all of the following criteria are met:

(a) The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.

(b) Transportation of the packaged product is regulated under federal or state transportation requirements.

(c) The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

(2) The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

e. (1) Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in subsection 4, paragraph "*a*", subparagraph (3), if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in subsection 4, paragraph "*a*", subparagraph (3). The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in subparagraph (2), subparagraph divisions (a) through (d), be renewed for additional two-year periods.

(2) In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

(a) A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.

(b) A method of regulatory and financial accountability so that a specified percentage of

the reusable entities manufactured and distributed to another person are not discarded by that person after use, but are returned to the manufacturer or the manufacturer's designee.

(c) A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.

(d) A means of transforming returned entities, that are no longer reusable, into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

(3) The application for an exemption must document the measures to be taken by the applicant as set out in subparagraph (2), subparagraph divisions (a) through (d).

6. *a.* A manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this section.

b. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

7. The commission shall adopt rules to administer this section and recommend any other toxic substances contained in packaging to be added to the list in order to further reduce the toxicity of packaging waste.

90 Acts, ch 1255, §29; 91 Acts, ch 203, §5; 91 Acts, ch 255, §15; 94 Acts, ch 1085, §1; 96 Acts, ch 1095, §1; 2004 Acts, ch 1086, §75, 106; 2007 Acts, ch 151, §5 – 7; 2009 Acts, ch 41, §134, 135; 2015 Acts, ch 30, §136

Referred to in §455D.22, 455D.25

455D.20 Refuse-derived fuel — calculation as portion of waste reduction goal. Repealed by 2004 Acts, ch 1078, §3.

455D.21 Local ordinance — curbside collection.

A city council or county board of supervisors which provides for the collection of solid waste by its residents shall consider as a proposed ordinance, the mandatory curbside collection of recyclable materials which have been separated from other solid waste. The proposed ordinance shall be considered in accordance with chapter 331 or 380.

92 Acts, ch 1215, §17

455D.22 Civil penalty.

A person who violates section 455D.4A, 455D.6, subsection 4, section 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, or any rule, permit, or order issued pursuant thereto shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any civil penalty collected shall be deposited in the general fund of the state.

2007 Acts, ch 151, §8; 2018 Acts, ch 1023, §9

455D.23 Administrative enforcement — compliance orders.

The director may issue any order necessary to secure compliance with or prevent a violation of the provisions of this chapter or any rule adopted or permit or order issued pursuant to this chapter. Any order issued to enforce section 455D.4A may include a requirement to remove and properly dispose of materials being accumulated speculatively from a property and impose costs and penalties as determined by the department by rule. The person to whom such compliance order is issued may cause to be commenced a contested case within the meaning of chapter 17A by filing a notice of appeal to the commission. On appeal, the commission may affirm, modify, or vacate the order of the director. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110.

2007 Acts, ch 151, §9; 2018 Acts, ch 1023, §10; 2019 Acts, ch 97, §8

Section amended

455D.24 Judicial review.

Judicial review of any order or other action of the commission or director may be sought in accordance with the terms of chapter 17A. Notwithstanding the terms of chapter 17A, petitions for judicial review may be filed in the district court of the county in which the alleged offense was committed.

2007 Acts, ch 151, §10

455D.25 Civil actions for compliance — penalties.

1. The attorney general, on request of the department, shall institute any legal proceedings necessary to obtain compliance with an order of the commission or the director, including proceedings for a temporary injunction, or prosecuting any person for a violation of an order of the commission or the director or the provisions of this chapter or any rules adopted or permit or order issued pursuant to this chapter.

2. Any person who violates section 455D.4A, 455D.10A, 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, or any order or permit issued or rule adopted pursuant to section 455D.6, subsection 4, section 455D.10A, 455D.11, 455D.11A, 455D.11B, 455D.11I, or 455D.19, shall be subject to a civil penalty, not to exceed ten thousand dollars for each day of such violation.

2007 Acts, ch 151, §11; 2018 Acts, ch 1023, §11

Referred to in §455D.19

455D.26 Green advisory committee. Repealed by its own terms; 2010 Acts, ch 1166, §2.

CHAPTER 455E

GROUNDWATER PROTECTION

Referred to in §364.22, 455A.6, 455H.102, 455H.303

455E.1 Title.
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455E.10 Joint duties — local authority.
455E.11 Groundwater protection fund established — appropriations.

455E.1 Title.

This chapter shall be known and may be cited as the *"Groundwater Protection Act"*.

87 Acts, ch 225, §101

455E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Active cleanup"* means removal, treatment, or isolation of a contaminant from groundwater through the directed efforts of humans.

2. *"Commission"* means the environmental protection commission created under section 455A.6.

3. *"Contaminant"* means any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance which does not occur naturally in groundwater or which naturally occurs at a lower concentration.

4. *"Contamination"* means the direct or indirect introduction into groundwater of any contaminant caused in whole or in part by human activities.

5. *"Department"* means the department of natural resources created under section 455A.2.

6. *"Director"* means the director of the department.

7. *"Groundwater"* means any water of the state, as defined in section 455B.171, which occurs beneath the surface of the earth in a saturated geological formation of rock or soil.

8. *"Passive cleanup"* means the removal or treatment of a contaminant in groundwater through management practices or the construction of barriers, trenches, and other similar facilities for prevention of contamination, as well as the use of natural processes such as groundwater recharge, natural decay, and chemical or biological decomposition.

87 Acts, ch 225, §102
Referred to in §455B.190A

455E.3 Findings.

The general assembly finds that:

1. Groundwater is a precious and vulnerable natural resource. The vast majority of persons in the state depend on groundwater as a drinking water source. Agriculture, commerce, and industry also depend heavily on groundwater. Historically, the majority of Iowa's groundwater has been usable for these purposes without treatment. Protection of groundwater is essential to the health, welfare, and economic prosperity of all citizens of the state.

2. Many activities of humans, including the manufacturing, storing, handling, and application to land of pesticides and fertilizers; the disposal of solid and hazardous wastes; the storing and handling of hazardous substances; and the improper construction and the abandonment of wells and septic systems have resulted in groundwater contamination throughout the state.

3. Knowledge of the health effects of contaminants varies greatly. The long-term detriment to human health from synthetic organic compounds in particular is largely unknown but is of concern.

4. Any detectable quantity of a synthetic organic compound in groundwater is unnatural and undesirable.

5. The movement of groundwater, and the movement of contaminants in groundwater, are often difficult to ascertain or control. Decontamination is difficult and expensive to accomplish. Therefore, preventing contamination of groundwater is of paramount importance.

87 Acts, ch 225, §103

455E.4 Groundwater protection goal.

The intent of the state is to prevent contamination of groundwater from point and nonpoint sources of contamination to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

87 Acts, ch 225, §104
Referred to in §455B.307

455E.5 Groundwater protection policies.

1. It is the policy of the state to prevent further contamination of groundwater from any source to the maximum extent practical.

2. The discovery of any groundwater contamination shall require appropriate actions to prevent further contamination. These actions may consist of investigation and evaluation or enforcement actions if necessary to stop further contamination as required under chapter 455B.

3. All persons in the state have the right to have their lawful use of groundwater unimpaired by the activities of any person which render the water unsafe or unpotable.

4. All persons in the state have the duty to conduct their activities so as to prevent the release of contaminants into groundwater.

5. Documentation of any contaminant which presents a significant risk to human health, the environment, or the quality of life shall result in either passive or active cleanup. In both cases, the best technology available or best management practices shall be utilized. The department shall adopt rules which specify the general guidelines for determining the cleanup actions necessary to meet the goals of the state and the general procedures for determining the parties responsible by July 1, 1989. Until the rules are adopted, the absence of rules shall not be raised as a defense to an order to clean up a source of contamination.

6. Adopting health-related groundwater standards may be of benefit in the overall

groundwater protection or other regulatory efforts of the state. However, the existence of such standards, or lack of them, shall not be construed or utilized in derogation of the groundwater protection goal and protection policies of the state.

7. The department shall take actions necessary to promote and assure public confidence and public awareness. In pursuing this goal, the department shall make public the results of groundwater investigations.

8. Education of the people of the state is necessary to preserve and restore groundwater quality. The content of this groundwater protection education must assign obligations, call for sacrifice, and change some current values. Educational efforts should strive to establish a conservation ethic among Iowans and should encourage each Iowan to go beyond enlightened self-interest in the protection of groundwater quality.

87 Acts, ch 225, §105

455E.6 Legal effects — liability.

1. This chapter supplements other legal authority and shall not enlarge, restrict, or abrogate any remedy which any person or class of persons may have under other statutory or common law and which serves the purpose of groundwater protection. An activity that does not violate chapter 455B or chapter 459, subchapters II and III, does not violate this chapter. In the event of a conflict between this section and another provision of this chapter, it is the intent of the general assembly that this section prevails.

2. Liability shall not be imposed upon an agricultural producer for the costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of any quantity of nitrates provided that application has been in compliance with soil test results and that the applicator has properly complied with label instructions for application of the fertilizer. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

3. Liability shall not be imposed upon an agricultural producer for costs of active cleanup, or for any damages associated with or resulting from the detection in the groundwater of pesticide provided that the applicator has properly complied with label instructions for application of the pesticide and that the applicator has a valid appropriate applicator's license. Compliance with the above provisions may be raised as an affirmative defense by an agricultural producer.

87 Acts, ch 225, §106; 2018 Acts, ch 1041, §127

455E.7 Primary administrative agency.

The department is designated as the agency to coordinate and administer groundwater protection programs for the state.

87 Acts, ch 225, §107

455E.8 Powers and duties of the director.

In addition to other groundwater protection duties, the director, in cooperation with soil and water conservation district commissioners and with other state and local agencies, shall:

1. Develop and administer a comprehensive groundwater monitoring network, including point of use, point of contamination, and problem assessment monitoring sites across the state, and the assessment of ambient groundwater quality.

2. Complete groundwater hazard mapping of the state and make the results available to state and local planning organizations by July 1, 1991.

3. Establish a system or systems within the department for collecting, evaluating, and disseminating groundwater quality data and information.

4. Develop and maintain a natural resource geographic information system and comprehensive water resource data system. The system shall be accessible to the public.

5. Develop and adopt by administrative rule, criteria for evaluating groundwater protection programs by July 1, 1988.

6. Take any action authorized by law, including the investigatory and enforcement actions authorized by chapters 455B and 459, subchapters I, II, III, IV, and VI, to implement the provisions of this chapter and the rules adopted pursuant to this chapter.

7. Disseminate data and information, relative to this chapter, to the public to the greatest extent practical.

8. Develop a program, in consultation with the department of education and the department of environmental education of the university of northern Iowa, regarding water quality issues which shall be included in the minimum program required in grades seven and eight pursuant to rules adopted by the state board of education under section 256.11, subsection 4.

87 Acts, ch 225, §108; 88 Acts, ch 1262, §8; 2013 Acts, ch 12, §25
Referred to in §455E.11

455E.9 Powers and duties of the commission.

1. The commission shall adopt rules to implement this chapter.

2. When groundwater standards are proposed by the commission, all available information to develop the standards shall be considered, including federal regulations and all relevant information gathered from other sources. A public hearing shall be held in each congressional district prior to the submittal of a report on standards to the general assembly. This report on how groundwater standards may be a part of a groundwater protection program shall be submitted by the department to the general assembly for its consideration by January 1, 1989.

87 Acts, ch 225, §109

455E.10 Joint duties — local authority.

1. All state agencies shall consider groundwater protection policies in the administration of their programs. Local agencies shall consider groundwater protection policies in their programs. All agencies shall cooperate with the department in disseminating public information and education materials concerning the use and protection of groundwater, in collecting groundwater management data, and in conducting research on technologies to prevent or remedy contamination of groundwater.

2. Political subdivisions are authorized and encouraged to implement groundwater protection policies within their respective jurisdictions, provided that implementation is at least as stringent but consistent with the rules of the department.

87 Acts, ch 225, §110

455E.11 Groundwater protection fund established — appropriations.

1. *a.* A groundwater protection fund is created in the state treasury. Moneys received from sources designated for purposes related to groundwater monitoring and groundwater quality standards shall be deposited in the fund. Notwithstanding section 8.33, any unexpended balances in the groundwater protection fund and in any of the accounts within the groundwater protection fund at the end of each fiscal year shall be retained in the fund and the respective accounts within the fund. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the groundwater protection fund or in any of the accounts within the groundwater protection fund shall be credited to the groundwater protection fund or the respective accounts within the groundwater protection fund. The fund may be used for the purposes established for each account within the fund.

b. The director shall include in the departmental budget prepared pursuant to section 455A.4, subsection 1, paragraph *"c"*, a proposal for the use of groundwater protection fund moneys, and a report of the uses of the groundwater protection fund moneys appropriated in the previous fiscal year.

c. The secretary of agriculture shall submit the report on a biennial basis to the governor in the same manner as provided in section 7A.3. The report shall include a proposal for the use of groundwater protection fund moneys, and uses of the groundwater protection fund moneys appropriated in the two previous fiscal years.

2. The following accounts are created within the groundwater protection fund:

a. A solid waste account. Moneys received from the tonnage fee imposed under section 455B.310 and from other sources designated for environmental protection purposes in

relation to sanitary disposal projects shall be deposited in the solid waste account. Moneys shall be allocated as follows:

(1) After the one dollar and fifty-five cents is allocated pursuant to subparagraph (2), the remaining moneys from the tonnage fee shall be used for funding alternatives to landfills and shall be allocated as follows:

(a) Fifty thousand dollars to the department to implement the special waste authorization program.

(b) One hundred sixty-five thousand dollars to the department to be used for the by-products and waste search service at the university of northern Iowa.

(c) Up to thirty percent of the fees remitted shall be used for grants to environmental management systems as provided in section 455J.7.

(d) Not more than four hundred thousand dollars to the department for purposes of providing funding assistance to eligible communities to address abandoned buildings by promoting waste abatement, diversion, selective dismantlement of building components, and recycling. Eligible communities include a city with a population of five thousand or fewer. Eligible costs for program assistance include but are not limited to asbestos and other hazardous material abatement and removal, the recovery processing of recyclable or reusable material through the selective dismantlement of abandoned buildings, and reimbursement for purchased recycled content materials used in the renovation of buildings.

(e) The balance of the remaining funds shall be used by the department to develop and implement demonstration projects for landfill alternatives to solid waste disposal including recycling programs. These funds may also be used to assist planning areas which have not been designated as environmental management systems in meeting the designation requirements of section 455J.3.

(2) One dollar and fifty-five cents shall be used as follows:

(a) Forty-eight percent to the department to be used for the following purposes:

(i) Eight thousand dollars shall be transferred to the Iowa department of public health for departmental duties required under section 135.11, subsections 18 and 19, and section 139A.21.

(ii) The administration and enforcement of a groundwater monitoring program and other required programs relating to solid waste management.

(iii) The development of guidelines for groundwater monitoring at sanitary disposal projects as defined in section 455B.301.

(iv) The waste management assistance program of the department.

(b) Sixteen percent to the university of northern Iowa to develop and maintain the Iowa waste reduction center for the safe and economic management of solid waste and hazardous substances.

(c) Six and one-half percent for the department to establish a program to provide competitive grants to regional coordinating councils for projects in regional economic development centers related to a by-products and waste exchange system. Grantees under this program shall coordinate activities with other available state or multistate waste exchanges, including but not limited to the by-products and waste search service at the university of northern Iowa. The department shall consult with the economic development authority and the waste reduction center at the university of northern Iowa in establishing criteria for and the awarding of grants under this program. The department shall expend not more than thirty thousand dollars of the moneys appropriated under this subparagraph division to contract with the by-products and waste search service at the university of northern Iowa to provide training and other technical services to grantees under the program. If regional economic development centers cease to exist, the department shall transfer existing contracts to one or more community colleges or councils of governments and shall revise the criteria and rules for this program to allow community colleges or councils of governments to be applicants for competitive grants.

(d) Three percent to the department to establish permanent household hazardous materials collection sites so that both urban and rural populations are served and so that collection services are available to the public on a regular basis. Beginning July 1, 2008, any moneys collected pursuant to this subparagraph division that remain unexpended at the end

of a fiscal year for establishment of permanent household hazardous materials collection sites shall be used for purposes of subparagraph division (e).

(e) Nine and one-half percent to the department for payment of collection and disposal costs related to household hazardous materials collection programs.

(f) Eight and one-half percent to the department to support special events for household hazardous materials collection or other efforts of the department to support the household hazardous materials program, permanent household hazardous material collection systems, and for the natural resource geographic information system required under section 455E.8, subsection 4.

(g) Three percent for the economic development authority to establish, in cooperation with the department of natural resources, a marketing initiative to assist Iowa businesses producing recycling or reclamation equipment or services, recyclable products, or products from recycled materials to expand into national markets. Efforts shall include the reuse and recycling of sawdust.

(h) Five and one-half percent to the department for the provision of assistance to public and private entities in developing and implementing waste reduction and minimization programs for Iowa industries.

b. An agriculture management account. Moneys collected from the groundwater protection fee levied pursuant to section 200.8, subsection 4, the portion of the fees collected pursuant to section 206.8, subsection 2, and section 206.12, subsection 3, and other moneys designated for the purpose of agriculture management shall be deposited in the agriculture management account. The agriculture management account shall be used for the following purposes:

(1) Nine thousand dollars of the account is appropriated to the Iowa department of public health for carrying out the departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) Two hundred thousand dollars of the moneys deposited in the agriculture management account is appropriated to the department of agriculture and land stewardship for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the demonstration projects regarding agriculture drainage wells and sinkholes. Any remaining balance of the appropriation made for the purpose of funding such demonstration projects for the fiscal year beginning July 1, 1987, and ending June 30, 1988, shall not revert to the account, notwithstanding section 8.33, but shall remain available for the purpose of funding such demonstration projects during the fiscal period beginning July 1, 1988, and ending June 30, 1990.

(3) Of the remaining moneys in the account:

(a) Thirty-five percent is appropriated annually to the Iowa nutrient research fund created in section 466B.46.

(b) Two percent is appropriated annually to the department and, except for administrative expenses, is transferred to the Iowa department of public health for the purpose of administering grants to counties and conducting oversight of county-based programs for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns. Not more than thirty-five percent of the moneys is appropriated annually for grants to counties for the purpose of conducting programs of private rural water supply testing, private rural water supply well sealing, the proper closure of private rural abandoned wells and cisterns, or any combination thereof. An amount agreed to by the department of natural resources and the Iowa department of public health shall be retained by the department of natural resources for administrative expenses.

(i) A county applying for grants under this subparagraph division shall submit only one application. To be eligible for a grant, a county must have adopted standards for private water supply and private disposal facilities at least as stringent as the standards adopted by the commission. During each fiscal year, the amount granted each eligible applicant shall be the total funds available divided by the number of eligible counties applying. Upon receipt of the grant, the county may apply the funds to any one or more of the county-based programs

for the testing of private rural water supply wells, private rural water supply well sealing, and the proper closure of private rural abandoned wells and cisterns.

(ii) Not more than six percent of the moneys is appropriated annually to the state hygienic laboratory to assist in well testing.

(iii) For purposes of this subparagraph division, "*cistern*" means an artificial reservoir constructed underground for the purpose of storing rainwater.

(c) The department shall allocate a sum not to exceed seventy-nine thousand dollars of the moneys appropriated for the fiscal year beginning July 1, 1987, and ending June 30, 1988, for the preparation of a detailed report and plan for the establishment on July 1, 1988, of the center for health effects of environmental contamination. The plan for establishing the center shall be presented to the general assembly on or before January 15, 1988. The report shall include the assemblage of all existing data relating to Iowa drinking water supplies, including characteristics of source, treatment, presence of contaminants, precise location, and usage patterns to facilitate data retrieval and use in research; and detailed organizational plans, research objectives, and budget projections for the anticipated functions of the center in subsequent years. The department may allocate annually a sum not to exceed nine percent of the moneys of the account to the center, beginning July 1, 1988.

(d) (i) Thirteen percent of the moneys is appropriated annually to the department of agriculture and land stewardship for financial incentive programs related to agricultural drainage wells and sinkholes, for studies and administrative costs relating to sinkholes and agricultural drainage wells programs. Of the moneys allocated for financial incentive programs, the department may reimburse landowners for engineering costs associated with voluntarily closing agricultural drainage wells. The financial incentives allocated for voluntary closing of agricultural drainage wells shall be provided on a cost-share basis which shall not exceed fifty percent of the estimated cost or fifty percent of the actual cost, whichever is less. Engineering costs do not include construction costs, including costs associated with earth moving.

(ii) Notwithstanding subparagraph subdivision (i), the department of agriculture and land stewardship may use all or a portion of the moneys appropriated in that subparagraph subdivision to support programs, projects, and activities related to improving the quality of surface water as well as groundwater.

c. A household hazardous waste account.

(1) The moneys collected pursuant to section 455F.7 and moneys collected pursuant to section 29C.8A which are designated for deposit shall be deposited in the household hazardous waste account. Two thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21. The remainder of the account shall be used to fund the efforts of the department to support a collection system for household hazardous materials, including public education programs, training, and consultation of local governments in the establishment and operation of permanent collection systems, and the management of collection sites, education programs, and other activities pursuant to chapter 455F, including the administration of the household hazardous materials retailer permit program by the department of revenue.

(2) The department shall submit to the general assembly, annually on or before January 1, an itemized report which includes but is not limited to the total amount of moneys collected and the sources of the moneys collected, the amount of moneys expended for administration of the programs funded within the account, results of the efforts of the department to support a collection system for household hazardous materials pursuant to chapter 455F, and an itemization of any other expenditures made within the previous fiscal year.

d. A storage tank management account. All fees collected pursuant to section 455B.473, subsection 5, and section 455B.479, shall be deposited in the storage tank management account. Moneys deposited in the account shall be expended for the following purposes:

(1) One thousand dollars is appropriated annually to the Iowa department of public health to carry out departmental duties under section 135.11, subsections 18 and 19, and section 139A.21.

(2) The moneys remaining in the account after the appropriation in subparagraph (1)

are appropriated from the storage tank management account to the department of natural resources for the administration of a state storage tank program pursuant to chapter 455B, division IV, part 8, and for programs which reduce the potential for harm to the environment and the public health from storage tanks.

(3) Each fiscal year, the department of natural resources shall enter into an agreement with the Iowa comprehensive petroleum underground storage tank fund board for the completion of administrative tasks during the fiscal year directly related to the evaluation and modification of risk based corrective action rules as necessary and processes that affect the administration in subparagraph (2).

87 Acts, ch 225, §111; 88 Acts, ch 1169, §9 – 13; 88 Acts, ch 1188, §2, 3; 88 Acts, ch 1190, §3; 89 Acts, ch 131, §41; 89 Acts, ch 272, §38; 89 Acts, ch 311, §28; 90 Acts, ch 1255, §30, 31; 90 Acts, ch 1260, §27, 28; 91 Acts, ch 257, §6; 91 Acts, ch 268, §237; 92 Acts, ch 1215, §18; 92 Acts, ch 1239, §21; 93 Acts, ch 176, §46; 94 Acts, ch 1023, §112; 94 Acts, ch 1173, §36; 94 Acts, ch 1177, §5; 95 Acts, ch 80, §3; 95 Acts, ch 97, §1; 95 Acts, ch 216, §35; 98 Acts, ch 1220, §22; 2000 Acts, ch 1066, §46 – 49; 2000 Acts, ch 1086, §1; 2001 Acts, ch 7, §13, 14; 2001 Acts, ch 24, §54; 2001 Acts, ch 124, §3 – 6; 2001 Acts, ch 129, §6; 2002 Acts, ch 1119, §176; 2002 Acts, ch 1162, §60 – 62; 2003 Acts, ch 145, §286; 2004 Acts, ch 1082, §5; 2004 Acts, ch 1101, §64; 2005 Acts, ch 33, §2, 3; 2006 Acts, ch 1178, §28; 2008 Acts, ch 1109, §3; 2008 Acts, ch 1126, §17, 33; 2009 Acts, ch 41, §136, 263; 2010 Acts, ch 1191, §24; 2010 Acts, ch 1193, §176; 2011 Acts, ch 25, §53, 110, 143; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 128, §23, 24, 60; 2014 Acts, ch 1026, §100, 143; 2015 Acts, ch 30, §137; 2016 Acts, ch 1010, §1, 2; 2017 Acts, ch 45, §1, 2; 2017 Acts, ch 168, §31; 2019 Acts, ch 128, §9

Referred to in §135.11, 455B.310, 455B.311, 455B.473, 455D.3, 455F.8A, 455J.7, 460.305, 466B.46, 473.19A

See Iowa Acts for special provisions relating to appropriations in a given year

Moneys appropriated from fund for three-year data collection of in-field practices project by Iowa state university of science and technology with final report due March 1, 2018; effective May 16, 2018, remaining moneys to be expended by close of fiscal year beginning July 1, 2019, by the department of agriculture and land stewardship in cooperation with Iowa state university of science and technology to administer programs regarding such practices; 2015 Acts, ch 132, §18; 2018 Acts, ch 1152, §17 – 19

Subsection 2, paragraph b, subparagraph (3), subparagraph division (d) amended

CHAPTER 455F

HOUSEHOLD HAZARDOUS MATERIAL

Referred to in §455A.6, 455E.11

455F.1 Definitions.
455F.2 Policy statement.
455F.3 Repealed by 97 Acts, ch 191, §4.
455F.4 Consumer information booklets. Repealed by 2016 Acts, ch 1010, §11.
455F.5 Rules.
455F.6 Duties of the department.
455F.7 Household hazardous materials permit.
455F.8 Household hazardous materials program created.
455F.8A Household hazardous material regional collection centers and satellite facilities.
455F.8B Local government education programs. Repealed by 2016 Acts, ch 1010, §11.
455F.9 Public information and education program.
455F.10 Penalty.
455F.11 Recycling and reclamation programs. Repealed by 2016 Acts, ch 1010, §11.

455F.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Commission"* means the state environmental protection commission.

2. *"Department"* means the department of natural resources.

3. *"Household hazardous material"* means a product used for residential purposes and designated by rule of the department of natural resources and may include any hazardous substance as defined in section 455B.411, subsection 2; and any hazardous waste as defined in section 455B.411, subsection 3. However, *"household hazardous material"* does not include noncaustic household cleaners, laundry detergents or soaps, dishwashing

compounds, chlorine bleach, personal care products, personal care soaps, cosmetics, and medications.

4. *"Manufacturer"* means a person who manufactures or produces a household hazardous material for resale in this state.

5. *"Regional collection center"* means a secured facility at which collection, sorting, and packaging of household hazardous materials and hazardous materials from conditionally exempt small quantity generators are accomplished prior to transportation of these materials to the final disposal site. Regional collection centers have regular hours during which the public may drop off hazardous materials. A regional collection center may be a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan.

6. *"Residential"* means a permanent place of abode, which is a person's home as opposed to a person's place of business.

7. *"Retailer"* means a person offering for sale or selling a household hazardous material to the ultimate consumer, within the state.

8. *"Satellite facility"* means a secured facility at which collection and storage of household hazardous materials and hazardous materials from conditionally exempt small quantity generators are accomplished prior to transportation of these materials to a regional collection center. A satellite facility has a written contract with a regional collection center for the removal of collected household hazardous materials. A satellite facility may be operated by a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. A satellite facility is available for public drop off of household hazardous materials either during regularly scheduled hours or by appointment.

9. *"Wholesaler"* or *"distributor"* means a person other than a manufacturer or manufacturer's agent who engages in the business of selling or distributing a household hazardous material within the state, for the purpose of resale.

87 Acts, ch 225, §501; 97 Acts, ch 191, §1; 2016 Acts, ch 1010, §3 – 5

455F.2 Policy statement.

It is the policy of this state to educate Iowans regarding the hazardous nature of certain household products, proper use of the products, and the proper methods of disposal of residual product and containers in order to protect the public health, safety, and the environment.

87 Acts, ch 225, §502

455F.3 Repealed by 97 Acts, ch 191, §4.

455F.4 Consumer information booklets. Repealed by 2016 Acts, ch 1010, §11.

455F.5 Rules.

The commission shall adopt rules to implement the programs established pursuant to this chapter.

87 Acts, ch 225, §505; 2016 Acts, ch 1010, §6

455F.6 Duties of the department.

The department shall:

1. Designate products which are household hazardous materials and, based upon the designations and in consultation with manufacturers, distributors, wholesalers, and retailer associations, develop a household hazardous product list for the use of retailers in identifying the products.

2. Enforce the provisions of this chapter and implement the penalties established.

87 Acts, ch 225, §506; 88 Acts, ch 1169, §14; 2016 Acts, ch 1010, §7

455F.7 Household hazardous materials permit.

1. A retailer offering for sale or selling a household hazardous material shall have a valid permit for each place of business owned or operated by the retailer for this activity. All permits

provided for in this section shall expire on June 30 of each year. Every retailer shall submit an annual application by July 1 of each year and a fee of twenty-five dollars to the department of revenue for a permit upon a form prescribed by the director of revenue. Permits are nonrefundable, are based upon an annual operating period, and are not prorated. A person in violation of this section shall be subject to permit revocation upon notice and hearing. The department shall remit the fees collected to the household hazardous waste account of the groundwater protection fund. A person distributing general use pesticides labeled for agricultural or lawn and garden use with gross annual pesticide sales of less than ten thousand dollars is subject to the requirements and fee payment prescribed by this section.

2. A manufacturer or distributor of household hazardous materials, which authorizes retailers as independent contractors to sell the products of the manufacturer or distributor on a person-to-person basis primarily in the customer's home, may obtain a single household hazardous materials permit on behalf of its authorized retailers in the state, in lieu of individual permits for each retailer, and pay a fee of twenty-five dollars. However, a manufacturer or distributor which has gross retail sales of three million dollars or more in the state shall pay an additional permit fee of one hundred dollars for each subsequent increment of three million dollars of gross retail sales in the state, up to a maximum permit fee of three thousand dollars.

87 Acts, ch 225, §507; 88 Acts, ch 1169, §15; 2003 Acts, ch 145, §286; 2013 Acts, ch 90, §111
Referred to in §455E.11

455F.8 Household hazardous materials program created.

The department shall conduct programs to promote the proper management of household hazardous materials collected from residents and conditionally exempt small quantity generators.

87 Acts, ch 225, §508; 90 Acts, ch 1255, §32; 2016 Acts, ch 1010, §8

455F.8A Household hazardous material regional collection centers and satellite facilities.

1. *a.* The department shall establish a competitive grant program to assist in the development of permanent household hazardous material regional collection centers and satellite facilities.

b. The grant program shall provide for the establishment of permanent collection facilities so that both rural and urban populations are served.

c. The department shall develop criteria to evaluate proposals for the establishment of permanent collection facilities. The criteria shall give priority to proposals for permanent collection facilities which provide the most efficient services and which provide local, public, and private contributions for establishment of the permanent collection facilities. The criteria shall also include a requirement that the recipient of a grant design and construct a facility sufficient for the collection, sorting, and packaging of materials prior to transportation of the materials to the final disposal site. Final review of design and construction of the proposed facilities shall be by the department.

d. The recipients of grants shall provide for collection of hazardous wastes from conditionally exempt small quantity generators in the area of the facility established. The facility shall require payment for collection from conditionally exempt small quantity generators if the amount of waste disposed is greater than ten pounds. Conditionally exempt small quantity generators which deliver their hazardous wastes to a permanent collection facility shall not be required to obtain a permit to transport the hazardous waste to the permanent collection facility.

2. An owner or operator of a collection facility which provides for the collection and disposal of household hazardous materials as part of an approved comprehensive plan pursuant to section 455B.306 shall be eligible for reimbursement moneys pursuant to section 455E.11, subsection 2, paragraph "*a*", subparagraph (2), subparagraph division (e). The department shall develop eligibility criteria for the receipt of such reimbursement moneys.

90 Acts, ch 1255, §33; 2005 Acts, ch 33, §1; 2009 Acts, ch 41, §263; 2016 Acts, ch 1010, §9

455F.8B Local government education programs. Repealed by 2016 Acts, ch 1010, §11.

455F.9 Public information and education program.

The department shall implement a public information and education program regarding the proper management of household hazardous materials. The program shall provide appropriate information concerning the reduction in use of the materials, including the purchase of smaller quantities, selection of alternative products, and proper disposal. The department shall also develop and provide to a retailer upon request, at departmental expense, consumer brochures which provide information about household hazardous materials. The retailer shall distribute the brochures without charge to customers upon request. The department shall cooperate with existing educational institutions, the household product industry, distributors, wholesalers, and retailers, and other agencies of government and shall enlist the support of service organizations, whenever possible, in promoting and conducting the program in order to effectuate the household hazardous materials policy of the state.

87 Acts, ch 225, §509; 97 Acts, ch 191, §3; 2016 Acts, ch 1010, §10

455F.10 Penalty.

Any person violating a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

87 Acts, ch 225, §510

455F.11 Recycling and reclamation programs. Repealed by 2016 Acts, ch 1010, §11.

CHAPTER 455G

FUEL STORAGE TANKS AND DISPENSING INFRASTRUCTURE

Referred to in §323.1, 455B.174, 455B.477, 455I.2

Legislative findings; legislative intent; conditions upon finding of invalidity; 89 Acts, ch 131, §1, 2, 59
See also chapter 101

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455G.31 E-85 gasoline storage and dispensing infrastructure.

SUBCHAPTER I

COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND

455G.1 Title — scope.

1. This subchapter is entitled the *"Iowa Comprehensive Petroleum Underground Storage Tank Fund Act"*.

2. This subchapter applies to petroleum underground storage tanks for which an owner or operator is required to maintain proof of financial responsibility under federal or state law, from the effective date of the regulation of the federal environmental protection agency governing that tank, and not from the effective compliance date, unless the effective compliance date of the regulation is the effective date of the regulation. An owner or operator of a petroleum underground storage tank required by federal or state law to maintain proof of financial responsibility for that underground storage tank is subject to this subchapter.

a. As of May 5, 1989, tanks excluded by the federal Resource Conservation and Recovery Act, subtitle I, included the following:

(1) A farm or residential tank of one thousand one hundred gallons or less capacity used for storing motor fuel for noncommercial purposes.

(2) A tank used for storing heating oil for consumptive use on the premises where stored.

(3) A septic tank.

(4) A pipeline facility, including gathering lines, regulated under any of the following:

(a) The federal Natural Gas Pipeline Safety Act of 1968.

(b) The federal Hazardous Liquid Petroleum Pipeline Safety Act of 1979.

(c) State laws comparable to the provisions of the law referred to in subparagraph division (a) or (b).

(5) A surface impoundment, pit, pond, or lagoon.

(6) A storm water or wastewater collection system.

(7) A flow-through process tank.

(8) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations.

(9) A storage tank situated in an underground area, such as a basement, cellar, mine working, drift, shaft, or tunnel, if the storage tank is situated upon or above the surface of the floor to permit inspection of its entire surface.

b. As of May 5, 1989, tanks exempted or excluded by United States environmental protection agency financial responsibility regulations, 40 C.F.R. §280.90, included the following:

(1) Underground storage tank systems not in operation on or after the applicable compliance date.

(2) Those owned or operated by state and federal governmental entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(3) Any underground storage tank system holding hazardous wastes listed or identifiable under subtitle C of the federal Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(4) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under section 307(b) or 402 of the federal Clean Water Act.

(5) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and reservoirs and electrical equipment tanks.

(6) Any underground storage tank system whose capacity is one hundred ten gallons or less.

(7) Any underground storage tank system that contains a de minimis concentration of regulated substances.

(8) Any emergency spill or overflow containment underground storage tank system that is expeditiously emptied after use.

(9) Any underground storage tank system that is part of an emergency generator system at nuclear power generation facilities regulated by the nuclear regulatory commission under 10 C.F.R. pt. 50, appendix A.

(10) Airport hydrant fuel distribution systems.

(11) Underground storage tank systems with field-constructed tanks.

c. If and when federal law changes, the department of natural resources shall adopt by rule such additional requirements, exemptions, deferrals, or exclusions as required by federal law. It is expected that certain classes of tanks currently exempted or excluded by federal regulation will be regulated by the United States environmental protection agency in the future. A tank which is not required by federal law to maintain proof of financial responsibility shall not be subject to department of natural resources rules on proof of financial responsibility.

89 Acts, ch 131, §42; 91 Acts, ch 252, §7, 8; 2009 Acts, ch 41, §263; 2013 Acts, ch 90, §112, 113; 2016 Acts, ch 1105, §5, 15

Referred to in §455G.9, 455G.21

455G.2 Definitions.

As used in this subchapter unless the context otherwise requires:

1. *"Board"* means the Iowa comprehensive petroleum underground storage tank fund board.

2. *"Bond"* means a bond, note, or other obligation issued by the treasurer of state for the fund and the purposes of this subchapter.

3. *"Claimant"* means an owner or operator who has received assistance under the remedial account or who had coverage under the underground storage tank insurance fund, established in section 455G.11, Code 2003, with respect to a release, or an installer or inspector who had coverage under the underground storage tank insurance fund.

4. *"Community remediation"* means a program of coordinated testing, planning, or remediation, involving two or more tank sites potentially connected with a continuous contaminated area, pursuant to rules adopted by the board. A community remediation does not expand the scope of coverage otherwise available or relieve liability otherwise imposed under state or federal law.

5. *"Corrective action"* means an action taken to minimize, eliminate, or clean up a release to protect the public health and welfare or the environment. Corrective action includes but is not limited to excavation of an underground storage tank for the purposes of repairing a leak or removal of a tank, removal of contaminated soil, and cleansing of groundwaters or surface waters. Corrective action does not include replacement of an underground storage tank or other capital improvements to the tank. Corrective action specifically excludes third-party liability. Corrective action includes the expenses incurred to prepare a site cleanup report for approval by the department of natural resources detailing the planned response to a release or suspected release, but not necessarily all actions proposed to be taken by a site cleanup report.

6. *"Diminution"* is the amount of petroleum which is released into the environment prior to its intended beneficial use.

7. *"Diminution rate"* is the presumed rate at which petroleum experiences diminution, and is equal to one-tenth of one percent of all petroleum deposited into a tank.

8. *"Free product"* means a regulated substance that is present as a nonaqueous phase liquid.

9. *"Fund"* means the Iowa comprehensive petroleum underground storage tank fund.

10. *"Improvement"* means the acquisition, construction, or improvement of any tank, tank system, or monitoring system in order to comply with state and federal technical requirements or to obtain insurance to satisfy financial responsibility requirements.

11. *"Insurance"* includes any form of financial assistance or showing of financial responsibility sufficient to comply with the federal Resource Conservation and Recovery Act or the Iowa department of natural resources' underground storage tank financial responsibility rules.

12. *"Insurance premium"* includes any form of premium or payment for insurance or for obtaining other forms of financial assurance, or showing of financial responsibility.

13. *"Petroleum"* means petroleum, including crude oil or any fraction of crude oil which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and fourteen and seven-tenths pounds per square inch absolute).

14. *"Potentially responsible party"* means a person who may be responsible or liable for a release for which the fund has made payments for corrective action or third-party liability.

15. *"Precorrective action value"* means the purchase price of the tank site paid by the owner after October 26, 1990.

16. *"Release"* means any spilling, leaking, emitting, discharging, escaping, leaching, or dispersing from an underground storage tank into groundwater, surface water, or subsurface soils.

17. *"Small business"* means a business that meets all of the following requirements:

a. Is independently owned and operated.

b. Owns at least one, but no more than twelve tanks at no more than two different tank sites.

c. Has a net worth of four hundred thousand dollars or less.

18. *"Tank"* means an underground storage tank for which proof of financial responsibility is, or on a date definite will be, required to be maintained pursuant to the federal Resource Conservation and Recovery Act and the regulations from time to time adopted pursuant to that Act or successor Acts or amendments.

19. *"Third-party liability"* means both of the following:

a. Property damage including physical injury to tangible property, but not including loss of use, other than costs to remediate.

b. Bodily injury including sickness, bodily injury, illness, or death.

89 Acts, ch 131, §43; 90 Acts, ch 1235, §17, 18; 91 Acts, ch 252, §9 – 12; 98 Acts, ch 1068, §1, 2; 2001 Acts, ch 51, §4; 2004 Acts, ch 1094, §1, 5, 6; 2005 Acts, ch 19, §59, 60; 2010 Acts, ch 1193, §185, 186, 195; 2013 Acts, ch 90, §114, 115; 2014 Acts, ch 1026, §101

Referred to in §455G.16

455G.3 Establishment of Iowa comprehensive petroleum underground storage tank fund — appropriation.

1. The Iowa comprehensive petroleum underground storage tank fund is created as a separate fund in the state treasury, and any funds remaining in the fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Iowa comprehensive petroleum underground storage tank fund. Interest or other income earned by the fund shall be deposited in the fund. The fund shall include moneys credited to the fund under this section, section 321.145, subsection 2, paragraph *"a"*, Code 2016, and sections 455G.8 and 455G.9, and section 455G.11, Code 2003, and other funds which by law may be credited to the fund. The moneys in the fund are appropriated to and for the purposes of the board as provided in this subchapter. Amounts in the fund shall not be subject to appropriation for any other purpose by the general assembly, but shall be used only for the purposes set forth in this subchapter. The treasurer of state shall act as custodian of the fund and disburse amounts contained in it as directed by the board including automatic disbursements of funds as received pursuant to the terms of bond indentures and documents and security provisions to trustees and custodians. The treasurer of state is authorized to invest the funds deposited in the fund at the direction of the board and subject to any limitations contained in any applicable bond proceedings. The income from such investment shall be credited to and deposited in the fund. The fund shall be administered by the board which shall make expenditures from the

fund consistent with the purposes of the programs set out in this subchapter without further appropriation. The fund may be divided into different accounts with different depositories as determined by the board and to fulfill the purposes of this subchapter.

2. The board shall assist Iowa's owners and operators of petroleum underground storage tanks in complying with federal environmental protection agency technical and financial responsibility regulations by establishment of the Iowa comprehensive petroleum underground storage tank fund. The treasurer of state may issue its bonds, or series of bonds, to assist the board, as provided in this subchapter.

3. The purposes of this subchapter shall include but are not limited to any of the following:

a. To establish a remedial account to fund corrective action for petroleum releases as provided by section 455G.9.

b. To establish a loan guarantee account, as provided by and to the extent permitted by section 455G.10, Code 1999.

c. To establish a marketability fund for the purposes as stated in section 455G.21.

4. The state, the general fund of the state, or any other fund of the state, other than the Iowa comprehensive petroleum underground storage tank fund, is not liable for a claim or cause of action in connection with a tank not owned or operated by the state, or agency of the state. All expenses incurred by the fund shall be payable solely from the fund and no liability or obligation shall be imposed upon the state. The liability of the fund is limited to the extent of coverage provided by the account or fund under which a claim is submitted, subject to the terms and conditions of that coverage. The liability of the fund is further limited by the moneys made available to the fund, and no remedy shall be ordered which would require the fund to exceed its then current funding limitations to satisfy an award or which would restrict the availability of moneys for higher priority sites. The state is not liable for a claim presented against the fund.

5. *a.* For the fiscal year beginning July 1, 2010, and each fiscal year thereafter, there is appropriated from the Iowa comprehensive petroleum underground storage tank fund to the department of natural resources two hundred thousand dollars for purposes of technical review support to be conducted by nongovernmental entities for leaking underground storage tank assessments.

b. Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

6. *a.* For the fiscal year beginning July 1, 2010, and each fiscal year thereafter, there is appropriated from the Iowa comprehensive petroleum underground storage tank fund to the department of agriculture and land stewardship two hundred fifty thousand dollars for the sole and exclusive purpose of inspecting fuel quality at pipeline terminals and renewable fuel production facilities, including salaries, support, maintenance, and miscellaneous purposes.

b. Notwithstanding section 8.33, moneys appropriated in this subsection that remain unencumbered or unobligated at the close of the fiscal year shall not revert but shall remain available for expenditure for the purposes designated until the close of the succeeding fiscal year.

7. Beginning September 1, 2010, the board shall administer safety training, hazardous material training, environmental training, and underground storage tank operator training in the state to be provided by an entity approved by the department of natural resources. The training provided pursuant to this subsection shall be available to any tank operator in the state at an equal and reasonable cost and shall not be conditioned upon any other requirements. Each fiscal year, the board shall not expend more than two hundred fifty thousand dollars from the Iowa comprehensive petroleum underground storage tank fund for purposes of administering this subsection.

89 Acts, ch 131, §44; 90 Acts, ch 1235, §19; 91 Acts, ch 159, §29; 95 Acts, ch 215, §11, 12; 98 Acts, ch 1065, §1; 98 Acts, ch 1068, §3, 4; 2000 Acts, ch 1226, §13, 30; 2001 Acts, ch 190, §21; 2002 Acts, ch 1050, §42; 2003 Acts, ch 145, §263; 2003 Acts, 1st Ex, ch 2, §198, 205; 2004 Acts, ch 1094, §2, 5, 6; 2005 Acts, ch 19, §61, 62; 2008 Acts, ch 1113, §117; 2010 Acts, ch 1061,

§60; 2010 Acts, ch 1193, §177, 187, 195; 2011 Acts, ch 128, §25, 26; 2013 Acts, ch 90, §116; 2016 Acts, ch 1105, §6, 7, 15; 2019 Acts, ch 59, §143

Referred to in §455B.477

For temporary exceptions, changes, or other noncodified enactments modifying these statutory provisions, see annual Iowa Acts of the general assembly

Subsection 6 stricken and former subsections 7 and 8 renumbered as 6 and 7

455G.3A Special appropriation — renewable fuel infrastructure fund. Repealed by its own terms; 2006 Acts, ch 1175, §19, 23.

455G.4 Governing board.

1. *Members of the board.*

a. The Iowa comprehensive petroleum underground storage tank fund board is established consisting of the following members:

(1) The director of the department of natural resources, or the director's designee.

(2) The treasurer of state, or the treasurer's designee.

(3) An employee of the department of management who has been designated as a risk manager by the director of the department of management.

(4) Three public members appointed by the governor and confirmed by the senate to staggered four-year terms, except that, of the first members appointed, one public member shall be appointed for a term of two years and one for a term of four years. A public member shall have experience, knowledge, and expertise of the subject matter embraced within this subchapter. A public member may have experience in either, or both, financial markets or insurance.

(5) Three owners or operators appointed by the governor, two of which shall be designated as follows:

(a) One member shall be an owner or operator who is self-insured.

(b) One member shall be a member of the petroleum marketers and convenience stores of Iowa or its designee.

(6) The director of the legislative services agency, or the director's designee. The director under this subparagraph shall not participate as a voting member of the board.

b. A public member appointed pursuant to paragraph "*a*", subparagraph (4), shall not have a conflict of interest. For purposes of this section, a "*conflict of interest*" means an affiliation, within the twelve months before the member's appointment, with the regulated tank community, or with a person or property and casualty insurer offering competitive insurance or other means of financial assurance or which previously offered environmental hazard insurance for a member of the regulated tank community.

c. The filling of positions reserved for public representatives, vacancies, membership terms, payment of compensation and expenses, and removal of members are governed by chapter 69. Members of the board are entitled to receive reimbursement of actual expenses incurred in the discharge of their duties within the limits of funds appropriated to the board or made available to the fund. Each member of the board may also be eligible to receive compensation as provided in section 7E.6. The members shall elect a voting chairperson of the board from among the members of the board.

2. *Department cooperation with board.* The director of the department of natural resources shall cooperate with the board in the implementation of this part so as to minimize unnecessary duplication of effort, reporting, or paperwork and maximize environmental protection.

3. *Rules and emergency rules.*

a. The board shall adopt rules regarding its practice and procedures, develop underwriting standards, establish procedures for investigating and settling claims made against the fund, and otherwise implement and administer this subchapter.

b. Rules to facilitate and encourage the use of community remediation whenever possible shall be adopted.

c. The board shall adopt rules relating to appeal procedures which shall require the administrator to deliver notice of appeal to the affected parties within fifteen days of receipt of notice, require that the hearing be held within one hundred eighty days of the filing of

the petition unless good cause is shown for the delay, and require that a final decision be issued no later than one hundred twenty days following the close of the hearing. The time restrictions in this paragraph may be waived by mutual agreement of the parties.

4. *Public bid.* All contracts entered into by the board, including contracts relating to community remediation, shall be awarded on a competitive basis to the maximum extent practical. In those situations where it is determined that public bidding is not practical, the basis for the determination of impracticability shall be documented by the board or its designee. This subsection applies only to contracts entered into on or after July 1, 1992.

5. *Contract approval.*

a. The board shall approve any contract entered into pursuant to this subchapter if the cost of the contract exceeds seventy-five thousand dollars.

b. A listing of all contracts entered into pursuant to this subchapter shall be presented at each board meeting and shall be made available to the public. The listing shall state the interested parties to the contract, the amount of the contract, and the subject matter of the contract.

c. The board shall be required to review and approve or disapprove the administrator's failure to approve a contract under section 455G.12A. Review by the board shall not be required for cancellation or replacement of a contract for a site included in a community remediation project or when an emergency situation exists.

6. *Reporting.* Beginning July 2003, the board shall submit a written report quarterly to the legislative council, the chairperson and ranking member of the committee on environment and energy independence in the senate, and the chairperson and ranking member of the committee on environmental protection in the house of representatives regarding changes in the status of the program including but not limited to the number of open claims by claim type; the number of new claims submitted and the eligibility status of each claim; a summary of the risk classification of open claims; the status of all claims at high-risk sites including the number of corrective action design reports submitted, approved, and implemented during the reporting period; total moneys reserved on open claims and total moneys paid on open claims; and a summary of budgets approved and invoices paid for high-risk site activities including a breakdown by corrective action design report, construction and equipment, implementation, operation and maintenance, monitoring, over excavation, free product recovery, site reclassification, reporting and other expenses, or a similar breakdown. In each report submitted by the board, the board shall include an estimated timeline to complete corrective action at all currently eligible high-risk sites where a corrective action design report has been submitted by a claimant and approved during the reporting period. The timeline shall include the projected year when a no further action designation will be obtained based upon the corrective action activities approved or anticipated at each claimant site. The timeline shall be broken down in annual increments with the number or percentage of sites projected to be completed for each time period. The report shall identify and report steps taken to expedite corrective action and eliminate the state's liability for open claims.

89 Acts, ch 131, §45; 91 Acts, ch 252, §13; 92 Acts, ch 1217, §3, 4; 93 Acts, ch 155, §1; 98 Acts, ch 1068, §5; 2003 Acts, ch 35, §45, 49; 2003 Acts, ch 110, §2 – 4; 2005 Acts, ch 19, §63 – 65; 2006 Acts, ch 1010, §118; 2008 Acts, ch 1031, §114; 2009 Acts, ch 133, §155; 2010 Acts, ch 1193, §178; 2011 Acts, ch 25, §54; 2012 Acts, ch 1095, §149; 2013 Acts, ch 90, §117 – 119; 2016 Acts, ch 1105, §8, 15

Referred to in §159A.11, 455G.5

Confirmation; see §2.32

455G.5 Independent contractors to be retained by board.

1. The board shall administer the fund. A contract entered into on or after July 1, 1992, to retain a person to act as the administrator of the fund shall be subject to public bid. All other contracts to retain a person under this section shall be in compliance with the public bidding requirements of section 455G.4, subsection 4.

2. The board may enter into a contract or an agreement authorized under chapter 28E with a private agency or person, the department of natural resources, the Iowa finance authority,

the department of administrative services, the department of revenue, other departments, agencies, or governmental subdivisions of this state, another state, or the United States, in connection with its administration and implementation of this subchapter or chapter 455B.

3. The board may reimburse a contractor, public or private, retained pursuant to this section for expenses incurred in the execution of a contract or agreement. Reimbursable expenses include, by way of example, but not exclusion, the costs of administering specific delegated duties or powers of the board.

89 Acts, ch 131, §46; 92 Acts, ch 1217, §5; 2003 Acts, ch 145, §286; 2004 Acts, ch 1101, §65; 2013 Acts, ch 90, §120; 2016 Acts, ch 1105, §9, 15

455G.6 Iowa comprehensive petroleum underground storage tank fund — general and specific powers.

In administering the fund, the board has all of the general powers reasonably necessary and convenient to carry out its purposes and duties and may do any of the following, subject to express limitations contained in this subchapter:

1. Guarantee secured and unsecured loans, and enter into agreements for corrective action, acquisition and construction of tank improvements, and provide for the insurance program. The loan guarantees may be made to a person or entity owning or operating a tank. The board may take any action which is reasonable and lawful to protect its security and to avoid losses from its loan guarantees.

2. Acquire, hold, and mortgage personal property and real estate and interests in real estate to be used.

3. Purchase, construct, improve, furnish, equip, lease, option, sell, exchange, or otherwise dispose of one or more improvements under the terms it determines.

4. Grant a mortgage, lien, pledge, assignment, or other encumbrance on one or more improvements, revenues, asset of right, accounts, or funds established or received in connection with the fund, including revenues derived from the moneys credited under section 321.145, subsection 2, paragraph *"a"*, Code 2016, and deposited in the fund or an account of the fund.

5. Provide that the interest on bonds may vary in accordance with a base or formula.

6. Contract for the acquisition, construction, or both of one or more improvements or parts of one or more improvements and for the leasing, subleasing, sale, or other disposition of one or more improvements in a manner it determines.

7. The board may contract with the treasurer of state for the treasurer of state to issue bonds and do all things necessary with respect to the purposes of the fund, as set out in the contract between the board and the treasurer of state. The board may delegate to the treasurer of state and the treasurer of state shall then have all of the powers of the board which are necessary to issue and secure bonds and carry out the purposes of the fund, to the extent provided in the contract between the board and the treasurer of state. The treasurer of state may issue the treasurer of state's bonds in principal amounts which, in the opinion of the board, are necessary to provide sufficient funds for the fund, the payment of interest on the bonds, the establishment of reserves to secure the bonds, the costs of issuance of the bonds, other expenditures of the treasurer of state incident to and necessary or convenient to carry out the bond issue for the fund, and all other expenditures of the board necessary or convenient to administer the fund. The bonds are investment securities and negotiable instruments within the meaning of and for purposes of the uniform commercial code, chapter 554.

8. Bonds issued under this section are payable solely and only out of the moneys, assets, or revenues of the fund, all of which may be deposited with trustees or depositories in accordance with bond or security documents and pledged by the board to the payment thereof, and are not an indebtedness of this state, or a charge against the general credit or general fund of the state, and the state shall not be liable for any financial undertakings with respect to the fund. Bonds issued under this subchapter shall contain on their face a statement that the bonds do not constitute an indebtedness of the state.

9. The proceeds of bonds issued by the treasurer of state and not required for immediate disbursement may be deposited with a trustee or depository as provided in the bond

documents and invested in any investment approved by the treasurer of state and specified in the trust indenture, resolution, or other instrument pursuant to which the bonds are issued without regard to any limitation otherwise provided by law.

10. The bonds shall be:

a. In a form, issued in denominations, executed in a manner, and payable over terms and with rights of redemption, and be subject to such other terms and conditions as prescribed in the trust indenture, resolution, or other instrument authorizing their issuance.

b. Negotiable instruments under the laws of the state and may be sold at prices, at public or private sale, and in a manner, as prescribed by the treasurer of state. Chapters 73A, 74, 74A and 75 do not apply to their sale or issuance of the bonds.

c. Subject to the terms, conditions, and covenants providing for the payment of the principal, redemption premiums, if any, interest, and other terms, conditions, covenants, and protective provisions safeguarding payment, not inconsistent with this subchapter and as determined by the trust indenture, resolution, or other instrument authorizing their issuance.

11. The bonds are securities in which public officers and bodies of this state; political subdivisions of this state; insurance companies and associations and other persons carrying on an insurance business; banks, trust companies, savings associations, and investment companies; administrators, guardians, executors, trustees, and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them.

12. Bonds must be authorized by a trust indenture, resolution, or other instrument of the treasurer of state, approved by the board. However, a trust indenture, resolution, or other instrument authorizing the issuance of bonds may delegate to an officer of the issuer the power to negotiate and fix the details of an issue of bonds.

13. Neither the resolution, trust agreement, nor any other instrument by which a pledge is created needs to be recorded or filed under the Iowa uniform commercial code, chapter 554, to be valid, binding, or effective.

14. Bonds issued under the provisions of this section are declared to be issued for an essential public and governmental purpose and all bonds issued under this subchapter shall be exempt from taxation by the state of Iowa and the interest on the bonds shall be exempt from the state income tax and the state inheritance tax.

15. *a.* Subject to the terms of any bond documents, moneys in the fund or fund accounts may be expended for administration expenses, civil penalties, moneys paid under an agreement, stipulation, or settlement, for the costs associated with sites within a community remediation project, for costs related to contracts entered into with a state agency or university, costs for activities relating to litigation, or for the costs of any other activities as the board may determine are necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this subchapter. For purposes of this subchapter, administration expenses include expenses incurred by the underground storage tank section of the department of natural resources in relation to tanks regulated under this subchapter.

b. The authority granted under this subsection which allows the board to expend fund moneys on an activity the board determines is necessary and convenient to facilitate compliance with and to implement the intent of federal laws and regulations and this subchapter, shall only be used in accordance with the following:

(1) Prior board approval shall be required before expenditure of moneys pursuant to this authority shall be made.

(2) If the expenditure of fund moneys pursuant to this authority would result in the board establishing a policy which would substantially affect the operation of the program, rules shall be adopted pursuant to chapter 17A prior to the board or the administrator taking any action pursuant to this proposed policy.

16. The board shall cooperate with the department of natural resources in the implementation and administration of this subchapter to assure that in combination with existing state statutes and rules governing underground storage tanks, the state will be, and continue to be, recognized by the federal government as having an “approved state account” under the federal Resource Conservation and Recovery Act, especially by compliance with

the Act's subtitle I financial responsibility requirements as enacted in the federal Superfund Amendments and Reauthorization Act of 1986 and the financial responsibility regulations adopted by the United States environmental protection agency at 40 C.F.R. pts. 280 and 281. Whenever possible this subchapter shall be interpreted to further the purposes of, and to comply, and not to conflict, with such federal requirements.

17. The board may adopt rules pursuant to chapter 17A providing for the transfer of all or a portion of the liabilities of the board under this subchapter. Notwithstanding other provisions to the contrary, the board, upon such transfer, shall not maintain any duty to reimburse claimants under this subchapter for those liabilities transferred.

89 Acts, ch 131, §47; 90 Acts, ch 1235, §20; 92 Acts, ch 1018, §1; 92 Acts, ch 1217, §6; 95 Acts, ch 215, §13; 98 Acts, ch 1065, §2; 2000 Acts, ch 1226, §14, 30; 2003 Acts, ch 44, §114; 2003 Acts, ch 110, §5; 2003 Acts, 1st Ex, ch 2, §199, 205; 2008 Acts, ch 1113, §118; 2008 Acts, ch 1119, §9; 2010 Acts, ch 1138, §55; 2010 Acts, ch 1193, §188 – 190, 195; 2012 Acts, ch 1017, §86; 2013 Acts, ch 90, §121 – 124; 2014 Acts, ch 1076, §18; 2016 Acts, ch 1105, §10, 15

Referred to in §422.7(2)(u)

455G.7 Security for bonds — capital reserve fund — irrevocable contracts.

1. *a.* For the purpose of securing one or more issues of bonds for the fund, the treasurer of state, with the approval of the board, may authorize the establishment of one or more special funds, called "capital reserve funds". The treasurer of state may pay into the capital reserve funds the proceeds of the sale of its bonds and other money which may be made available to the treasurer of state from other sources for the purposes of the capital reserve funds. Except as provided in this section, money in a capital reserve fund shall be used only as required for any of the following:

(1) The payment of the principal of and interest on bonds or of the sinking fund payments with respect to those bonds.

(2) The purchase or redemption of the bonds.

(3) The payment of a redemption premium required to be paid when the bonds are redeemed before maturity.

b. However, money in a capital reserve fund shall not be withdrawn if the withdrawal would reduce the amount in the capital reserve fund to less than the capital reserve fund requirement, except for the purpose of making payment, when due, of principal, interest, redemption premiums on the bonds, and making sinking fund payments when other money pledged to the payment of the bonds is not available for the payments. Income or interest earned by, or increment to, a capital reserve fund from the investment of all or part of the capital reserve fund may be transferred by the treasurer of state to other accounts of the fund if the transfer does not reduce the amount of the capital reserve fund below the capital reserve fund requirement.

2. If the treasurer of state decides to issue bonds secured by a capital reserve fund, the bonds shall not be issued if the amount in the capital reserve fund is less than the capital reserve fund requirement, unless at the time of issuance of the bonds the treasurer of state deposits in the capital reserve fund from the proceeds of the bonds to be issued or from other sources, an amount which, together with the amount then in the capital reserve fund, is not less than the capital reserve fund requirement.

3. In computing the amount of a capital reserve fund for the purpose of this section, securities in which all or a portion of the capital reserve fund is invested shall be valued by a reasonable method established by the treasurer of state. Valuation shall include the amount of interest earned or accrued as of the date of valuation.

4. In this section, "*capital reserve fund requirement*" means the amount required to be on deposit in the capital reserve fund as of the date of computation.

5. To assure maintenance of the capital reserve funds, the treasurer of state shall, on or before July 1 of each calendar year, make and deliver to the governor the treasurer of state's certificate stating the sum, if any, required to restore each capital reserve fund to the capital reserve fund requirement for that fund. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor may submit to both houses printed copies of a budget including the sum, if any, required to

restore each capital reserve fund to the capital reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer of state pursuant to this section shall be deposited in the applicable capital reserve fund.

6. All amounts paid by the state pursuant to this section shall be considered advances by the state and, subject to the rights of the holders of any bonds of the treasurer of state that have previously been issued or will be issued, shall be repaid to the state without interest from all available revenues of the fund in excess of amounts required for the payment of bonds of the treasurer of state, the capital reserve fund, and operating expenses.

7. If any amount deposited in a capital reserve fund is withdrawn for payment of principal, premium, or interest on the bonds or sinking fund payments with respect to bonds thus reducing the amount of that fund to less than the capital reserve fund requirement, the treasurer of state shall immediately notify the governor and the general assembly of this event and shall take steps to restore the capital reserve fund to the capital reserve fund requirement for that fund from any amounts designated as being available for such purpose.

89 Acts, ch 131, §48; 2010 Acts, ch 1193, §191, 195

455G.8 Revenue sources for fund.

Revenue for the fund shall include but is not limited to the following, which shall be deposited with the board or its designee as provided by any bond or security documents and credited to the fund:

1. *Bonds issued to capitalize fund.* The proceeds of bonds issued to capitalize and pay the costs of the fund, and investment earnings on the proceeds except as required for the capital reserve funds.

2. *Statutory allocations fund.* The moneys credited from the statutory allocations fund under section 321.145, subsection 2, paragraph *"a"*, Code 2016, shall be allocated, consistent with this subchapter, among the fund's accounts, for debt service and other fund expenses, according to the fund budget, resolution, trust agreement, or other instrument prepared or entered into by the board or treasurer of state under direction of the board.

3. *Cost recovery enforcement.* Cost recovery enforcement net proceeds as provided by section 455G.13 shall be allocated to the innocent landowners fund created under section 455G.21, subsection 2, paragraph *"a"*. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

4. *Other sources.* Interest attributable to investment of money in the fund or an account of the fund. Moneys in the form of a devise, gift, bequest, donation, federal or other grant, reimbursement, repayment, judgment, transfer, payment, or appropriation from any source intended to be used for the purposes of the fund.

89 Acts, ch 131, §49; 90 Acts, ch 1235, §21; 95 Acts, ch 215, §14, 15; 98 Acts, ch 1068, §6; 99 Acts, ch 114, §31; 2003 Acts, 1st Ex, ch 2, §200, 205; 2008 Acts, ch 1113, §119; 2010 Acts, ch 1193, §179, 192, 195; 2013 Acts, ch 90, §125; 2016 Acts, ch 1105, §11, 15

Referred to in §455G.3

455G.9 Remedial program.

1. *Limits of remedial account coverage.* Moneys in the remedial account shall only be paid out for the following:

a. (1) Corrective action for an eligible release reported to the department of natural resources on or after July 1, 1987, but prior to May 5, 1989. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(b) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after July 1, 1987.

(c) The claim for coverage pursuant to this subparagraph must have been filed with the

board prior to January 31, 1990, except that cities and counties must have filed their claim with the board by September 1, 1990.

(d) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(2) Corrective action, up to one million dollars total, and subject to prioritization rules as established pursuant to section 455G.12A, for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990. Third-party liability is specifically excluded from remedial account coverage. Corrective action coverage provided pursuant to this paragraph may be aggregated with other financial assurance mechanisms as permitted by federal law to satisfy required aggregate and per occurrence limits of financial responsibility for both corrective action and third-party liability, if the owner's or operator's effective financial responsibility compliance date is prior to October 26, 1990. School districts who reported a release to the department of natural resources prior to December 1, 1990, shall have until July 1, 1991, to report a claim to the board for remedial coverage under this subparagraph.

(3) Corrective action for an eligible release reported to the department of natural resources on or after January 1, 1984, but prior to July 1, 1987. Third-party liability is specifically excluded from remedial account coverage. For a claim for a release under this subparagraph, the remedial program shall pay in accordance with subsection 4. For a release to be eligible for coverage under this subparagraph the following conditions must be satisfied:

(a) The owner or operator applying for coverage must be currently engaged in the business for which the tank connected with the release was used prior to the report of the release.

(b) The owner or operator applying for coverage shall not be a person who is maintaining, or has maintained, proof of financial responsibility for federal regulations through self-insurance.

(c) The owner or operator applying for coverage shall not have claimed bankruptcy any time on or after January 1, 1985.

(d) The claim for coverage pursuant to this subparagraph must have been filed with the board prior to September 1, 1990.

(e) The owner or operator at the time the release was reported to the department of natural resources must have been in compliance with then current monitoring requirements, if any, or must have been in the process of compliance efforts with anticipated requirements, including installation of monitoring devices, a new tank, tank improvements or retrofit, or any combination.

(4) One hundred percent of the costs of corrective action for a release reported to the department of natural resources on or before July 1, 1991, if the owner or operator is not a governmental entity and is a not-for-profit organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code with a net annual income of twenty-five thousand dollars or less for the year 1990, and if the tank which is the subject of the corrective action is a registered tank and is under one thousand one hundred gallons capacity.

(5) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the cost of a tank system upgrade required by section 455B.474, subsection 1, paragraph *"a"*, subparagraph (6), subparagraph division (i). Payments under this subparagraph shall be limited to a maximum of ten thousand dollars for any one site.

(6) For the purposes of calculating corrective action costs under this paragraph, corrective action shall include the costs associated with monitoring required by the rules adopted under section 455B.474, subsection 1, paragraph *"a"*, subparagraph (6), but corrective action shall exclude monitoring used for leak detection required by rules adopted under section 455B.474, subsection 1, paragraph *"a"*, subparagraph (1).

b. Corrective action and third-party liability for a release discovered on or after January

24, 1989, for which a responsible owner or operator able to pay cannot be found and for which the federal underground storage tank trust fund or other federal moneys do not provide coverage. For the purposes of this section property shall not be deeded or quitclaimed to the state or board in lieu of cleanup. Additionally, the ability to pay shall be determined after a claim has been filed. The board is not liable for any cost where either the responsible owner or operator, or both, have a net worth greater than fifteen thousand dollars, or where the responsible party can be determined. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

c. Corrective action and third-party liability for a tank owned or operated by a financial institution eligible to participate in the remedial account under section 455G.16 if the prior owner or operator is unable to pay, if so authorized by the board as part of a condition or incentive for financial institution participation in the fund pursuant to section 455G.16. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including, but not limited to, loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

d. One hundred percent of the costs of corrective action and third-party liability for a release situated on property acquired by a county for delinquent taxes pursuant to chapters 445 through 448, for which a responsible owner or operator able to pay, other than the county, cannot be found. A county is not a "responsible party" for a release in connection with property which it acquires in connection with delinquent taxes, and does not become a responsible party by sale or transfer of property so acquired. In such situations, the board may act as an agent for the county. Actual corrective action on the site shall be overseen by the department, the board, and a certified groundwater professional. Third-party liability specifically excludes any claim, cause of action, or suit, for personal injury including but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution. Reasonable acquisition costs do not include any taxes or costs related to the collection of taxes.

e. Corrective action for a release reported to the department of natural resources after May 5, 1989, and on or before October 26, 1990, in connection with a tank owned or operated by a state agency or department which elects to participate in the remedial account pursuant to this paragraph. A state agency or department which does not receive a standing unlimited appropriation which may be used to pay for the costs of a corrective action may opt, with the approval of the board, to participate in the remedial account. As a condition of opting to participate in the remedial account, the agency or department shall pay all registration fees, storage tank management fees, environmental protection charges, and all other charges and fees upon all tanks owned or operated by the agency or department in the same manner as if the agency or department were a person required to maintain financial responsibility. Once an agency has opted to participate in the remedial program, it cannot opt out, and shall continue to pay all charges and fees upon all tanks owned or operated by the agency or department so long as the charges or fees are imposed on similarly situated tanks of a person required to maintain financial responsibility. The board shall by rule adopted pursuant to chapter 17A provide the terms and conditions for a state agency or department to opt to participate in the remedial account. A state agency or department which opts to participate in the remedial account shall be subject to the minimum copayment schedule of subsection 4, as if the state agency or department were a person required to maintain financial responsibility.

f. One hundred percent of the costs up to twenty thousand dollars incurred by the board under section 455G.12A, subsection 2, paragraph "*b*", for site cleanup reports. Costs of a site cleanup report which exceed twenty thousand dollars shall be considered a cost of corrective action and the amount shall be included in the calculations for corrective action cost copayments under subsection 4. The board shall have the discretion to authorize a site cleanup report payment in excess of twenty thousand dollars if the site is participating in community remediation.

g. (1) Corrective action for the costs of a release under all of the following conditions:

(a) The property upon which the tank causing the release was situated was transferred by inheritance, devise, or bequest.

(b) The property upon which the tank causing the release was situated has not been used to store or dispense petroleum since December 31, 1975.

(c) The person who received the property by inheritance, devise, or bequest was not the owner of the property during the period of time when the release which is the subject of the corrective action occurred.

(d) The release was reported to the board by October 26, 1991.

(2) Corrective action costs and copayment amounts under this paragraph "*g*" shall be paid in accordance with subsection 4.

(3) A person requesting benefits under this paragraph "*g*" may establish that the conditions of subparagraph (1), subparagraph divisions (a), (b), and (c), are met through the use of supporting documents, including a personal affidavit.

h. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank which was in place on the date the release was discovered or reported if the governmental subdivision did not own or operate the tank which caused the release and if the governmental subdivision did not obtain the property upon which the tank giving rise to the release is located on or after May 3, 1991. Property acquired pursuant to eminent domain in connection with a United States department of housing and urban development approved urban renewal project is eligible for payment of costs under this paragraph whether or not the property was acquired on or after May 3, 1991.

i. Notwithstanding section 455G.1, subsection 2, corrective action, for a release which was tested prior to October 26, 1990, and for which the site was issued a no-further-action letter by the department of natural resources and which was later determined, due to sale of the property or removal of a nonoperating tank, to require remediation which was reported to the administrator by October 26, 1992, in an amount as specified in subsection 4. In order to qualify for benefits under this paragraph, the applicant must not have operated a tank on the property during the period of time for which the applicant owned the property and the applicant must not be a financial institution.

j. One hundred percent of the costs of corrective action for a governmental subdivision in connection with a tank if the governmental subdivision did not own or operate the tank from which the release occurred, and the property was acquired pursuant to eminent domain after the release occurred. A governmental subdivision which acquires property pursuant to eminent domain in order to obtain benefits under this paragraph is not a responsible party for a release in connection with property which it acquired, and does not become a responsible party by sale or transfer of property so acquired.

k. Pursuant to an agreement between the board and the department of natural resources, assessment and corrective action arising out of releases at sites for which a no further action certificate has been issued pursuant to section 455B.474, when the department determines that an unreasonable risk to public health and safety may still exist or that previously reported upon applicable target levels have been exceeded. At a minimum, the agreement shall address eligible costs, contracting for services, and conditions under which sites may be reevaluated.

l. Up to fifteen thousand dollars for the permanent closure of an underground storage tank system that does not meet performance standards for new or upgraded tanks or is otherwise required to be closed pursuant to rules adopted by the environmental protection commission pursuant to section 455B.474. Reimbursement is limited to costs approved by the board prior to the closure activities.

2. *Remedial account funding.* The remedial account shall be funded by that portion of the proceeds of the use tax imposed under chapter 423, subchapter III, and other moneys and revenues budgeted to the remedial account by the board.

3. *Trust fund to be established.* When the remedial account has accumulated sufficient capital to provide dependable income to cover the expenses of expected future releases or expected future losses for which no responsible owner is available, the excess capital shall be transferred to a trust fund administered by the board and created for that purpose.

4. *Minimum copayment schedule.*

a. An owner or operator shall be required to pay the greater of five thousand dollars or eighteen percent of the first eighty thousand dollars of the total costs of corrective action for that release, except for claims pursuant to section 455G.21, where the claimant is not a responsible party or potentially responsible party for the site for which the claim is filed.

b. If a site's actual expenses exceed eighty thousand dollars, the remedial account shall pay the remainder, as required by federal regulations, of the total costs of the corrective action for that release, not to exceed one million dollars, except that a county shall not be required to pay a copayment in connection with a release situated on property acquired in connection with delinquent taxes, as provided in subsection 1, paragraph "*d*", unless subsequent to acquisition the county actively operates a tank on the property for purposes other than risk assessment, risk management, or tank closure.

5. *Recovery of gain on sale of property.*

a. If an owner or operator ceases to own or operate a tank site for which remedial account benefits were received within ten years of the receipt of any account benefit and sells or transfers a property interest in the tank site for an amount which exceeds one hundred twenty percent of the precorrective action value, adjusted for equipment and capital improvements, the owner or operator shall refund to the remedial account an amount equal to ninety percent of the amount in excess of one hundred twenty percent of the precorrective action value up to a maximum of the expenses incurred by the remedial account associated with the tank site plus interest, equal to the interest for the most recent twelve-month period for the most recent bond issue for the fund, on the expenses incurred, compounded annually. An owner or operator under this subsection shall notify the board of the sale or transfer of the property interest in the tank site. Expenses incurred by the fund are a lien upon the property recordable and collectible in the same manner as the lien provided for in section 424.11, Code 2016, at the time of sale or transfer, subject to the terms of this section.

b. This subsection shall not apply if the sale or transfer is pursuant to a power of eminent domain, or benefits. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

6. *Recurring releases treated as a newly reported release.* A release shall be treated as a release reported on or after May 5, 1989, if prior to May 5, 1989, a release was reported to the department, corrective action was taken pursuant to a site cleanup report approved by the department, and the work performed was accepted by the department. For purposes of this subsection, work performed is accepted by the department if the department did not order further action within ninety days of the date on which the department had notice that the work was completed, unless the department clearly indicated in writing to the owner, operator, contractor, or other agent that additional work would be required beyond that specified in the site cleanup report or in addition to the work actually performed.

7. *Expenses of cleanup not required.* When an owner or operator who is eligible for benefits under this subchapter is allowed by the department of natural resources to monitor in place, the expenses incurred for cleanup beyond the level required by the department of natural resources may be covered under any of the accounts established under the fund only if approved by the board as cost-effective relative to the department accepted monitoring plan or relative to the repeal date specified in section 424.19, Code 2016. The cleanup expenses incurred for work completed beyond what is required is the responsibility of the person contracting for the excess cleanup. The board shall seek to terminate the responsible party's environmental liabilities at such sites prior to the board ceasing operation.

8. *Owner or operator defined.* For purposes of receiving benefits under this section, "*owner or operator*" means the then current tank owner or operator or the owner of the land for which a covered release was reported or application for benefits was submitted on or before the relevant application deadlines of this section.

9. *Self-insureds.* For a self-insured as determined under 567 IAC 136.6(455B), to qualify for remedial benefits under this section, tanks shall be upgraded by January 1, 1995, as specified by the United States environmental protection agency in 40 C.F.R. §280.21, as amended through January 1, 1989. A self-insured who qualifies for benefits under this section shall repay any benefits received if the upgrade date is not met.

10. *Expenses incurred by governmental subdivisions and public works utilities.* The

board shall adopt rules for reimbursement for reasonable expenses incurred by a governmental subdivision or public works utility for sampling, treating, handling, or disposing, as required by the department, of petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance, or repair of a utility or public improvement. The board may seek full recovery from a responsible party liable for the release for such expenses and for all other costs and reasonable attorney fees and costs of litigation for which moneys are expended by the fund. Any expense described in this subsection incurred by the fund constitutes a lien upon the property from which the release occurred. A lien shall be recorded and an expense shall be collected in the same manner as provided in section 424.11, Code 2016.

89 Acts, ch 131, §50; 89 Acts, ch 307, §46; 90 Acts, ch 1235, §22 – 28; 90 Acts, ch 1267, §42 – 44; 91 Acts, ch 252, §14 – 24; 92 Acts, ch 1217, §7; 93 Acts, ch 155, §2 – 4; 95 Acts, ch 215, §16, 17; 98 Acts, ch 1065, §3 – 5; 99 Acts, ch 74, §1, 2; 2000 Acts, ch 1226, §15, 30; 2003 Acts, 1st Ex, ch 2, §201, 205; 2004 Acts, ch 1094, §3, 5, 6; 2007 Acts, ch 171, §7, 8; 2010 Acts, ch 1193, §180 – 184; 2011 Acts, ch 25, §111, 112, 141, 142; 2013 Acts, ch 90, §126; 2016 Acts, ch 1105, §12, 13, 15

Referred to in §455B.474, 455G.3, 455G.12A, 455G.21

455G.10 and 455G.11 Reserved.

455G.12 Board authority for prioritization.

1. If the board determines that, within the realm of sound business judgment and practice, prioritization of assistance is necessary in light of funds available for loan guarantees or insurance coverage, the board may develop rules for assistance or coverage prioritization based upon adherence or planned adherence of the owner or operator to higher than minimum environmental protection and safety compliance considerations.

2. Prior to the adoption of prioritization rules, the board shall at minimum review the following issues:

a. The positive environmental impact of assistance prioritization.

b. The economic feasibility, including the availability of private financing, for an owner or operator to obtain priority status.

c. Any negative impact on Iowa's rural petroleum distribution network which could result from prioritization.

d. Any similar prioritization systems in use by the private financing or insurance markets in this state, including terms, conditions, or exclusions.

e. The intent of this subchapter that the board shall maximize the availability of reasonably priced, financially sound insurance coverage or loan guarantee assistance.

89 Acts, ch 131, §53; 2011 Acts, ch 25, §143; 2013 Acts, ch 90, §127

455G.12A Cost containment authority.

1. *Validity of contracts.* A contract in which one of the parties to the contract is an owner or operator of a petroleum underground storage tank, for goods or services which may be payable or reimbursable from the fund, is invalid unless and until the administrator has approved the contract as fair and equitable to the tank owner or operator, and found that the contract terms are within the range of usual and customary rates for similar or equivalent goods or services within the state, and found that the goods or services are necessary for the owner or operator to comply with fund or regulatory standards. An owner or operator may appoint the administrator as an agent for the purposes of negotiating contracts with suppliers of goods or services compensable by the fund. The administrator may select another contractor for goods or services other than the one offered by the owner or operator, if the scope of the proposed work or actual work of the offered contractor does not reflect the quality of workmanship required, or the costs are determined to be excessive.

2. *Contract approval.*

a. In the course of review and approval of a contract pursuant to this section, the administrator may require an owner or operator to obtain and submit three bids, provided

that the administrator coordinates bid submission with the department. The administrator may require specific terms and conditions in a contract subject to approval.

b. The board shall have authority to contract for site cleanup reports. The board's responsibility for site cleanup reports is limited to those site cleanup reports subject to approval by the department of natural resources and required in connection with the remediation of a release which is eligible for benefits under section 455G.9. The site cleanup report shall address existing and available remedial technologies and the costs associated with the use of each technology. The board shall not have the authority to affect a contract which has been given written approval under this section.

3. *Exclusive contracts.*

a. The administrator may enter into a contract or an exclusive contract with the supplier of goods or services required by a class of tank owners or operators in connection with an expense payable or reimbursable from the fund, to supply a specified good or service for a gross maximum price, fixed rate, on an exclusive basis, or subject to another contract term or condition reasonably calculated to obtain goods or services for the fund or for tank owners and operators at a reasonable cost. A contract may provide for direct payment from the fund to a supplier.

b. The administrator may retain, subject to board approval, an independent person to assist in the review of work required in connection with a release or tank system for which fund benefits are sought, and to establish prevailing cost of goods and services needed. Nothing in this section is intended to preempt the regulatory authority of the department.

4. *Prior approval by administrator.* Unless emergency conditions exist, a contractor performing services pursuant to this section shall have the budget for the work approved by the administrator prior to commencement of the work. No expense incurred which is above the budgeted amount shall be paid unless the administrator approves such expense prior to its being incurred. All invoices or bills shall be submitted with appropriate documentation as deemed necessary by the board, no later than thirty days after the work has been performed. Neither the board nor an owner or operator is responsible for payment for work incurred which has not been previously approved by the board.

90 Acts, ch 1235, §40; 91 Acts, ch 252, §31, 32; 2011 Acts, ch 25, §113
Referred to in §455G.4, 455G.9

455G.13 Cost recovery enforcement.

1. *Full recovery sought from owner.* The board shall seek full recovery from the owner, operator, or other potentially responsible party liable for the released petroleum which is the subject of a corrective action, for which the fund expends moneys for corrective action or third-party liability, and for all other costs, including reasonable attorney fees and costs of litigation for which moneys are expended by the fund in connection with the release. When federal cleanup funds are recovered, the funds are to be deposited to the remedial account of the fund and used solely for the purpose of future cleanup activities.

2. *Limitation of liability of owner or operator.* Except as provided in subsection 3:

a. The board or the department of natural resources shall not seek recovery for expenses in connection with corrective action for a release from an owner or operator eligible for assistance under the remedial account except for any unpaid portion of the deductible or copayment. This section does not affect any authorization of the department of natural resources to impose or collect civil or administrative fines or penalties or fees. The remedial account shall not be held liable for any third-party liability.

b. An owner's or operator's liability for a release for which coverage is admitted under the underground storage tank insurance fund established in section 455G.11, Code 2003, shall not exceed the amount of the deductible.

3. *Owner or operator not in compliance, subject to full and total cost recovery.* Notwithstanding subsection 2, the liability of an owner or operator shall be the full and total costs of corrective action and bodily injury or property damage to third parties, as specified in subsection 1, if the owner or operator has not complied with the financial responsibility or other underground storage tank rules of the department of natural resources or with this subchapter and rules adopted under this subchapter.

4. *Treble damages for certain violations.*

a. Notwithstanding subsections 2 and 3, the owner or operator, or both, of a tank are liable to the fund for punitive damages in an amount equal to three times the amount of any cost incurred or moneys expended by the fund as a result of a release of petroleum from the tank if the owner or operator did any of the following:

(1) Failed, without sufficient cause, to respond to a release of petroleum from the tank upon, or in accordance with, a notice issued by the director of the department of natural resources.

(2) After May 5, 1989, failed to perform any of the following:

(a) Failed to register the tank, which was known to exist or reasonably should have been known to exist.

(b) Intentionally failed to report a known release.

b. The punitive damages imposed under this subsection are in addition to any costs or expenditures recovered from the owner or operator pursuant to this subchapter and in addition to any other penalty or relief provided by this subchapter or any other law.

c. However, the state, a city, county, or other political subdivision shall not be liable for punitive damages.

5. *Lien on tank site.* Any amount for which an owner or operator is liable to the fund, if not paid when due, by statute, rule, or contract, or determination of liability by the board or department of natural resources after hearing, shall constitute a lien upon the real property where the tank, which was the subject of corrective action, is situated, and the liability shall be collected in the same manner as the environmental protection charge pursuant to section 424.11, Code 2016.

6. *Joinder of parties.* The department of natural resources has standing in any case or contested action related to the fund or a tank to assert any claim that the department may have regarding the tank at issue in the case or contested action. Upon motion and sufficient showing by a party to a cost recovery or subrogation action provided for under this section, the court or the administrative law judge shall join to the action any potentially responsible party who may be liable for costs and expenditures of the type recoverable pursuant to this section.

7. *Strict liability.* The standard of liability for a release of petroleum or other regulated substance as defined in section 455B.471 is strict liability.

8. *Third-party contracts not binding on board, proceedings against responsible party.* An insurance, indemnification, hold harmless, conveyance, or similar risk-sharing or risk-shifting agreement shall not be effective to transfer any liability for costs recoverable under this section. The fund, board, or department of natural resources may proceed directly against the owner or operator or other allegedly responsible party. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs or expenditures under this subchapter, and does not modify rights between the parties to an agreement, except to the extent the agreement shifts liability to an owner or operator eligible for assistance under the remedial account for any damages or other expenses in connection with a corrective action for which another potentially responsible party is or may be liable. Any such provision is null and void and of no force or effect.

9. *Later proceedings permitted against other parties.* The entry of judgment against a party to the action does not bar a future action by the board or the department of natural resources against another person who is later alleged to be or discovered to be liable for costs and expenditures paid by the fund. Notwithstanding section 668.5 no other potentially responsible party may seek contribution or any other recovery from an owner or operator eligible for assistance under the remedial account for damages or other expenses in connection with corrective action for a release for which the potentially responsible party is or may be liable. Subsequent successful proceedings against another party shall not modify or reduce the liability of a party against whom judgment has been previously entered.

10. *Claims against potentially responsible parties.*

a. Upon payment by the fund for corrective action or third-party liability pursuant to this subchapter, the rights of the claimant to recover payment from any potentially responsible

party are assumed by the board to the extent paid by the fund. A claimant is precluded from receiving double compensation for the same injury.

b. In an action brought pursuant to this subchapter seeking damages for corrective action or third-party liability, the court shall permit evidence and argument as to the replacement or indemnification of actual economic losses incurred or to be incurred in the future by the claimant by reason of insurance benefits, governmental benefits or programs, or from any other source.

c. A claimant may elect to permit the board to pursue the claimant's cause of action for any injury not compensated by the fund against any potentially responsible party, provided the attorney general determines such representation would not be a conflict of interest. If a claimant so elects, the board's litigation expenses shall be shared on a pro rata basis with the claimant, but the claimant's share of litigation expenses is payable exclusively from any share of the settlement or judgment payable to the claimant.

11. *Exclusion of punitive damages.* The fund shall not be liable in any case for punitive damages.

12. *Recovery or subrogation — installers and inspectors.* Notwithstanding any other provision contained in this subchapter, the board or a person insured under the underground storage tank insurance fund established in section 455G.11, Code 2003, has no right of recovery or right of subrogation against an installer or an inspector who was insured by the underground storage tank insurance fund for the tank giving rise to the liability other than for recovery of any deductibles paid.

89 Acts, ch 131, §54; 91 Acts, ch 252, §33 – 36; 98 Acts, ch 1068, §12, 13; 99 Acts, ch 114, §36; 2005 Acts, ch 19, §66, 67; 2011 Acts, ch 25, §114; 2013 Acts, ch 90, §128 – 133; 2014 Acts, ch 1026, §102, 103; 2016 Acts, ch 1105, §14, 15

Referred to in §455G.8, 455G.21

455G.14 Fund not subject to regulation.

The fund is not subject to regulation under chapter 502 or Title XIII, subtitle 1.

89 Acts, ch 131, §55; 98 Acts, ch 1068, §14; 2005 Acts, ch 19, §68

455G.15 Fund not part of the Iowa insurance guaranty association.

Notwithstanding any other provisions of law to the contrary, the fund shall not be considered an insurance company or insurer under the laws of this state and shall not be a member of nor be entitled to claim against the Iowa insurance guaranty association created under chapter 515B.

89 Acts, ch 131, §56

455G.16 Financial institution participation in fund.

1. The board may impose conditions on the participation of a financial institution in the fund. Conditions shall be reasonably intended to increase the quantity of private capital available for loans to tank owners or operators who are small businesses within the meaning of section 455G.2. Additionally, the board may offer incentives to financial institutions meeting conditions imposed by the board. Incentives may include extended fund coverage of corrective action or third-party liability expenses, waiver of copayment or deductible requirements, or other benefits not offered to other participants, if reasonably intended to increase the quantity of private capital available for loans by an amount greater than the increased costs of the incentives to the fund.

2. Third-party liability expenses under this section specifically exclude any claim, cause of action, or suit, for personal injury including but not limited to loss of use or of private enjoyment, mental anguish, false imprisonment, wrongful entry or eviction, humiliation, discrimination, or malicious prosecution.

89 Acts, ch 131, §57; 91 Acts, ch 252, §37; 2019 Acts, ch 24, §104

Referred to in §455G.9

Code editor directive applied

455G.17 Inspectors — education — registration. Repealed by 2007 Acts, ch 171, §11, 13. See §455B.474.

455G.18 Groundwater professionals — certification. Repealed by 2007 Acts, ch 171, §12. See §455B.474.

455G.19 Environmental damage offset. Repealed by 95 Acts, ch 215, §29.

455G.20 Final approval.

Notwithstanding any other provision to the contrary, the department of natural resources shall have final approval for a determination as to when remediation shall begin on a site.

92 Acts, ch 1217, §9

455G.21 Marketability fund.

1. A marketability fund is created as a separate fund in the state treasury under the control of the board. The board shall administer the marketability fund. Notwithstanding section 8.33, moneys remaining in the marketability fund at the end of each fiscal year shall not revert to the general fund but shall remain in the marketability fund. The marketability fund shall include, notwithstanding section 12C.7, interest earned by the marketability fund or other income specifically allocated to the marketability fund.

2. The marketability fund shall be used for the following purposes:

a. The innocent landowners fund shall be established as a separate fund in the state treasury under the control of the board. The innocent landowners fund shall include any moneys recovered pursuant to cost recovery enforcement under section 455G.13. Notwithstanding section 455G.1, subsection 2, benefits for the costs of corrective action may be provided to the owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, who is not otherwise eligible to receive benefits under section 455G.9 due to the date on which the release causing the contamination was reported or the date the claim was filed. An owner of a petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, shall be eligible for payment of corrective action costs subject to copayment requirements under section 455G.9, subsection 4. The board may adopt rules conditioning receipt of benefits under this paragraph to those petroleum-contaminated properties which present a higher degree of risk to the public health and safety or the environment and may adopt rules providing for denial of benefits under this paragraph to a person who did not make a good faith attempt to comply with the provisions of this subchapter. This paragraph does not confer a legal right to an owner of petroleum-contaminated property, or an owner or operator of an underground storage tank located on the property, for receipt of benefits under this paragraph.

b. The remainder of the moneys shall be used for payment of remedial benefits as provided in section 455G.9.

3. Moneys in the fund shall not be used for purposes of bonding or providing security for bonding under this subchapter.

95 Acts, ch 215, §28, 34; 96 Acts, ch 1034, §69, 71; 98 Acts, ch 1065, §6; 99 Acts, ch 114, §37, 38; 2001 Acts, ch 51, §3; 2010 Acts, ch 1061, §61; 2013 Acts, ch 90, §134, 135

Referred to in §455G.3, 455G.8, 455G.9

455G.22 No further action fund. Repealed by 2000 Acts, ch 1226, §21, 30. See §455G.9(1k).

SUBCHAPTER II

ABOVEGROUND PETROLEUM STORAGE TANK FUND

455G.23 Aboveground petroleum storage tank fund. Repealed by its own terms; 2004 Acts, ch 1094, §4, 6.

455G.24 through 455G.30 Reserved.

SUBCHAPTER III

E-85 GASOLINE STORAGE AND DISPENSING INFRASTRUCTURE

455G.31 E-85 gasoline storage and dispensing infrastructure.

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

(1) *"Dispenser"* includes a motor fuel pump, including but not limited to a motor fuel blender pump.

(2) *"E-85 gasoline"*, *"ethanol blended gasoline"*, and *"retail dealer"* mean the same as defined in section 214A.1.

(3) *"Gasoline storage and dispensing infrastructure"* means any storage tank located below ground or above ground and any associated equipment including but not limited to a pipe, hose, connection, fitting seal, or motor fuel pump, which is used to store, measure, and dispense gasoline by a retail dealer.

(4) *"Motor fuel pump"* means the same as defined in section 214.1.

b. Ethanol blended gasoline shall be designated in the same manner as provided in section 214A.2.

2. A retail dealer may use gasoline storage and dispensing infrastructure to store and dispense ethanol blended gasoline classified as E-9 or higher if the department of natural resources under this subchapter or the state fire marshal under chapter 101 determines that it is compatible with the ethanol blended gasoline being used.

3. *a.* A retail dealer may use a dispenser that does not satisfy the requirement in subsection 2 to dispense ethanol blended gasoline classified as higher than E-10 if the dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. In addition, the retail dealer must install an under-dispenser containment system with electronic monitoring. The under-dispenser containment system shall comply with applicable rules adopted by the department of natural resources and the state fire marshal.

b. If within ten years from the date that a dispenser described in paragraph *"a"* is installed the same model of dispenser is listed as compatible for use with E-85 gasoline by an independent testing laboratory, the dispenser shall be deemed as compatible for use with ethanol blended gasoline classified as E-9 or higher up to and including E-85 by the department of natural resources and the state fire marshal. However, if after that time the same model of dispenser is not listed as compatible for use with E-85 gasoline by an independent testing laboratory, paragraph *"a"* no longer applies and the retail dealer must upgrade or replace the dispenser as necessary to be listed as compatible for use with E-85 gasoline.

2006 Acts, ch 1142, §25; 2006 Acts, ch 1185, §122; 2007 Acts, ch 22, §80; 2007 Acts, ch 211, §47 – 49; 2008 Acts, ch 1169, §22 – 25, 30; 2009 Acts, ch 105, §1; 2011 Acts, ch 34, §104; 2013 Acts, ch 90, §136; 2018 Acts, ch 1026, §142

Referred to in §159A.14, 323.4A

CHAPTER 455H

LAND RECYCLING AND REMEDIATION STANDARDS

Referred to in §6A.22, 6B.56, 455A.6, 455I.2

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SUBCHAPTER 1

GENERAL PROVISIONS

455H.101 Short title.

This chapter shall be known and may be cited as the *"Iowa Land Recycling and Environmental Remediation Standards Act"*.

97 Acts, ch 127, §1

455H.102 Scope.

The environmental remediation standards established under this chapter shall be used for any response action or other site assessment or remediation that is conducted at a site enrolled pursuant to this chapter notwithstanding provisions regarding water quality in chapter 455B, division III; hazardous conditions in chapter 455B, division IV, part 4; hazardous waste and substance management in chapter 455B, division IV, part 5; underground storage tanks, other than petroleum underground storage tanks, in chapter 455B, division IV, part 8; and groundwater protection in chapter 455E.

97 Acts, ch 127, §2; 2011 Acts, ch 9, §7

455H.103 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Affected area"* means any real property affected, suspected of being affected, or modeled to be likely affected by a release occurring at an enrolled site.

2. *"Affiliate"* means a corporate parent, subsidiary, or predecessor of a participant, a co-owner or cooperator of a participant, a spouse, parent, or child of a participant, an affiliated corporation or enterprise of a participant, or any other person substantially involved in the legal affairs or management of a participant, as defined by the department.

3. *"Background levels"* means concentrations of hazardous substances naturally occurring and generally present in the environment in the vicinity of an enrolled site or an affected area and not the result of releases.

4. *"Commission"* means the environmental protection commission created under section 455A.6.

5. *"Department"* means the department of natural resources created under section 455A.2.

6. *"Director"* means the director of the department of natural resources appointed under section 455A.3.

7. *"Enrolled site"* means any property which has been or is suspected to be the site of or affected by a release and which has been enrolled pursuant to this chapter by a participant.

8. *"Environmental covenant"* means a servitude arising under an environmental response project that imposes activity and use limitations as defined in section 455I.2.

9. *"Hazardous substance"* has the same meaning as defined in section 455B.381.

10. *"Noncancer health risk"* means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic hazardous substances expressed as the hazard quotient for a hazardous substance. A hazard quotient is the ratio of the level of exposure of a hazardous substance over a specified time period to a reference dose for a similar exposure period.

11. *"Participant"* means any person who enrolls property pursuant to this chapter. A participant is a participant only to the extent the participant complies with the requirements of this chapter.

12. *"Protected groundwater source"* means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least forty-four-hundredths meters per day and a total dissolved solids concentration of less than two thousand five hundred milligrams per liter.

13. *"Protected party"* means any of the following:

a. A participant, including, but not limited to, a development authority or fiduciary.

b. A person who develops or otherwise occupies an enrolled site after the issuance of a no further action letter.

c. A successor or assignee of a protected party, as to an enrolled site of a protected party.

d. A lender which practices commercial lending including, but not limited to, providing financial services, holding of security interests, workout practices, and foreclosure or the recovery of funds from the sale of an enrolled site.

e. A parent corporation or subsidiary of a participant.

f. A co-owner or cooperator, either by joint tenancy or a tenancy in common, or any other party sharing a legal relationship with the participant.

g. A holder of a beneficial interest of a land trust or inter vivos trust, whether revocable or irrevocable, as to any interests in an enrolled site.

h. A mortgagee or trustee of a deed of trust existing as to an enrolled site as of the date of issuance of a no further action letter.

i. A transferee of the participant whether the transfer is by purchase, eminent domain, assignment, bankruptcy proceeding, partition, dissolution of marriage, settlement or adjudication of any civil action, charitable gift, or bequest, in conjunction with the acquisition of title to the enrolled site.

j. An heir or devisee of a participant.

k. A government agency or political subdivision which acquires an enrolled site through voluntary or involuntary means, including, but not limited to, abandonment, tax foreclosure, eminent domain, or escheat.

14. *"Release"* means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of a hazardous substance, including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous substance, but excludes all of the following:

a. Any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons.

b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine.

c. The release of source, by-product, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject

to requirements with respect to financial protection established by the nuclear regulatory commission under 42 U.S.C. §2210 or, for the purposes of 42 U.S.C. §9604 or any other response action, any release of source, by-product, or special nuclear material from any processing site designated under 42 U.S.C. §7912(a)(1) or 7942(a).

d. The use of pesticides in accordance with the product label.

15. *"Response action"* means an action taken to reduce, minimize, eliminate, clean up, control, assess, or monitor a release to protect the public health and safety or the environment. *"Response action"* includes, but is not limited to, investigation, excavation, removal, disposal, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls, or site management practices.

97 Acts, ch 127, §3; 99 Acts, ch 114, §39; 2005 Acts, ch 102, §3

455H.104 Declaration of policy.

The general assembly finds and declares all of the following:

1. Some real property in Iowa is not put to its highest productive use because it is contaminated or it is perceived to be contaminated as a result of past activity on the property. The reuse of these sites is an important component of a sound land-use policy that will prevent the needless development of prime farmland and open-space and natural areas, and reduce public expenditures for installing new infrastructure.

2. Incentives should be put in place to encourage capable persons to voluntarily develop and implement cleanup plans.

3. The safe reuse of property should be encouraged through the adoption of environmental remediation standards developed through an open process which take into account the risks associated with any release at the site. Any remediation standards adopted by this state must provide for the protection of the public health and safety and the environment.

97 Acts, ch 127, §4

455H.105 Duties of the commission.

The commission shall do all of the following:

1. Adopt rules pertaining to the assessment, evaluation, and cleanup of the presence of hazardous substances which allow participants to carry out response actions using background standards, statewide standards, or site-specific cleanup standards pursuant to this chapter.

2. Adopt rules establishing statewide standards and criteria for determination of background standards and site-specific cleanup standards.

3. Adopt rules establishing a program intended to encourage and enhance assessment, evaluation, and cleanup of sites which may have been the site of or affected by a release.

4. Adopt rules establishing a program to administer the land recycling fund established in section 455H.401.

5. Adopt rules establishing requirements for the submission, performance, and verification of site assessments, cleanup plans, and certifications of completion. The rules shall provide that all site assessments, cleanup plans, and certifications of completion submitted by a participant shall be prepared by or under the supervision of an appropriately trained professional, including a groundwater professional certified pursuant to section 455B.474.

6. Adopt rules for public notice of the proposed verification of a certificate of completion by the department where the certificate of completion is conditioned on the use of an institutional or technological control.

97 Acts, ch 127, §5; 2007 Acts, ch 171, §9

455H.106 Duties of the department.

The department shall do all of the following:

1. Enter into agreements or issue orders in connection with the enrollment of property into a program established pursuant to this chapter.

2. Issue no further action letters upon the demonstration of compliance with applicable standards for an affected area by a participant.

3. Enter into agreements or issue orders providing for institutional and technological controls to assure compliance with applicable standards pursuant to this chapter.

4. Take actions necessary, including the revocation, suspension, or modification of permits or agreements, the issuance of orders, and the initiation of administrative or judicial proceedings, to enforce the provisions of this chapter and any agreements, covenants, easements, or orders issued pursuant to this chapter.

97 Acts, ch 127, §6

455H.107 Land recycling program.

1. A person may enroll property in the land recycling program pursuant to this chapter to carry out a response action in accordance with rules adopted by the commission which outline the eligibility for enrollment. The eligibility rules shall reasonably encourage the enrollment of all sites potentially eligible to participate under this chapter and shall not take into account any amounts the department may be reimbursed under this chapter.

2. All participants shall enter into an agreement with the department to reimburse the department for actual costs incurred by the department in reviewing documents submitted as a part of the enrollment of the site. This fee shall not exceed seven thousand five hundred dollars per enrolled site for sites enrolled prior to July 1, 2018. For sites enrolled on or after July 1, 2018, the fee shall not exceed twenty-five thousand dollars per enrolled site. An agreement entered into under this subsection must allow the department access to the enrolled site and must require a demonstration of the participant's ability to carry out a response action reasonably associated with the enrolled site.

3. All of the following shall not be enrolled in the land recycling program:

a. Property for which corrective action is needed or has been taken for petroleum underground storage tanks under chapter 455B, division IV, part 8. However, such property may be enrolled to address hazardous substances other than petroleum from underground storage tanks.

b. Property which has been placed or is proposed to be included on the national priorities list established pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

c. An animal feeding operation structure as defined in section 459.102.

4. If the site cleanup assessment demonstrates that the release on the enrolled site has affected additional property, all property which is shown to be affected by the release on the enrolled site shall be enrolled in addition to the enrolled site.

5. Following enrollment of the property in the land recycling program, the participant shall proceed on a timely basis to carry out response actions in accordance with the rules implementing this chapter.

6. Once the participant has demonstrated the affected area is in compliance with the standards described in subchapter 2, the department shall proceed on a timely basis and issue a no further action letter pursuant to section 455H.301.

7. The participant may withdraw the enrolled site from further participation in the land recycling program at any time upon written notice to the department. Any participant who withdraws an enrolled site from further participation in the program shall not be entitled to any refund or credit for the enrollment fee paid pursuant to this section and shall, subject to the limitation on fees in subsection 2, be liable for any costs actually incurred by the department. The department or court may determine that a participant who withdraws prior to completion of all response actions identified for the enrolled site forfeits all benefits and immunities provided by this chapter as to the enrolled site. If it is deemed necessary and appropriate by the department, a participant who withdraws shall stabilize the enrolled site in accordance with a plan approved by the department.

97 Acts, ch 127, §7; 2018 Acts, ch 1105, §1

455H.108 through 455H.200 Reserved.

SUBCHAPTER 2

RESPONSE ACTION STANDARDS AND REVIEW PROCEDURES

Referred to in §455H.107

455H.201 Cleanup standards.

1. *a.* A participant carrying out a response action shall take such response actions as necessary to assure that conditions in the affected area comply with any of the following, as applicable:

(1) Background standards established pursuant to section 455H.202.

(2) Statewide standards established pursuant to section 455H.203.

(3) Site-specific cleanup standards established pursuant to section 455H.204.

b. Any remediation standard which is applied must provide for the protection of the public health and safety and the environment.

2. A participant may use a combination of these standards to implement a site remediation plan and may propose to use the site-specific cleanup standards whether or not efforts have been made to comply with the background or statewide standards.

3. Until rules setting out requirements for background standards, statewide standards, or site-specific cleanup standards are finally adopted by the commission and effective, participants may utilize site-specific cleanup standards for any hazardous substance utilizing the procedures set out in the department's rules implementing risk-based corrective action for underground storage tanks and, where relevant, the United States environmental protection agency's guidance regarding risk assessment for superfund sites.

4. The standards may be complied with through a combination of response actions that may include, but are not limited to, treatment, removal, technological or institutional controls, and natural attenuation and other natural mechanisms, and can include the use of innovative or other demonstrated measures.

97 Acts, ch 127, §8; 2011 Acts, ch 25, §143

455H.202 Background standards.

1. Methods to identify background standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee.

2. The demonstration that the affected area meets the background standard shall be documented by the participant in the following manner:

a. Compliance with the background standard shall be demonstrated by collection and analysis of representative samples from environmental media of concern.

b. A final report that documents compliance with the background standard shall be submitted to the department and shall include, as appropriate, all of the following:

(1) A description of procedures and conclusions of the site investigation to characterize the nature, extent, direction, volume, and composition of hazardous substances.

(2) The basis for selecting environmental media of concern, descriptions of removal or decontamination procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that the background standard has been complied with.

(3) The basis for determining the background levels.

97 Acts, ch 127, §9

Referred to in §455H.201

455H.203 Statewide standards.

1. Statewide standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. The standards must provide for the protection of the public health and safety and the environment.

2. In establishing these standards, all of the following shall be considered:

a. Separate standards shall be established for hazardous substances in soil, in

groundwater which is a protected groundwater source, and in groundwater which is not a protected groundwater source.

b. In groundwater which is a protected groundwater source, the standards shall be the maximum contaminant levels established pursuant to the department's drinking water standards or, for contaminants that do not have established drinking water standards, the standards shall be derived in a manner comparable to that used for establishment of drinking water standards. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

c. In groundwater which is not a protected groundwater source, the standards shall be no more protective than a standard reflecting an increased cancer risk of one in ten thousand from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to levels below or more restrictive than background levels.

d. In soil, the standards shall be no more protective than a standard reflecting an increased cancer risk of five in one million from exposure to contaminants that are known or probable human carcinogens; a standard reflecting a noncancer health risk of one-tenth from exposure to contaminants that are possible human carcinogens; or a standard reflecting a noncancer health risk of one from exposure to contaminants that are not known, probable, or possible human carcinogens. An affected area shall not be required to be cleaned up to concentration levels below or more restrictive than background levels.

e. Statewide standards specified in paragraphs *"b"*, *"c"*, and *"d"* assume exposure to individual contaminants in groundwater or soil. If more than one contaminant exists in a medium or exposure to contaminants can occur from more than one medium, standards shall be adjusted to reflect a cumulative increased cancer risk that is no less protective than one in ten thousand and a cumulative noncancer health risk to the same target human organ that is no less protective than one. Risks associated with background levels of contaminants shall not be included in the cumulative risk determination.

3. The demonstration that the affected area meets the statewide standard shall be documented by the participant, as appropriate, in the following manner:

a. Compliance with cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern.

b. A final report that documents compliance with the statewide standard shall be submitted to the department which includes, as appropriate, the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement at the site and cumulative effects, if any, volume, composition, and concentration of hazardous substances in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, and summaries of sampling methodology and analytical results which demonstrate that hazardous substances have been removed or treated to applicable levels.

97 Acts, ch 127, §10; 2002 Acts, ch 1091, §1

Referred to in §455H.201

455H.204 Site-specific cleanup standards.

1. Procedures to establish site-specific cleanup standards shall be adopted by the commission after consideration of the joint recommendations of the department and the technical advisory committee. Site-specific cleanup standards must provide for the protection of the public health and safety and the environment.

2. Site-specific cleanup standards and appropriate response actions shall take into account all of the following provided, however, that an affected area shall not be required to be cleaned up to levels below or more restrictive than background levels, and in groundwater which is not a protected groundwater source, to a concentration level which presents an increased cancer risk of less than one in ten thousand:

a. The most appropriate exposure scenarios based on current or probable future residential, commercial, industrial, or other industry-accepted scenarios.

b. Exposure pathway characterizations including contaminant sources, transport mechanisms, and exposure pathways.

c. Affected human or environmental receptors and exposure scenarios based on current or probable projected use scenarios.

d. Risk-based corrective action assessment principles which identify risks presented to the public health and safety or the environment by each released hazardous substance in a manner that will protect the public health and safety or the environment using a tiered procedure consistent with the ASTM (American society for testing and materials) international standards applied to nonpetroleum and petroleum hazardous substances.

e. Other relevant site-specific risk-related factors such as the feasibility of available technologies, existing background levels, current and planned future uses, ecological, aesthetic, and other relevant criteria, and the applicability and availability of technological and institutional controls.

f. Cleanup shall not be required in an affected area that does not present any of the following:

(1) An increased cancer risk from a single contaminant at the point of exposure of five in one million for residential areas or one in ten thousand for nonresidential areas.

(2) An increased cancer risk from multiple contaminants or multiple routes of exposure greater than one in ten thousand.

(3) An increased noncancer health risk from a single contaminant at the point of exposure of greater than one, or greater than one-tenth for possible carcinogens.

(4) An increased noncancer risk to the same target human organ from multiple contaminants or multiple routes of exposure greater than one.

3. The concentration of a hazardous substance in an environmental medium of concern at an affected area where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background level. In such cases, the background level shall apply.

4. Any participant electing to comply with site-specific standards established by this section shall submit, as appropriate, all of the following reports and evaluations for review and approval by the department:

a. (1) A site-specific risk assessment report and a cleanup plan. The site-specific risk assessment report must include, as appropriate, all of the following:

(a) Documentation and descriptions of procedures and conclusions from the site investigation to characterize the nature, extent, direction, rate of movement, volume, and composition of hazardous substances.

(b) The concentration of hazardous substances in environmental media of concern, including summaries of sampling methodology and analytical results.

(c) A fate and transport analysis to demonstrate that no exposure pathways exist.

(2) If no exposure pathways exist, a risk assessment report and a cleanup plan are not required and no remedy is required to be proposed or completed.

b. A final report demonstrating compliance with site-specific cleanup standards has been completed in accordance with the cleanup plan.

c. This section does not preclude a participant from submitting a site-specific risk assessment report and cleanup plan at one time to the department for review.

5. Upon submission of either a site-specific risk assessment report or a cleanup plan to the department, the department shall notify the participant of any deficiencies in the report or plan in a timely manner.

6. Owners and operators of underground storage tanks other than petroleum underground storage tanks, aboveground storage tanks, and pipelines which contain or have contained petroleum shall comply with the corrective action rules issued pursuant to chapter 455B, division IV, part 8, to satisfy the requirements of this section.

97 Acts, ch 127, §11; 2002 Acts, ch 1091, §2; 2004 Acts, ch 1086, §76; 2011 Acts, ch 25, §143

Referred to in §455H.201

455H.205 Variances.

1. A participant may apply to the department for a variance from any applicable provision of this chapter.

2. The department may issue a variance from applicable standards only if the participant demonstrates all of the following:

a. The participant demonstrates either of the following:

(1) It is technically infeasible to comply with the applicable standards.

(2) The cost of complying with the applicable standards exceeds the benefits.

b. The proposed alternative standard or set of standards in the terms and conditions set forth in the application will result in an improvement of environmental conditions in the affected area and ensure that the public health and safety will be protected.

c. The establishment of and compliance with the alternative standard or set of standards in the terms and conditions is necessary to promote, protect, preserve, or enhance employment opportunities or the reuse of the enrolled site.

3. If requested by a participant, the department may issue a variance from any other provision of this chapter if the department determines that the variance would be consistent with the declaration of policy of this chapter and is reasonable under the circumstances.

97 Acts, ch 127, §12

455H.206 Institutional and technological controls.

1. In achieving compliance with the cleanup standards under this chapter, a participant may use an institutional or technological control. The director may require reasonable proof of financial assurance where necessary to assure a technological control remains effective.

2. An institutional or technological control includes any of the following:

a. A state or federal law or regulation.

b. An ordinance of any political subdivision of the state.

c. A contractual obligation recorded and executed in a manner satisfying chapter 558.

d. A control which the participant can demonstrate reduces or manages the risk from a release through the period necessary to comply with the applicable standards.

e. An environmental protection easement filed prior to July 1, 2005.

f. An environmental covenant created in accordance with chapter 455I.

3. If the department's determination of compliance with applicable standards pursuant to subchapter 3 is conditioned on a restriction in the use of any real estate in the affected area, the participant must utilize an institutional control. If the restriction in use is to limit the use to nonresidential use, the participant must use an environmental covenant as the institutional control. Environmental covenants may also be used to implement other institutional or technological controls. An environmental covenant must comply with the requirements of chapter 455I.

4. If the use of an institutional or technological control is confirmed in a no further action letter issued pursuant to section 455H.301, the institutional or technological control may be enforced in district court by the department, a political subdivision of this state, the participant, or any successor in interest to the participant.

5. An institutional or technological control, except for an environmental covenant, may be removed, discontinued, modified, or terminated by the participant or a successor in interest to the participant upon a demonstration that the control no longer is required to assure compliance with the applicable standard. Upon review and approval by the department, the department shall issue an amendment to its no further action letter approving the removal, discontinuance, modification, or termination of an institutional or technological control which is no longer needed.

6. An environmental covenant created pursuant to subsection 3 may be terminated or amended only in accordance with chapter 455I. The department may determine that any person who intentionally violates an environmental covenant or other technological or institutional control contained in a no further action letter loses any of the benefits provided by this chapter as to the affected area. In the event the technological or institutional controls fail to achieve compliance with the applicable standards, the participant shall undertake an additional response action sufficient to demonstrate to the department compliance with

applicable standards. Failure to proceed in a timely manner in performing the additional response action may result in termination of the participant's enrollment in the land recycling program.

97 Acts, ch 127, §13; 2005 Acts, ch 102, §4

455H.207 Response action — permitting requirements.

1. A participant who would be otherwise required to obtain a permit, license, plan approval, or other approval from the department under any provision of the Code may obtain a consolidated standards permit for the activities in connection with the response action for which the permit, license, plan approval, or other approval is required. The consolidated standards permit shall encompass all the substantive requirements applicable to those activities under any applicable federal or state statute, rule, or regulation and any agreements the director had entered into with the United States environmental protection agency under those statutes, rules, or regulations.

2. In addition to any other notice or hearing requirements of relevant chapters, at least ten days prior to issuing a permit under this section, the director shall publish a notice of the proposed permit which contains a general description of the activities to be conducted in the affected area under the permit. The notice shall be published in the official newspaper, as designated by the county board of supervisors pursuant to section 349.1, of the county in which the site is located. A person may submit written or oral comments on or objections to the permit. After considering the comments and objections, the director shall approve or deny the application for the consolidated standards permit.

3. A participant issued a consolidated standards permit under this section in connection with a particular activity is not required to obtain a permit, license, plan approval, or other approval from the department in connection with any activity under the applicable provisions of the Code or rules. A participant who obtains a consolidated standards permit for a particular activity is deemed to be in compliance with the requirement to obtain from the department a permit, license, plan approval, or other approval in connection with the activity under the applicable provisions of the Code or rules. A violation of the conditions of the consolidated standards permit shall be deemed to be a violation of the applicable statute, rule, or regulation under which approval of activities in connection with a response action would have been required and is subject to enforcement in the same manner and to the same extent as a violation of the applicable statute, rule, or regulation would have been.

97 Acts, ch 127, §14

455H.208 Public participation.

Public participation shall be a required component of the process for participants for all sites enrolled in the land recycling program. The required level of public participation shall vary depending on the conditions existing at a site. At a minimum, the department shall notify all adjacent property owners, occupants of adjacent property, and the city or county in which the property is located of a site's enrollment in the land recycling program and of the scope of work described in the participation agreement, and give the notified parties the opportunity to obtain updates regarding the status of activities relating to the enrolled site in the land recycling program. The notification shall not be required before the participant has had the opportunity to collect basic information characterizing the nature and extent of the contamination, but the notification shall be required in a timely manner allowing appropriate parties to have input in the formulation of the response action. If contaminants from the enrolled site have migrated off the enrolled site or are likely to migrate off the enrolled site, as determined by the department, the department shall notify by direct mailing all potentially affected parties, including the city or county in which the potentially affected property is located, and officials in charge of any potentially impacted public water supply and the notified parties shall be given opportunity to comment on proposed response actions. The department may require the participant of an enrolled site to publish public notice in a local newspaper if widespread interest in the site exists or is likely to exist as determined by the department. The department shall consider reasonable comments from

potentially affected parties in determining whether to approve or disapprove a proposed response action or site closure.

2002 Acts, ch 1091, §3; 2003 Acts, ch 108, §78

455H.209 through 455H.300 Reserved.

SUBCHAPTER 3

EFFECTS OF PARTICIPATION

Referred to in §455H.206

455H.301 No further action letters.

1. Once a participant demonstrates that an affected area meets applicable standards and the department has certified that the participant has met all requirements for completion, the department shall promptly issue a no further action letter to the participant.

2. *a.* A no further action letter shall state that the participant and any protected party are not required to take any further action at the site related to any hazardous substance for which compliance with applicable standards is demonstrated by the participant in accordance with applicable standards, except for continuing requirements specified in the no further action letter. If the participant was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, a no further action letter may provide that a further response action may be required, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare. A protected party who was a person having control over a hazardous substance, as that phrase is defined in section 455B.381, at the time of the release, may be required by the department to conduct a further response action, where appropriate, to protect against an imminent and substantial threat to public health, safety, and welfare.

b. If a person transfers property to an affiliate in order for that person or the affiliate to obtain a benefit to which the transferor would not otherwise be eligible under this chapter or to avoid an obligation under this chapter, the affiliate shall be subject to the same obligations and obtain the same level of benefits as those available to the transferor under this chapter.

c. A no further action letter shall be void if the department demonstrates by clear, satisfactory, and convincing evidence that any approval under this chapter was obtained by fraud or material misrepresentation, knowing failure to disclose material information, or false certification to the department.

3. The department shall provide, upon request, a no further action letter as to the affected area to each protected party.

4. The department shall condition the no further action letter upon compliance with any institutional or technological controls relied upon by the participant to demonstrate compliance with the applicable standards.

5. A no further action letter shall be in a form recordable in county real estate records as provided in chapter 558.

97 Acts, ch 127, §15; 2011 Acts, ch 25, §143

Referred to in §455H.107, 455H.206, 455H.302, 455H.303, 455H.503, 455H.509

455H.302 Covenants not to sue.

Upon issuance of a no further action letter pursuant to section 455H.301, a covenant not to sue arises by operation of law. The covenant releases the participant and each protected party from liability to the state, in the state's capacity as a regulator administering environmental programs, to perform additional environmental assessment, remedial activity, or response action with regard to the release of a hazardous substance for which the participant and each protected party has complied with the requirements of this chapter.

97 Acts, ch 127, §16

455H.303 Cessation of statutory liability.

Upon issuance of a no further action letter pursuant to section 455H.301, except as provided in that section, the participant and each protected party shall no longer have liability under chapter 455A, under chapter 455B other than liability for petroleum underground storage tanks, or under chapters 455D and 455E to the state or to any other person as to any condition at the affected area with regard to hazardous substances for which compliance with applicable standards was demonstrated by the participant in accordance with this chapter and for which the department has provided a certificate of completion.

97 Acts, ch 127, §17

455H.304 Limitation of liability.

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

a. *"Environmental claim"* means a civil action for damages for environmental harm and includes a civil action under this chapter for recovery of the costs of conducting a response action, but does not include a civil action for damages for a breach of contract or another agreement between persons or for a breach of a warranty that exists pursuant to the Code or common law of this state.

b. *"Environmental harm"* means injury, death, loss, or threatened loss to a person or property caused by exposure to or the release of a hazardous substance.

2. Except as may be required in accordance with obligations incurred pursuant to participation in the land recycling program established in this chapter, all of the following, or any officer or employee thereof, are relieved of any further liability for any environmental claim resulting from the presence of hazardous substances at, or the release of hazardous substances from, an enrolled site where a response action is being or has been conducted under this chapter, unless an action or omission of the person, state agency, political subdivision, or public utility, or an officer or employee thereof, constitutes willful or wanton misconduct or intentionally tortious conduct:

a. A contractor working for another person in conducting any response action under this chapter.

b. A state agency or political subdivision that is conducting a voluntary response action or a maintenance activity on lands, easements, or rights-of-way owned, leased, or otherwise held by the state agency or political subdivision.

c. A state agency when an officer or employee of the state agency provides technical assistance to a participant undertaking a response action under this chapter or rules adopted pursuant to this chapter, or to a contractor, officer, or employee of the agency, in connection with the response action.

d. A public utility, as defined in section 476.1, which is performing work in any of the following:

(1) An easement or right-of-way of a public utility across an affected area where a response action is being or has been conducted and where the public utility is constructing or has main or distribution lines above or below the surface of the ground for purposes of maintaining the easement or right-of-way for construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

(2) An affected area where a response action is being conducted that is necessary to establish or maintain utility service to the property, including, without limitation, the construction, repair, or replacement of any of the following:

(a) Main or distribution lines above or below the surface of the ground.

(b) Poles, towers, foundations, or other structures supporting or sustaining any such lines.

(c) Appurtenances to poles, towers, foundations, or other structures supporting or sustaining any such lines.

3. This section does not create, and shall not be construed to create, a new cause of

action against or substantive legal right against a person, state agency, political subdivision, or public utility, or an officer or employee thereof.

4. This section does not affect, and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Code or available at common law, to which a person, state agency, political subdivision, or public utility, or officer or employee thereof, may be entitled under circumstances not covered by this section.

97 Acts, ch 127, §18

455H.305 Participation not deemed an admission of liability.

1. Enrolling a site pursuant to this chapter or participating in a response action does not constitute an admission of liability under the statutes of this state, the rules adopted pursuant to the statutes, or the ordinances and resolutions of a political subdivision, or an admission of civil liability under the Code or common law of this state.

2. The fact that a person has become a participant in a response action under this chapter is not admissible in any civil, criminal, or administrative proceeding initiated or brought under any law of this state other than to enforce this chapter.

3. All information, documents, reports, data produced, and any sample collected as a result of enrolling any property under this chapter are not admissible against the person undertaking the response action, and are not discoverable in any civil or administrative proceeding against the participant undertaking the response action except in a judicial or administrative proceeding initiated to enforce this chapter in connection with an alleged violation thereof. This prohibition against admissibility does not apply to any person whose covenant not to sue has been revoked under this chapter.

4. Enrolling a site pursuant to this chapter or participating in a response action shall not be construed to be an acknowledgment that the conditions at the affected area identified and addressed by the response action constitute a threat or danger to public health or safety or the environment.

97 Acts, ch 127, §19

455H.306 Liability protections.

The protections from liability afforded under this chapter shall be in addition to the exclusions to any liability protections afforded participants under any other provision of the Code.

97 Acts, ch 127, §20

455H.307 Liability — new release — condition outside affected area.

Protections afforded in this chapter shall not relieve a person from liability for a release of a hazardous substance occurring at the enrolled site after the issuance of a no further action letter or from liability for any condition outside the affected area addressed in the cleanup plan and no further action letter.

97 Acts, ch 127, §21

455H.308 Relationship to federal law.

The liability protection and immunities afforded under this chapter extend only to liability or potential liability arising under state law. It is not intended to provide any relief as to liability or potential liability arising under federal law. This section shall not be construed as precluding any agreement with a federal agency by which it agrees to provide liability protection based on participation and completion of a cleanup plan under this chapter.

97 Acts, ch 127, §22

455H.309 Incremental property taxes.

To encourage economic development and the recycling of contaminated land to promote the purposes of this chapter, cities and counties may provide by ordinance that the costs of carrying out response actions under this chapter are to be reimbursed, in whole or in part, by incremental property taxes over a six-year period. A city or county which implements the option provided for under this section shall provide that taxes levied on property enrolled in

the land recycling program under this chapter each year by or for the benefit of the state, city, county, school district, or other taxing district shall be divided as provided in section 403.19, subsections 1 and 2, in the same manner as if the enrolled property was taxable property in an urban renewal project. Incremental property taxes collected under this section shall be placed in a special fund of the city or county. A participant shall be reimbursed with moneys from the special fund for costs associated with carrying out a response action in accordance with rules adopted by the commission. Beginning in the fourth of the six years of collecting incremental property taxes, the city or county shall begin decreasing by twenty-five percent each year the amount of incremental property taxes computed under this section.

97 Acts, ch 127, §23

455H.310 through 455H.400 Reserved.

SUBCHAPTER 4

LAND RECYCLING FUND

455H.401 Land recycling fund.

1. A land recycling fund is created within the state treasury under the control of the commission. Moneys received from fees, general revenue, federal funds, gifts, bequests, donations, or other moneys so designated shall be deposited in the fund. Any unexpended balance in the land recycling fund at the end of each fiscal year shall be retained in the fund, notwithstanding section 8.33.

2. The commission may use the land recycling fund to provide for all of the following:

a. Financial assistance to political subdivisions of the state for activities related to an enrolled site.

b. Financial assistance and incentives for qualifying enrolled sites.

c. Funding for any other purpose consistent with this chapter and deemed appropriate by the commission.

97 Acts, ch 127, §24

Referred to in §455H.105

455H.402 through 455H.500 Reserved.

SUBCHAPTER 5

MISCELLANEOUS PROVISIONS

455H.501 and 455H.502 Repealed by 99 Acts, ch 114, §54.

455H.503 Recordkeeping requirements.

The director shall maintain a record of the affected areas or portion of affected areas for which no further action letters were issued under section 455H.301 and which involve institutional or technological controls that restrict the use of any of the enrolled sites to comply with applicable standards. The records pertaining to those sites shall indicate the applicable use restrictions.

97 Acts, ch 127, §27

455H.504 Transferability of participation benefits.

A no further action letter, a covenant not to sue, and any agreement authorized to be entered into and entered into under this chapter and the rules adopted pursuant to this chapter may be transferred by the participant or a later recipient to any other person by assignment or in conjunction with the acquisition of title to the enrolled site to which the document applies.

97 Acts, ch 127, §28

455H.505 Emergency response.

The provisions of this chapter shall not prevent or impede the immediate response of the department or a participant to an emergency which involves an imminent or actual release of a hazardous substance which threatens public health and safety or the environment. The emergency response action taken by the participant shall comply with the provisions of this chapter and the participant shall not be prejudiced by the mitigation measures undertaken to that point.

97 Acts, ch 127, §29

455H.506 Interim response.

The provisions of this chapter shall not prevent or impede a participant from undertaking mitigation measures to prevent significant impacts on human health or the environment. A response action for the site shall not be prejudiced by the mitigation measures undertaken prior to enrolling a property in the land recycling program. The effects of any interim mitigation measure shall be taken into account in the department's evaluation of the participant's compliance with applicable standards.

97 Acts, ch 127, §30

455H.507 Transition from existing programs.

Except for any enrolled site which is the subject of an enforcement action by an agency of the state or the federal government prior to July 1, 1997, for any property where actions similar to a response action have commenced pursuant to any provision of chapter 455B prior to July 1, 1997, the person carrying out the action shall elect within ninety days following the final adoption of rules implementing this chapter to either continue to proceed in accordance with the laws and rules in effect prior to July 1, 1997, or to proceed pursuant to this chapter.

97 Acts, ch 127, §31

455H.508 Participant protection.

A participant shall not be subject to either a civil enforcement action by an agency of this state or a political subdivision of this state, or an action filed pursuant to section 455B.112 regarding any release, response action, or condition which is the subject of the response action. This protection is contingent on the participant proceeding on a due and timely basis to carry out the response action.

97 Acts, ch 127, §32

455H.509 Removal of a site from the registry listing.

An enrolled site listed on the registry of confirmed hazardous waste or hazardous substance disposal sites, established pursuant to section 455B.426, which has completed a response action as to the conditions which led to its original listing on the registry, shall be removed from the registry listing, once a letter of no further action has been issued pursuant to section 455H.301.

97 Acts, ch 127, §33

455H.510 Relationship to federal programs.

The provisions of this chapter shall not prevent the department from enforcing both specific numerical cleanup standards and monitoring of compliance requirements specifically required to be enforced by the federal government as a condition of the receipt of program authorization, delegation, primacy, or federal funds.

97 Acts, ch 127, §34

455H.511 Federal stringency.

Any rules or standards established pursuant to this chapter shall be no more stringent than those required under any comparable federal law or regulation.

97 Acts, ch 127, §35

CHAPTER 455I

UNIFORM ENVIRONMENTAL COVENANTS ACT

Referred to in §455B.103, 455B.426, 455B.474, 455H.206, 558.68, 614.24, 614.32

455I.1 Title.
455I.2 Definitions.
455I.3 Nature of rights — subordination of interests.
455I.4 Contents of environmental covenant.
455I.5 Validity — effect on other instruments.
455I.6 Relationship to other land-use law.
455I.7 Notice.
455I.8 Recording.
455I.9 Duration — amendment by court or department action.
455I.10 Amendment or termination by consent.
455I.11 Enforcement of environmental covenant.
455I.12 Relation to Electronic Signatures in Global and National Commerce Act.

455I.1 Title.

This chapter shall be known and cited as the *"Uniform Environmental Covenants Act"*.

2005 Acts, ch 102, §5

455I.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Activity and use limitations"* means restrictions or obligations created under this chapter with respect to real property. *"Activity and use limitations"* may include, but is not limited to, restrictions on installation of water wells and other exposure receptors, construction of surface and subsurface structures, disturbance of and maintenance of soil caps and technological controls, and land use classifications such as residential, nonresidential, or industrial.

2. *"Agency"* means the department of natural resources created by section 455A.2 or any other state department or federal agency that determines or approves the environmental response project pursuant to which an environmental covenant is created.

3. *"Common interest community"* means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums for, or for maintenance or improvement of, other real property described in a recorded covenant that creates the common interest community.

4. *"Environmental covenant"* means a servitude arising under an environmental response project that imposes activity and use limitations or the written document creating such servitude.

5. *"Environmental response project"* means a plan or work performed for environmental remediation or flood control affecting real property and conducted under or by one of the following:

a. A federal or state program that is subject to the jurisdiction of an agency, including but not limited to programs established by chapters 455B and 455G, corrective or response actions pursuant to 42 U.S.C. §6901 et seq., and remedial actions under 42 U.S.C. §9601 et seq.

b. A federal or state program for the replacement or protection of ecological features including wetlands.

c. A state voluntary cleanup program authorized in chapter 455H.

d. An incident to a closure conducted with approval of an agency of a solid or hazardous waste management unit, a sanitary disposal project, or an underground storage tank.

6. *"Grantor"* means any person with sufficient fee title or other property ownership interests necessary to create a valid environmental covenant under Iowa law.

7. *"Holder"* means the grantee of an environmental covenant as specified in section 455I.3, subsection 1.

8. *"Person"* means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government,

governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

9. *"Record"*, used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2005 Acts, ch 102, §6; 2012 Acts, ch 1018, §5, 7

Referred to in §455H.103

Validity and enforceability under this chapter of certain instruments entered into on or after July 1, 1992, and before July 1, 2012, and declared as environmental covenants by July 1, 2013; 2012 Acts, ch 1018, §7

455I.3 Nature of rights — subordination of interests.

1. Any person, including a person that owns an interest in the real property, an agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

2. A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

3. An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the environmental covenant, but signing the environmental covenant does not change obligations, rights, or protections granted or imposed under law or administrative action other than this chapter except as provided in the environmental covenant.

4. The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

a. An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the environmental covenant.

b. This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the environmental covenant.

c. A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the covenant or record may be signed by any person authorized by the governing board of the owners' association.

d. An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

2005 Acts, ch 102, §7

Referred to in §455I.2

455I.4 Contents of environmental covenant.

1. An environmental covenant shall contain all of the following:

a. A statement that the instrument is an environmental covenant executed pursuant to this chapter.

b. A legally sufficient description of the real property subject to the environmental covenant.

c. A description of the activity and use limitations on the real property.

d. The identity of every holder and grantor.

e. A signature by the grantor, the agency, every holder, and, unless waived by the agency, every owner in fee simple of the real property subject to the environmental covenant.

f. Identification of the name and location of any final agency action decision documents for the environmental response project reflected in the environmental covenant.

g. The rights of access to the real property granted in connection with implementation or enforcement of the environmental covenant.

2. In addition to the information required in this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who sign the environmental covenant, including any of the following:

a. Requirements for periodic reporting describing compliance with the environmental covenant.

b. Requirements for notice to an agency following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the real property subject to the environmental covenant.

c. A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.

d. Limitations on amendment or termination of the environmental covenant in addition to those contained in sections 455I.9 and 455I.10.

e. Rights of the holder in addition to the holder's right to enforce the environmental covenant pursuant to section 455I.11.

3. In addition to other conditions for its approval of an environmental covenant authorized by law, an agency may require those persons specified by the agency who have interests in the real property to sign the environmental covenant.

2005 Acts, ch 102, §8

455I.5 Validity — effect on other instruments.

1. An environmental covenant that complies with this chapter runs with the land.

2. An environmental covenant that is otherwise effective is valid and enforceable even if any of the following applies to the environmental covenant:

a. The environmental covenant is not appurtenant to an interest in real property.

b. The environmental covenant can be or has been assigned to a person other than the original holder.

c. The environmental covenant is not of a character that has been recognized traditionally at common law.

d. The environmental covenant imposes a negative burden.

e. The environmental covenant imposes an affirmative obligation on a person having an interest in the real property or on the holder.

f. The benefit or burden does not touch or concern real property.

g. There is no privity of estate or contract.

h. The holder dies, ceases to exist, resigns, or is replaced.

i. The owner of an interest subject to the environmental covenant and the holder are the same person.

3. An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before July 1, 2005, is valid and enforceable and is not rendered invalid or unenforceable based upon any of the potential limitations on enforcement of interests described in subsection 2 or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

4. This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that was created prior to July 1, 2005, or that is otherwise enforceable under the laws of this state.

2005 Acts, ch 102, §9; 2006 Acts, ch 1030, §43, 89

455I.6 Relationship to other land-use law.

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this chapter.

2005 Acts, ch 102, §10

455I.7 Notice.

1. A copy of a recorded environmental covenant shall be provided to each of the following in the manner required by an agency:

a. Each person that signed the environmental covenant.

b. Each person holding a recorded interest in the real property subject to the environmental covenant.

c. Each person in possession of the real property subject to the environmental covenant.

d. Each municipality or other unit of local government in which real property subject to the environmental covenant is located.

e. Any other person the agency requires.

2. The validity of an environmental covenant is not affected by failure to provide a copy of the environmental covenant as required under this section.

2005 Acts, ch 102, §11

455I.8 Recording.

1. An environmental covenant and any amendment or termination of the environmental covenant shall be recorded in every county in which any portion of the real property subject to the environmental covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

2. Except as otherwise provided in section 455I.9, subsection 4, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property.

2005 Acts, ch 102, §12

455I.9 Duration — amendment by court or department action.

1. An environmental covenant is perpetual unless any of the following occurs:

a. The environmental covenant, by its terms, is limited to a specific duration or terminated by the occurrence of a specific event.

b. The environmental covenant is terminated by consent pursuant to section 455I.10.

c. The environmental covenant is terminated pursuant to subsection 2 or 3.

d. The environmental covenant is terminated by foreclosure of an interest that has priority over the environmental covenant.

e. The environmental covenant is terminated or modified in an eminent domain proceeding, but only if all of the following occur:

(1) The agency that signed the document, if any, is a party to the proceeding.

(2) Each person that signed the environmental covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence, and the current property owner are given notice of the pendency of the proceeding.

(3) The court determines, after hearing, that the termination or modification will not adversely affect human health and safety or the environment.

2. If the agency that signed an environmental covenant is a state agency and has determined that the intended purposes can no longer be realized, the agency may terminate the environmental covenant or reduce its burden on the real property subject to the environmental covenant. Notice shall be provided to each person that signed the covenant or their assignee, to the current property owner, and to any other persons identified in section 455I.10, subsection 1. The agency's determination or failure to make a determination upon request shall constitute final agency action. Failure by the agency to make a determination within sixty days upon request shall constitute final agency action. Any person entitled to notice by the agency shall be entitled to judicial review pursuant to section 17A.19 with the following exceptions:

a. Proceedings for judicial review shall be filed in the county in which the environmental covenant was recorded.

b. Notwithstanding section 17A.19, subsection 2, service of process shall not be jurisdictional and shall be as provided in the Iowa rules of civil procedure.

c. Notwithstanding section 17A.19, subsection 3, a petition for judicial review shall be filed within thirty days of the written decision by the agency. Such filing shall be jurisdictional.

d. The district court shall hear and consider relevant evidence, including testimony or other evidence not considered by the agency, regarding the question of whether the

environmental covenant should be terminated or the burden on the real estate reduced if, based on changed circumstances, the court determines the intended purposes of the environmental covenant can no longer be realized.

3. If the agency that signed an environmental covenant is a federal agency, the agency's determination or failure to make a determination as provided in subsection 2 shall be reviewable in accordance with applicable federal law.

4. Except as otherwise provided in subsections 1, 2, and 3, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

5. An environmental covenant may not be extinguished, limited, or impaired by application of section 558.68 or sections 614.24 through 614.38.

2005 Acts, ch 102, §13
Referred to in §455I.4, 455I.8

455I.10 Amendment or termination by consent.

1. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by all of the following:

a. The agency.

b. The current owner in fee simple of the real property subject to the environmental covenant.

c. Each person that originally signed the environmental covenant or an assignee of an original signatory, unless the person waived in a recorded document the right to consent or the agency finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence.

d. Except as otherwise provided in subsection 4, paragraph "*b*", the holder.

2. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment to the environmental covenant unless the current owner of the interest consents to the amendment or has waived in a recorded document the right to consent to amendments.

3. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

4. Except as otherwise provided in an environmental covenant, all of the following apply:

a. A holder may not assign its interest without consent of the other parties as provided in subsection 1.

b. A holder may be removed and replaced by agreement of the other parties specified in subsection 1.

c. A court of competent jurisdiction may fill a vacancy in the position of holder.

2005 Acts, ch 102, §14
Referred to in §455I.4, 455I.9

455I.11 Enforcement of environmental covenant.

1. A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by any of the following:

a. A holder or grantor.

b. The agency or, if the agency is not the agency with authority to determine or approve the environmental response project, the department of natural resources.

c. Any person to whom the environmental covenant expressly grants power to enforce the environmental covenant.

d. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the environmental covenant.

e. A municipality or other unit of local government in which the real property subject to the environmental covenant is located.

2. This chapter does not limit the regulatory authority of an agency under law other than this chapter with respect to an environmental response project.

3. A person is not responsible for or subject to liability for environmental remediation or flood control solely because it has the right to enforce an environmental covenant.

2005 Acts, ch 102, §15; 2006 Acts, ch 1030, §44; 2012 Acts, ch 1018, §6, 7

Referred to in §455I.4

Validity and enforceability under this chapter of certain instruments entered into on or after July 1, 1992, and before July 1, 2012, and declared as environmental covenants by July 1, 2013; 2012 Acts, ch 1018, §7

455I.12 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 et seq., but does not modify, limit, or supersede section 101(a) of that Act, 15 U.S.C. §7001(a), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, 15 U.S.C. §7003(b).

2005 Acts, ch 102, §16

CHAPTER 455J

ENVIRONMENTAL MANAGEMENT SYSTEMS

455J.1 Environmental management systems — legislative findings — purpose.
455J.2 Definitions.
455J.3 Environmental management system designation requirements.
455J.4 Annual compliance reports.
455J.5 Incentives.
455J.6 Solid waste alternatives program advisory council. Repealed by 2017 Acts, ch 45, §10.
455J.7 Designation of environmental management systems.

455J.1 Environmental management systems — legislative findings — purpose.

1. The purpose of this chapter is to encourage responsible environmental management and solid waste disposal and to enhance efforts to promote environmental stewardship.

2. The general assembly finds and declares all of the following:

a. The policy of responsible environmental management can be furthered by rewarding solid waste planning and service areas that operate in an innovative, cost-effective, technologically advanced, and environmentally sensitive manner.

b. Responsible environmental management can also be furthered by changing the focus of solid waste disposal projects from disposal management to environmental resource management.

c. The concept of environmental stewardship embraces every aspect of the environmental footprint created by the management and disposal of solid waste.

d. Environmental management systems mitigate the climate change impacts of solid waste disposal by reducing the amount of greenhouse gases released into the atmosphere. In addition, environmental management systems improve water quality by limiting and treating the impacts of leachate disposal and by providing positive examples of sustainable water resource management.

e. The goal of managing resources in a sustainable manner is to increase the benefits to communities and society for the present and for the future.

2008 Acts, ch 1109, §4; 2017 Acts, ch 45, §3

Referred to in §455J.7

455J.2 Definitions.

For purposes of this chapter:

1. *"Commission"* means the environmental protection commission.

2. *"Department"* means the department of natural resources.

3. *"Director"* means the director of the department of natural resources.

4. *"Environmental management system"* or *"system"* means a solid waste planning or service area which has been designated as an environmental management system pursuant to section 455J.7. *"Environmental management system"* includes a planning or

service area designated as an environmental management system that is providing multiple environmental services in addition to solid waste disposal and that is planning for the continuous improvement of solid waste management by appropriately and aggressively mitigating the environmental impacts of solid waste disposal.

2008 Acts, ch 1109, §5; 2017 Acts, ch 45, §4, 5

455J.3 Environmental management system designation requirements.

To qualify for designation as an environmental management system pursuant to section 455J.7, a solid waste planning or service area shall actively pursue all of the following:

1. *Organics waste management.* Provide for the operation of an organics waste management program or provide support to another party to do so.

2. *Hazardous household materials collection.* Provide for the proper management and disposal of hazardous household materials by operating a regional collection center or participating in a regional collection center network. The regional collection center shall provide for the collection and disposal of hazardous household materials, including but not limited to paint, pesticides, batteries, automotive products, sharps, needles and syringes, and pool chemicals. The regional collection center shall encourage the reuse of any materials for which reuse is possible and may educate households on the use of safer alternatives through efforts designed to increase public participation and to increase the participation of local government entities not currently in a network. Regional collection centers may also provide for the assessment of current educational programs by examining changes in consumer behavior.

3. *Water quality improvement.* Provide for a water quality improvement program within the system's planning or service area. Such a program may include offering educational programs, sponsoring awareness initiatives, providing for cleanup activities such as the cleanup of illegal dumping areas, and otherwise promoting responsible environmental behavior.

4. *Greenhouse gas reduction.* Implement a greenhouse gas reduction program designed to prevent the release of greenhouse gases into the atmosphere. Such a program may include but is not limited to the following activities:

a. Generating electricity or producing other fuels through the collection of landfill gas, such as a methane gas recovery or minimization system.

b. Collecting and managing food and other organic waste from households and from industrial and commercial establishments, or attempting to recover energy from the reuse of biomass.

c. Implementing programs that encourage the efficient use of energy and promote the use of renewable fuels.

d. Discouraging the uncontrolled burning of solid waste and yard waste.

e. Setting recycling goals to measure energy savings and quantify the level of success of greenhouse gas mitigation efforts.

f. Collection and recycling services targeted at waste generated by industrial and commercial facilities such as cardboard, paper, construction, and demolition waste.

5. *Recycling services.*

a. Offer recycling services for paper, glass, metal, and plastics within the communities served. In addition to offering recycling of paper, metal, glass, and plastics, a solid waste planning or service area may also offer recycling services for electronic waste, white goods, and tires.

b. Recycling services may also be targeted at waste generated by industrial and commercial facilities such as cardboard, paper, construction, and demolition waste.

c. Recycling services offered in an effort to meet the goals of this subsection may be provided through drop-off sites or through curbside recycling programs operated in conjunction with solid waste collection.

6. *Environmental education.* Plan and implement programs educating the public on environmental stewardship. These programs may include components designed to prevent illegal dumping, reduce greenhouse gas emissions, improve water quality, reduce waste

generation, increase recycling and reuse, or any other environmental objective that furthers the purpose and goals of this chapter.

2008 Acts, ch 1109, §6; 2017 Acts, ch 45, §6

Referred to in §455E.11, 455J.4, 455J.7

455J.4 Annual compliance reports.

1. On September 1 each year, each environmental management system shall submit to the department an annual report. The report shall document the system's compliance with the requirements of section 455J.3.

2. The department shall adopt by rule methods and criteria for determining whether a system is in compliance with the provisions of this chapter. In adopting methods and criteria, the department shall consult with stakeholders in order to develop reasonable and appropriate criteria. In determining whether a system is in compliance with the provisions of this chapter, the department shall evaluate whether a system is making continuing progress in regard to the requirements of section 455J.3.

2008 Acts, ch 1109, §7; 2017 Acts, ch 45, §7

455J.5 Incentives.

1. A solid waste planning or service area designated as an environmental management system pursuant to section 455J.7 shall qualify for all of the following:

a. An exemption from solid waste reduction goals imposed on solid waste planning or service areas pursuant to section 455D.3.

b. A reduced tonnage fee of three dollars and sixty-five cents per ton, to be imposed as provided in section 455B.310, notwithstanding section 455B.310, subsection 2, of which two dollars and ten cents shall be remitted to the department.

c. Financial assistance as approved by the commission pursuant to section 455J.7.

2. Notwithstanding any other provision of law to the contrary, in addition to the incentives in subsection 1, a solid waste planning or service area designated as an environmental management system is exempt from filing its comprehensive plan.

2008 Acts, ch 1109, §8; 2017 Acts, ch 45, §8

Referred to in §455B.310

455J.6 Solid waste alternatives program advisory council. Repealed by 2017 Acts, ch 45, §10.

455J.7 Designation of environmental management systems.

1. *Consideration of plans.* The department shall consider solid waste management plans submitted by solid waste planning or service areas and make recommendations for designation as an environmental management system to the commission. All system designations recommended by the department are subject to approval by the commission. Any solid waste planning or service area may submit a plan to the department and seek designation as a system.

a. By October 1 each year, the department may recommend the designation of any additional planning or service areas as systems, provided those areas meet the requirements of section 455J.3.

b. In recommending the designation of a planning or service area as a system, the department shall make a determination as to whether the area meets the requirements of section 455J.3. The department shall not recommend the designation of a planning or service area as a system unless the planning or service area meets the requirements of section 455J.3.

c. The commission shall consider the plans submitted to the department and shall review the department's recommendations on those plans. The commission shall approve or reject each plan and shall make publicly available its reasons for doing so.

2. *System review.*

a. By January 1 each year, the department shall review the annual reports of all designated systems and determine whether those systems remain in compliance with section 455J.3. If the department determines that a planning or service area is no longer in compliance, the

department may recommend to the commission the revocation of the planning or service area's system designation.

b. The department may review and monitor the progress of those planning or service areas that have not been designated as a system and shall coordinate with other statewide boards, task forces, and other entities in order to achieve the goals and objectives of this chapter.

3. *Allocation of funds.*

a. The department shall recommend to the commission a reasonable allocation of the moneys provided in section 455E.11, subsection 2, paragraph "*a*", subparagraph (1), subparagraph division (c), to eligible systems. In making its recommendation as to the allocation of moneys, the department shall adopt and use a set of reasonable criteria. The criteria shall conform to the goals and purposes of this chapter as described in section 455J.1 and shall be approved by the commission.

b. Notwithstanding any other provision of law to the contrary, the commission shall make a final allocation of the funds described in section 455E.11, subsection 2, paragraph "*a*", subparagraph (1), subparagraph division (c), to systems meeting the requirements of this chapter.

c. Moneys allocated pursuant to this subsection shall be used by systems to further compliance with any of the requirements of this chapter.

4. The department shall prepare an annual report citing the results and costs of the program for submittal to the commission by January 1, 2018, and by January 1 each year thereafter.

2008 Acts, ch 1109, §10; 2009 Acts, ch 41, §263; 2017 Acts, ch 45, §9

Referred to in §455D.3, 455E.11, 455J.2, 455J.3, 455J.5

CHAPTER 455K

ENVIRONMENTAL AUDIT PRIVILEGE AND IMMUNITY

455K.1 Title.
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455K.9 Other privileges not affected.
455K.10 Environmental auditor training program.
455K.11 Summary.
455K.12 Rulemaking.
455K.13 Costs.

455K.1 Title.

This chapter shall be known and cited as the "*Environmental Audit Privilege and Immunity Act*".

98 Acts, ch 1109, §1

455K.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Department*" means the department of natural resources created under section 455A.2 or its delegated authority.

2. "*Environmental audit*" means a voluntary evaluation of a facility or operation, of an activity at a facility or operation, or of an environmental management system at a facility or operation when the facility, operation, or activity is regulated under state or federal environmental laws, rules, or permit conditions, conducted by an owner or operator, an employee of the owner or operator, or an independent contractor retained by the owner or operator that is designed to identify historical or current noncompliance with environmental laws, rules, ordinances, or permit conditions, discover environmental contamination or hazards, remedy noncompliance or improve compliance with environmental laws, or improve an environmental management system. Once notification is given to the

department, an environmental audit shall be completed within a reasonable time not to exceed six months unless an extension is approved by the department based on reasonable grounds.

3. *"Environmental audit report"* means a document or set of documents generated and developed for the primary purpose and in the course of or as a result of conducting an environmental audit. An *"environmental audit report"* includes supporting information which may include, but is not limited to, the report document itself, observations, samples, analytical results, exhibits, findings, opinions, suggestions, recommendations, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, charts, graphs, surveys, implementation plans, interviews, discussions, correspondence, and communications related to the environmental audit. An *"environmental audit report"* may include any of the following components:

a. An executive summary prepared by the person conducting the environmental audit which may include the scope of the environmental audit, the information gained in the environmental audit, conclusions, recommendations, exhibits, and appendices.

b. Memoranda and documents analyzing portions or all of the report and discussing implementation issues.

c. An implementation plan which addresses correcting past noncompliance, improving current compliance or an environmental management system, or preventing future noncompliance.

d. Periodic updates documenting progress in completing the implementation plan.

4. *"Inquiring party"* means any party appearing before a court or a presiding officer in an administrative proceeding seeking to review or obtain an in camera review of an environmental audit report.

5. *"Owner or operator"* means the person or entity who caused the environmental audit to be undertaken.

6. *"Privilege"* means the protections provided in regard to an environmental audit report as provided in this chapter.

98 Acts, ch 1109, §2
Referred to in §455K.3

455K.3 Privilege.

1. Material included in an environmental audit report generated during an environmental audit conducted after July 1, 1998, is privileged and confidential and is not discoverable or admissible as evidence in any civil or administrative proceeding, except as otherwise provided in this chapter. The environmental audit report shall be labeled "ENVIRONMENTAL AUDIT REPORT: PRIVILEGED DOCUMENT". Failure to label each document within the report does not constitute a waiver of the environmental audit privilege or create a presumption that the privilege does or does not apply.

2. A person shall not be compelled to testify in regard to or produce a document included in an environmental audit report in any of the following circumstances:

a. If the testimony or document discloses any component listed in section 455K.2, subsection 3, that was made as part of the preparation of an environmental audit report and that is addressed in a privileged part of an environmental audit report.

b. If the person is any of the following:

(1) A person who conducted any portion of the environmental audit but did not personally observe the physical events of an environmental violation.

(2) A person to whom the results of the environmental audit report are disclosed under section 455K.4, subsection 2.

(3) A custodian of the environmental audit report.

3. A person who conducts or participates in the preparation of an environmental audit report and who has observed physical events of an environmental violation may testify about those events but shall not be compelled to testify about or produce documents related to the preparation of or any privileged part of an environmental audit or any component listed in section 455K.2, subsection 3.

4. An employee of a state agency or other governmental employee shall not request,

review, or otherwise use an environmental audit report during an agency inspection of a regulated facility or operation, or an activity of a regulated facility or operation.

5. A party asserting the privilege under this section has the burden of establishing the applicability of the privilege.

6. The privilege provided in this section is in addition to the privilege provided to assistance programs pursuant to section 455B.484A.

98 Acts, ch 1109, §3
Referred to in §455K.4, 455K.8

455K.4 Waiver of privilege — disclosure.

1. The privilege described in section 455K.3 shall not apply to the extent that the privilege is expressly waived in writing by the owner or operator who prepared the environmental audit report or caused the report to be prepared.

2. Disclosure of an environmental audit report or any other information generated by an environmental audit does not waive the privilege established in section 455K.3 if the disclosure meets any of the following criteria:

a. The disclosure is made to address or correct a matter raised by the environmental audit and the disclosure is made to any of the following:

(1) A person employed by the owner or operator, including temporary and contract employees.

(2) A legal representative of the owner or operator.

(3) An officer or director of the regulated facility or operation or a partner of the owner or operator.

(4) An independent contractor retained by the owner or operator.

b. The disclosure is made under the terms of a confidentiality agreement between any person and the owner or operator of the audited facility or operation.

3. A party to a confidentiality agreement described in subsection 2, paragraph *"b"*, who violates that agreement is liable for damages caused by the disclosure and for any other penalties stipulated in the confidentiality agreement.

4. Information that is disclosed under subsection 2, paragraph *"b"*, is confidential and is not subject to disclosure under chapter 22.

5. The protections provided by federal or state law shall be afforded to individuals who disclose information to law enforcement authorities.

6. The provisions of this chapter shall not abrogate the protections provided by federal and state law regarding confidentiality and trade secrets.

98 Acts, ch 1109, §4; 2011 Acts, ch 106, §15, 17
Referred to in §455K.3

455K.5 Required disclosure.

1. A court or a presiding officer in an administrative hearing may require disclosure of a portion of an environmental audit report in a civil or administrative proceeding if the court or presiding officer affirmatively determines, after an in camera review, that any of the following exists:

a. The privilege is asserted for a fraudulent purpose.

b. The portion of the environmental audit report is not subject to the privilege under section 455K.6.

c. The portion of the environmental audit report shows evidence of noncompliance with a state or federal environmental or other law, rule, or permit condition and appropriate efforts to achieve compliance with the law or ordinance were not promptly initiated and pursued with reasonable diligence after discovery of noncompliance.

d. The portion of the environmental audit report shows clear and convincing evidence of substantial actual personal injury, which information is not otherwise available.

e. The portion of the environmental audit report shows a clear and present danger to the public health or the environment.

2. A party seeking disclosure under this section has the burden of proving that subsection 1 applies.

3. A decision of a presiding officer in an administrative hearing under subsection 1 may be directly appealed to the district court without disclosure of the environmental audit report to any person unless so ordered by the court.

4. A determination of a court under this section is subject to interlocutory appeal to an appropriate appellate court.

5. If a court finds that a person claiming privilege under this chapter intentionally claimed the privilege for material not privileged as provided in section 455K.6, the person is subject to a fine not to exceed one thousand dollars.

6. Privilege provided in this chapter does not apply if an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, or permit conditions, that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure.

98 Acts, ch 1109, §5

455K.6 Materials not privileged.

1. The privilege described in this chapter does not apply to any of the following:

a. A document, communication, datum, report, or other information required by a regulatory agency to be collected, developed, retained, or reported under a state or federal environmental law, rule, or permit condition.

b. Information obtained by observation, sampling, or monitoring by a regulatory agency or a regulatory agency's authorized designee.

c. Information obtained from a source not involved in the preparation of the environmental audit report.

2. This section does not limit the right of a person to agree to conduct an environmental audit and disclose an environmental audit report.

98 Acts, ch 1109, §6

Referred to in §455K.5, 455K.7

455K.7 Review of privileged documents.

1. The privileges created in this chapter shall not apply to criminal investigations or proceedings. An environmental audit report, supporting documents, and testimony relating thereto may be obtained by a prosecutor's subpoena pursuant to the rules of criminal procedure. If an environmental audit report is obtained, reviewed, or used in a criminal investigation or proceeding, the administrative and civil evidentiary privilege established in this chapter is not waived or made inapplicable for any purpose other than for the criminal investigation or proceeding.

2. Notwithstanding the privilege established in this chapter, the department may review information in an environmental audit report, but such review does not waive or make the administrative and civil evidentiary privilege inapplicable to the report. A regulatory agency shall not adopt a rule or impose a condition that circumvents the purpose of this chapter.

3. If information is required to be made available to the public by operation of a specific state or federal law, rule, or permit condition, the governmental authority shall notify the person claiming the privilege of the potential for public disclosure prior to obtaining such information under subsection 1 or 2.

4. If privileged information is disclosed under subsection 2 or 3, on the motion of a party, a court or the presiding officer in an administrative hearing shall suppress evidence offered in any civil or administrative proceeding that arises or is derived from review, disclosure, or use of information obtained under this section if the review, disclosure, or use is not authorized under section 455K.6. A party having received information under subsection 2 or 3 has the burden of proving that the evidence offered did not arise and was not derived from the review of privileged information.

98 Acts, ch 1109, §7

455K.8 Voluntary disclosure of environmental violation — immunity.

1. An owner or operator is eligible for immunity under this section from the time the department receives official notification from the owner or operator of a scheduled environmental audit. An owner or operator is immune from any administrative or civil penalty associated with the information disclosed if the owner or operator makes a prompt voluntary disclosure to the department regarding an environmental violation which is discovered through the environmental audit. The owner or operator creates a rebuttable presumption that the disclosure is voluntary by meeting the criteria provided in subsection 2 at the time of disclosure. To rebut the presumption that a disclosure is voluntary, the department or other party has the burden of proving that the disclosure was not voluntary. Immunity is not provided if the violations of state or federal environmental law, rule, or permit condition are intentional or if the violations of state or federal law, rule, or permit condition resulted in substantial actual injury or imminent and substantial risk of injury to persons, property, or the environment.

2. The disclosure of information is voluntary if all of the following circumstances exist:

a. The disclosure arises out of an environmental audit and relates to privileged information as provided in section 455K.3.

b. The person making the disclosure uses reasonable efforts to pursue compliance and to correct the noncompliance within a reasonable period of time after completion of the environmental audit in accordance with a remediation schedule submitted to and approved by the department. If evidence shows that the noncompliance is due to the failure to obtain a permit, reasonable effort may be demonstrated by the submittal of a complete permit application within a reasonable time. Disclosure of information required to be reported by state or federal law, rule, or permit condition is not considered to be voluntary disclosure and the immunity provisions in this section are not applicable.

c. Environmental violations are identified in an environmental audit report and disclosed to the department before there is notice of a citizen suit or a legal complaint by a third party.

d. Environmental violations are identified in an environmental audit report and disclosed to the department before the environmental violations are reported by any person not involved in conducting the environmental audit or to whom the environmental audit report was disclosed.

3. If an owner or operator has not provided the department with notification of a scheduled environmental audit prior to performing the audit, a disclosure of information is voluntary if the environmental violations are identified in an environmental audit report and disclosed by certified mail to the proper regulatory agency that has jurisdiction over the disclosed violation prior to the agency's commencement of an investigation.

4. If a person is required to make a disclosure relating to a specific issue under a specific permit condition or under an order issued by the department, the disclosure is not voluntary with respect to that issue.

5. Except as provided in this section, this section does not impair the authority of the proper regulatory agency to require a technical or remedial action or to order injunctive relief.

6. Upon application to the department, the time period within which the disclosed violation is corrected under subsection 2 may be extended if it is not practical to correct the noncompliance within the reasonable period of time initially approved by the department. The department shall not unreasonably withhold the grant of an extension. If the department denies an extension, the department shall provide the requesting party with a written explanation of the reasons for the denial. A request for de novo review of the department's decision may be made to the appropriate court.

7. Immunity provided under this section from administrative or civil penalties does not apply under any of the following circumstances:

a. If an owner or operator of the facility or operation has been found in a civil or administrative proceeding to have committed serious violations in this state that constitute a pattern of continuous or repeated violations of environmental laws, administrative rules, and permit conditions and that were due to separate and distinct events giving rise to the violations within the three-year period prior to the date of disclosure, or if under section 459.604 an owner or operator of a facility or operation is classified as a habitual violator.

b. If a violation of an environmental law, administrative rule, permit condition, settlement agreement, or order on consent, final order, or judicial order results in a substantial economic benefit which gives the violator a clear advantage over its business competitors.

8. In cases where the conditions of a voluntary disclosure are not met but a good faith effort was made to voluntarily disclose and resolve a violation detected in an environmental audit, the state regulatory authorities shall consider the nature and extent of any good faith effort in deciding the appropriate enforcement response and shall consider reducing any administrative or civil penalties based on mitigating factors showing that one or more of the conditions for voluntary disclosure have been met.

9. The immunity provided by this section does not abrogate the responsibility of a person as provided by applicable law to report a violation, to correct the violation, conduct necessary remediation, or respond to third-party actions. This chapter shall not be construed to confer immunity from liability in any private civil action except those actions brought pursuant to section 455B.111.

10. Information required by rule to be submitted to the department as part of a disclosure made pursuant to this section is not privileged information.

98 Acts, ch 1109, §8

455K.9 Other privileges not affected.

This chapter shall not limit, waive, or abrogate the scope or nature of any statutory or common-law privilege, including the work product doctrine and the attorney-client privilege.

98 Acts, ch 1109, §9

455K.10 Environmental auditor training program.

A training program for and standards for certification of environmental auditors shall be developed jointly by the Iowa waste reduction center and the department. The training program shall be administered by the Iowa waste reduction center. The program shall provide training on the proper conduct of an environmental audit; local, state, and federal environmental ordinances, rules, and laws that apply to businesses in this state; and the environmental audit laws in this state. The program shall be made available to small and large business owners and operators, consulting engineers, regulatory personnel, and citizens through the community college system. A fee may be assessed for participation in the program. Upon completion of the training program, program participants may elect to be tested by the department for certification as an environmental auditor for the purposes of this chapter.

98 Acts, ch 1109, §10

455K.11 Summary.

On or before December 1 of each year, the department shall make available a summary of the number of environmental audit notices received, the violations, and the remediation status of the violations reported pursuant to this chapter during the preceding fiscal year.

98 Acts, ch 1109, §11

455K.12 Rulemaking.

The department shall adopt rules pursuant to chapter 17A necessary to administer this chapter.

98 Acts, ch 1109, §12

455K.13 Costs.

The necessary costs incurred by the department under this chapter shall be funded from appropriations made to the department from the general fund of the state.

98 Acts, ch 1109, §13

CHAPTER 456

GEOLOGICAL SURVEY

Chapter transferred from chapter 460A in Code 2003 pursuant to
Code editor directive; 2002 Acts, 2nd Ex, ch 1003, §260, 262

456.1 Iowa geological survey created.
456.2 State geologist — qualifications.
456.3 Survey.
456.4 Investigations — collection.
456.5 Authority to enter lands.
456.6 Detailed reports.
456.7 Annual report.
456.8 Cooperation.
456.9 Publication of reports.
456.10 Distribution of reports.
456.11 Maps — surveys.
456.12 Failure to furnish map.
456.13 Maps property of state — custody — copies.
456.14 Water resource management.

456.1 Iowa geological survey created.

An Iowa geological survey of the state is created within the state university of Iowa, under the jurisdiction and authority of the state board of regents.

[C97, §2497; C24, 27, 31, 35, 39, §**4549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.1]
86 Acts, ch 1245, §1881
C93, §460A.1
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.1
2011 Acts, ch 25, §143; 2018 Acts, ch 1023, §12; 2019 Acts, ch 131, §34
Section amended

456.2 State geologist — qualifications.

The state board of regents shall appoint the state geologist. The state geologist must, at a minimum, have a master's degree in geology from an accredited college or university and must have at least five years of geological experience. The annual salary of the state geologist shall be determined by the state board of regents.

[R60, §180, 181; C97, §2498; C24, 27, 31, 35, 39, §**4550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.2]
86 Acts, ch 1245, §1882
C93, §460A.2
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.2
2018 Acts, ch 1023, §13

456.3 Survey.

The state geologist shall be director of the survey and shall make a complete survey of the natural resources of the state in all their economic and scientific aspects, including the determination of the order, arrangement, dip, and comparative magnitude of the various formations; the discovery and examination of all useful deposits, including their richness in mineral contents and their fossils; and the investigation of the position, formation, and arrangement of the different ores, coals, clays, building stones, glass sands, marls, peats, mineral oils, natural gases, mineral and artesian waters, and such other minerals or other materials as may be useful, with particular regard to the value thereof for commercial purposes and their accessibility.

[R60, §182; C97, §2499; C24, 27, 31, 35, 39, §**4551;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.3]
C93, §460A.3
2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.3

456.4 Investigations — collection.

The state geologist shall investigate the characters of the various soils and their capacities for agricultural purposes, the streams, and other scientific and natural resource matters that

may be of practical importance and interest. A complete cabinet collection shall be made to illustrate the natural products of the state, and the state geologist may also furnish suites of materials, rocks, and fossils for colleges and public museums within the state, if it can be done without impairing the general state collection.

[R60, §182, 185, 187; C97, §2499; C24, 27, 31, 35, 39, §**4552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.4]

C93, §460A.4

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.4

2003 Acts, ch 145, §286; 2018 Acts, ch 1023, §14

456.5 Authority to enter lands.

For the purpose of carrying on the aforesaid investigations the state geologist and the state geologist's assistants and employees shall have authority to enter and cross all lands within the state; provided that in so doing no damage is done to private property.

[C24, 27, 31, 35, 39, §**4553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.5]

C93, §460A.5

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.5

456.6 Detailed reports.

The state geologist and the state geologist's assistants shall make detailed maps and reports of counties and districts as fast as the work is completed, which reports shall embrace such geological, mineralogical, topographical, and scientific details as are necessary to make complete records thereof, which may include the necessary illustrations, maps, charts, and diagrams.

[R60, §184; C97, §2500; S13, §2500; C24, 27, 31, 35, 39, §**4554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.6]

C93, §460A.6

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.6

456.7 Annual report.

The state geologist shall, annually, at the time provided by law, make to the governor and the general assembly a full report of the work in the preceding year, which report shall be accompanied by such other reports and papers as may be considered desirable for publication.

[R60, §184; C97, §2498, 2500; S13, §2500; C24, 27, 31, 35, 39, §**4555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.7]

C93, §460A.7

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.7

2018 Acts, ch 1023, §15

456.8 Cooperation.

The state geologist shall cooperate with the United States geological survey, with other federal and state organizations, and with adjoining state surveys in the making of topographic maps and the study of geologic problems of the state when, in the opinion of the state geologist, such cooperation will result in profit to the state.

[S13, §2500; C24, 27, 31, 35, 39, §**4556;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.8]

C93, §460A.8

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.8

456.9 Publication of reports.

The state geologist may direct the preparation and publication of special reports and bulletins of educational and scientific value or containing information of immediate use to the people.

[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §**4557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.9]

C93, §460A.9

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.9

Reports, §7A.27

456.10 Distribution of reports.

All publications of the Iowa geological survey shall be made available electronically via an internet site maintained for that purpose.

[C97, §2501; S13, §2501; C24, 27, 31, 35, 39, §**4558;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §305.10]

C93, §460A.10

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.10

2018 Acts, ch 1023, §16; 2019 Acts, ch 131, §35

Section amended

456.11 Maps — surveys.

The operator of any underground mine shall comply with the following provisions relative to maps and surveys:

1. *Scale.* Each mine map shall be drawn to a scale of not more than two hundred feet to the inch.

2. *General specifications.* Each map shall show the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or operator, the certificate of the mining engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the map is drawn.

3. *Boundaries and surface lines.* Every map shall correctly show the surface boundary lines of the mineral rights pertaining to each mine and all section or quarter section lines or corners within the same, the lines of town lots and streets, the tracks and sidetracks of all railroads, the location of all wagon roads, rivers, streams, and ponds, and reservations made of the mineral.

4. *Underground conditions.* For the underground workings, the map shall show all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the location of the escape ways, and of the fan or furnace or other means of ventilation and the direction of air currents, and the location of permanent pumps, hauling engines, engine planes, abandoned works, fire walls, and standing water.

5. *Separate maps.* A separate and similar map drawn to the same scale in all cases shall be made of each layer of minerals mined in any mine in this state. A separate map shall also be made of the surface whenever the surface buildings, lines, or objects are so numerous as to obscure the details of the mine workings if drawn upon the same sheet with them, and in such case the surface map shall be drawn upon transparent cloth or paper so that it can be laid upon the map of the underground workings and thus truly indicate the local relation of lines and objects on the surface to the excavations of the mine and any other principal workings of the mine.

6. *Rise and dip of minerals.* Each map of underground workings shall also show by profile drawing and measurement, the last one hundred fifty feet approaching the boundary lines, showing the rise and dip of the minerals.

7. *Copies.* The original or true copies of the maps shall be kept at the office of the mine, and true copies thereof shall also be furnished the state geologist within thirty days after the completion of the same.

8. *Extensions.* An accurate extension of the last preceding survey of every mine in active operation shall be made once in every twelve months prior to July 1 of every year and the result of such survey, with the date thereof, shall be promptly and accurately entered upon the original map, and a true, correct, and accurate copy of the extended map shall be forwarded to the state geologist so as to show all changes in plan of new work in the mine, and all extensions of the old workings to the most advanced face or boundary of the workings which have been made since the last preceding survey, and the parts of the mine abandoned or worked out after the last preceding survey shall be clearly indicated and shown by colorings, which copy must be delivered to the state geologist within thirty days after the last survey is made.

9. *Abandoned mine.* When any underground mine is worked out or is about to be abandoned or indefinitely closed, the operator of the same shall make or cause to be made a completed and extended map of the mine and the result of the same shall be duly extended on all maps of the mine and copies thereof so as to show all excavations and the most advanced workings of the mine, and their exact relation to the boundary or section lines on the surface, and deliver to the state geologist a copy of the completed map.

10. *Copies furnished.* The state geologist shall provide the division of soil conservation and water quality created within the department of agriculture and land stewardship pursuant to section 159.5 a copy of each map and map extension received by the geologist under this section.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §**1245, 1351 – 1355, 1357, 1358;** C46, 50, 54, 58, 62, 66, 71, 73, §82.28, 83.14 – 83.18, 83.20, 83.21; C75, 77, 79, 81, §305.12]

C93, §460A.12

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.11

2015 Acts, ch 103, §44

Referred to in §456.13

456.12 Failure to furnish map.

When the operator of any mine neglects or refuses for a period of ninety days to furnish to the state geologist the map or plan, or a copy thereof, of such mine or any extension thereof, as provided in this chapter, the state geologist shall cause to be made an accurate map or plan of such mine or extension as the case may be, at the expense of the operator. The cost shall be paid by the state and recovered from such operator. It shall be the duty of the county attorney of the county in which such mine is located, at the request of the state geologist, to bring action in the name of the state for such recovery.

[S13, §2485-a, 2496-m; C24, 27, 31, 35, 39, §**1246, 1359;** C46, 50, 54, 58, 62, 66, 71, 73, §82.29, 83.22; C75, 77, 79, 81, §305.13]

C93, §460A.13

2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §456.12

Referred to in §331.756(46)

456.13 Maps property of state — custody — copies.

The maps so delivered to the state geologist shall be the property of the state and shall remain in the custody of the state geologist. They shall be kept at the office of the Iowa geological survey and be open to examination by all persons interested in the maps; but such examination shall only be made in the presence of the state geologist or a designee, and the state geologist shall not permit any copies of the maps to be made without the written consent of the operator or the owner of the property, except as provided in section 456.11 or if the mine has been abandoned for at least five years.

[C97, §2485; S13, §2485, 2496-m; C24, 27, 31, 35, 39, §**1247, 1356;** C46, 50, 54, 58, 62, 66, 71, 73, §82.30, 83.19; C75, 77, 79, 81, §305.14]

C93, §460A.14

2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §456.13
2019 Acts, ch 131, §36
Section amended

456.14 Water resource management.

1. The state geologist shall maintain historical data, collect existing data, and compile new data regarding water resources, including surface water sources and groundwater sources, and geological formations that impact upon those water resources. Such data shall be managed in a manner that allows it to be made available for use by the department of natural resources and the public.

2. The state geologist shall measure, assess, and evaluate groundwater sources and subsurface geological formations in a manner that assists the department of natural resources in optimizing allocations and uses of groundwater sources in this state, including as provided in chapter 455B, division III, part 4. The state geologist may use data described in subsection 1 to measure, assess, and evaluate all of the following:

a. The sustainability and existing or potential vulnerabilities of groundwater sources.

b. The risk, prediction, or indication of drought, the impacts of drought, and the presence, intensity, or duration of drought conditions.

c. Subsurface geologic hazards to groundwater resources.

d. The recharge of groundwater sources, including recharge rates.

e. The presence of reserves of groundwater sources.

f. The potential of groundwater sources present in subsurface geologic formations.

3. The state geologist shall develop and use management tools, computer programming, or modeling as necessary or convenient to administer this section.

4. The state geologist shall prepare, use, and make available maps or other methods of presentation that provide for the geospatial visualization of data described in subsection 1 as necessary or convenient to administer this section.

5. Upon request by the department of natural resources, the state geologist shall assist the department in regulating water quantity from water resources as provided in section 455B.262B.

2018 Acts, ch 1167, §27
Referred to in §455B.262B

CHAPTER 456A

REGULATION AND FUNDING — NATURAL RESOURCES DEPARTMENT

Referred to in §455A.4, 455A.5, 481A.1

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

456A.1 Definitions.
456A.2 through 456A.5 Reserved.
456A.6 Expenses generally.
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456A.12 Lighting by law enforcement vehicles of conservation officer.
456A.13 Officers and employees — peace officer status.
456A.14 Temporary appointments — peace officer status.
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456A.16 Income tax refund checkoff for fish and game protection fund.
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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
Referred to in §20.3, 97B.49B, 97B.49G, 161A.42, 456A.12, 456A.15, 481A.68, 801.4

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
Referred to in §456A.15, 481A.68

456A.15 Removal.

The persons appointed or employed as provided under sections 456A.13 and 456A.14 may be removed by the 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
2016 Acts, ch 1073, §125

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

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

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

7. The department shall adopt rules pursuant to chapter 17A 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 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; 2015 Acts, ch 30, §138; 2017 Acts, ch 144, §9, 14

Referred to in §422.12H

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

456A.17 Funds — restrictions.

1. The following four funds are created in the state treasury:

a. A state fish and game protection fund.

b. A state conservation fund.

c. An administration fund.

d. A county conservation board fund.

2. 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.

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

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

5. 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.

6. 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.

7. 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.

8. The department may apply for a loan for the construction of facilities for the collection and treatment of waste water and for the supply, treatment, and distribution of drinking 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; 2010 Acts, ch 1034, §3, 4; 2011 Acts, ch 25, §55

Referred to in §455A.19, 456A.18, 456A.27, 456A.28, 483A.3B, 484A.4

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 funds created in section 456A.17.

[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

2005 Acts, ch 3, §75

456A.19 Expenditures.

1. 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.

a. 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.

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

c. All administrative expense shall be paid from the administration fund.

d. All other expenditures shall be paid from the state conservation fund.

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

3. 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; 2011 Acts, ch 25, §56; 2013 Acts, ch 30, §103; 2015 Acts, ch 29, §114
Referred to in §456A.24, 456A.27, 456A.28

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
Referred to in §456A.21

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
Referred to in §456A.20

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
Referred to in §456A.26

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, §2 – 4; 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

Referred to in §456A.26, 481A.48, 481A.67, 481A.130, 483A.28, 805.8B(4)

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

Referred to in §456A.26

456A.26 Interpretation and limitations.

Sections 456A.23 through 456A.25 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

2009 Acts, ch 133, §156

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. 917, codified at 16 U.S.C. §669 – 669k, and the department may perform acts as necessary to the conduct and establishment of cooperative 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

2006 Acts, ch 1010, §119; 2015 Acts, ch 30, §139

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, Ch. 658, 64 Stat. 430, codified at 16 U.S.C. §777 – 777n, and the department may perform acts as necessary to the conduct and establishment of cooperative 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
2015 Acts, ch 30, §140

456A.29 Outdoor recreational and watershed projects.

The department may perform acts as necessary to the conduct and establishment of cooperative 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
2012 Acts, ch 1023, §157

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
Referred to in §456A.34

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
Referred to in §456A.30, 456A.34, 461.32

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 coordinate 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
Referred to in §456A.30, 456A.34

456A.33 Watershed projects.

The department may perform acts as necessary to conduct an establishment of cooperative 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
Referred to in §456A.30, 456A.34

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
Referred to in §161A.73, 456A.30, 461.34

456A.33B Lake restoration plan and report.

1. For purposes of this section, unless the context otherwise requires:

a. *"Lake"* includes a significant public lake and a public shallow lake or wetland.

b. *"Public shallow lake or wetland"* means a water body that meets the following criteria:

(1) Is owned by the federal government, the state of Iowa, a county, or a municipal government, and is maintained principally for public use.

(2) Is a multi-use system capable of supporting diverse wildlife, fish, or recreational opportunities.

(3) Has a surface water area of at least ten acres.

(4) Does not have a watershed-to-lake surface area ratio of greater than two hundred to one.

(5) Is an open freshwater system where maximum depth is typically less than six to eight feet at its deepest spot and is under four and one-half feet mean depth.

(6) Is typically fringed by a border of emergent vegetation in water depth less than six feet and when clear is dominated by both emergent and submergent vegetation and provides important wildlife and fish habitat.

c. *"Significant public lake"* means a lake that meets all of the following criteria:

(1) Is owned by the federal government, the state of Iowa, a county, or a municipal government, and is maintained principally for public use.

(2) Is a multi-use system capable of supporting diverse wildlife, fish, or recreational opportunities.

(3) Has a surface water area of at least ten acres.

(4) Does not have a watershed-to-lake surface area ratio of greater than two hundred to one.

(5) Is not an on-stream impoundment that emulates riverine habitat rather than a lake environment.

(6) Is not used solely as a water supply reservoir.

2. *a.* It is the intent of the general assembly that the department of natural resources

shall develop annually a lake restoration plan and report that shall be submitted to the joint appropriations subcommittee on transportation, infrastructure, and capitals and the legislative services agency by no later than January 1 of each year. The plan and report shall include the department's plans and recommendations for lake restoration projects to receive funding consistent with the process and criteria provided in this section, and shall include the department's assessment of the progress and results of projects funded with moneys appropriated under this section.

b. The department shall recommend funding for lake restoration projects that are designed to achieve the following goals:

(1) Ensure a cost-effective, positive return on investment for the citizens of Iowa.

(2) Ensure local community commitment to lake and watershed protection.

(3) Ensure significant improvement in water clarity, safety, and quality of Iowa lakes.

(4) Provide for a sustainable, healthy, functioning lake system.

(5) Result in the removal of the lake from the impaired waters list.

(6) When restored, will contribute to the department's fish and wildlife conservation plans.

3. The process and criteria the department shall utilize to recommend funding for lake restoration projects shall be as follows:

a. The department, with input from stakeholders, shall maintain an annual list of not more than thirty-five significant public lakes and not more than five public shallow lakes or wetlands to be considered for funding based on the feasibility of restoring each lake and the use or potential use of the lake, if restored. The list shall include lake projects under active development that the department shall recommend be given priority for funding so long as progress toward completion of the projects remains consistent with the goals of this section.

b. The department shall meet with stakeholders and representatives of communities where lakes on the annual list are located to provide an annual lake restoration assessment and to explain the process and criteria for receiving lake restoration funding. Communities with lakes not included on the annual list may petition the director of the department for a preliminary lake restoration assessment and explanation of the funding process and criteria. The department shall work with stakeholders and representatives of each community to develop a joint lake restoration action plan. At a minimum, each joint action plan shall document the causes, sources, and magnitude of lake impairment, evaluate the feasibility of the lake and watershed restoration options, establish water quality and fishery and wildlife goals and a schedule for attainment, describe long-term management actions, assess the economic benefits of the project, identify the sources and amounts of any leveraged funds, and describe the community's commitment to the project, including local funding. The stakeholders' and community's commitment to the project may include moneys to fund a lake diagnostic study and watershed assessment, including development of a TMDL (total maximum daily load).

c. Each joint lake restoration action plan shall comply with the following guidelines:

(1) Biologic controls will be utilized to the maximum extent, wherever possible.

(2) If proposed, dredging of the lake will be conducted to a mean depth of at least eight feet to gain water quality benefits unless a combination of biologic and structural controls is sufficient to assure water quality targets will be achieved at a shallower average water depth.

(3) The costs of lake restoration will include the maintenance costs of improvements to the lake.

(4) Delivery of phosphorus and sediment from the watershed will be controlled and in place before lake restoration begins. Loads of phosphorus and sediment, in conjunction with in-lake management, will meet or exceed the following water quality targets:

(a) Clarity. A four-and-one-half-foot Secchi depth will be achieved fifty percent of the time from April 1 through September 30.

(b) Safety. Beaches will meet water quality standards for recreational use.

(c) Biota. A diverse, balanced, and sustainable aquatic community will be maintained.

(d) Sustainability. The water quality benefits from the restoration efforts will be sustained for at least fifty years.

d. The department shall evaluate the joint action plans and prioritize the plans based on

the criteria required in this section. The department's annual lake restoration plan and report shall include the prioritized list and the amounts of state and other funding the department recommends for each lake restoration project. The department shall seek public comment on its recommendations prior to submitting the plan and report to the general assembly.

2006 Acts, ch 1179, §26; 2007 Acts, ch 22, §81, 82; 2011 Acts, ch 25, §143; 2012 Acts, ch 1023, §63; 2016 Acts, ch 1133, §15 – 19; 2017 Acts, ch 29, §128

Referred to in §456A.30, 461.38

456A.33C On-stream impoundment restoration fund.

1. For purposes of this section, unless the context otherwise requires, "*eligible water body*" means a body of water that meets all of the following criteria:

a. Is owned by the state of Iowa, a county, a municipal government, or a public entity organized under chapter 357E.

b. Is a multi-use system capable of supporting diverse wildlife, fish, and recreational opportunities.

c. Has a surface water area of at least ten acres.

d. Has a watershed-to-body of water ratio of not less than two hundred to one and not more than one thousand to one.

e. Is a public body of water with public access.

f. Has diverse water depths and is capable of supporting aquatic vegetation.

g. Is not used solely as a water supply reservoir.

2. An on-stream impoundment restoration fund is created in the state treasury under the control of the department. The fund shall consist of all moneys appropriated to the fund.

3. *a.* Moneys in the on-stream impoundment restoration fund are appropriated to the department subject to the requirements of this section for purposes of funding projects for the maintenance, restoration, and sustainability of eligible water bodies and their related watersheds.

b. The department shall fund projects from the on-stream impoundment restoration fund for eligible water bodies that are designed to achieve the following goals:

(1) Ensure a cost-effective, positive return on investment for the citizens of Iowa.

(2) Ensure local community commitment to watershed protection.

(3) Ensure significant improvement in water clarity, safety, and quality.

(4) Provide for sustainable, healthy, and functioning bodies of water.

(5) Contribute to the department's fish and wildlife conservation plans.

c. The process and criteria the department shall utilize to fund projects under this section shall favor proposals which include nonstate matching funds of at least one dollar for every dollar of state funding, and funding for watershed improvement practices and participation of corresponding watershed management authority.

4. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the on-stream impoundment restoration fund shall be credited to the on-stream impoundment restoration fund. Notwithstanding section 8.33, moneys credited to the on-stream impoundment restoration fund that remain unobligated and unencumbered at the close of a fiscal year shall not revert.

2019 Acts, ch 89, §15; 2019 Acts, ch 137, §18

Referred to in §456A.30

NEW section

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
Referred to in §456A.30

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.* (1) 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.

(2) 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.

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

(4) 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.

b. 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.

c. 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.

d. 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.

e. 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; 2011 Acts, ch 25, §115

456A.37 Aquatic invasive species — prevention and control.

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

a. *"Aquatic invasive species"* means a nonnative wildlife or plant species that has been determined by the department to pose a significant threat to the aquatic resources or water infrastructure of the state.

b. *"Aquatic plant"* means a submergent, emergent, floating, or floating-leaved plant, including algae, and includes any part of such a plant.

c. *"Bait"* means the same as defined in section 481A.1.

d. *"Water-related equipment"* means a motor vehicle, boat, watercraft, dock, boat lift, raft, vessel, trailer, tool, implement, device, or any other associated equipment or container, including but not limited to portable bait containers, live wells, ballast tanks, bilge areas, and water-hauling equipment that is capable of containing or transporting aquatic invasive species, aquatic plants, or water.

2. *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 waters of the state with infestations of aquatic invasive species. The commission shall require that such waters be posted as infested.

c. If the commission determines that an additional species should be defined as an *"aquatic invasive species"*, the species shall be defined by the commission by rule as an *"aquatic invasive species"*.

3. *Prohibitions.*

a. A person shall not transport on a public road, or place or attempt to place into waters of the state, any water-related equipment that has an aquatic invasive species or aquatic plant attached to or within the water-related equipment except as follows:

(1) When authorized by a written permit issued by the director upon a finding that the person is unable to comply with the requirements of this lettered paragraph *"a"*, is substantially impacted by the prohibitions of this lettered paragraph *"a"*, and is affording adequate protection of the aquatic resources or water infrastructure of the state by an alternative means.

(2) When the department, or other governmental entity approved by the director, is undertaking management activities that would constitute prohibited activities under this lettered paragraph *"a"* but are necessary to manage the aquatic resources or water infrastructure of the state, including but not limited to aquatic invasive species control, and sufficient mitigation efforts are undertaken to avoid or minimize, to the greatest extent possible, exposure of the waters of the state to an aquatic invasive species.

(3) When disposing of or engaging in a control activity of an aquatic invasive species and exposure to other waters of the state is minimized.

(4) When transporting commercial or municipal aquatic plant harvesting equipment to a suitable location away from any waters of the state, for purposes of cleaning the equipment of any remaining aquatic plants or wildlife.

(5) When water-related equipment is legally purchased or traded by or from a commercial source.

(6) For purposes of constructing or transporting a shooting or observation blind, provided that there are no aquatic invasive species present on or in the blind, and the aquatic plants used on or in the blind are emergent, cut above the waterline, and contain no propagules such as seed heads, roots, or rhizomes.

(7) For purposes of submitting a sample to the department or to another entity as directed by the department, provided that the sample is in a sealed container. Any test results of such samples shall be reported to the department.

(8) When engaged in emergency response activities, provided that the person engaged in such activities is affiliated with a law enforcement agency or an agency with emergency response authority.

(9) When otherwise permitted under a disaster declaration issued consistent with chapter 29C.

b. A person shall drain all water from water-related equipment when leaving the waters of the state and before transporting the water-related equipment off a water access area or riparian property. Drain plugs, bailers, valves, or other devices used to control the drainage of water from ballast tanks, bilges, and live wells shall be removed or opened while transporting water-related equipment except as follows:

(1) When authorized by a written permit issued by the director upon a finding that the person is unable to comply with the requirements of this lettered paragraph *"b"*, is substantially impacted by the prohibitions of this lettered paragraph *"b"*, and is affording adequate protection of the aquatic resources or water infrastructure of the state by an alternative means.

(2) When the department, or other governmental entity approved by the director, is undertaking management activities that would constitute prohibited activities under this lettered paragraph *"b"* but are necessary to manage the aquatic resources or water infrastructure of the state, including but not limited to aquatic invasive species control, and sufficient mitigation efforts are undertaken to avoid or minimize, to the greatest extent possible, exposure of the waters of the state to an aquatic invasive species.

(3) When water-related equipment constitutes a marine sanitary system, a closed engine cooling system, or is a tank or container of potable drinking water or other beverage intended for human consumption.

(4) When engaged in emergency response activities, provided that the person engaged in such activities is affiliated with a law enforcement agency or an agency with emergency response authority.

(5) When otherwise permitted under a disaster declaration issued consistent with chapter 29C.

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

4. *Inspections.* Persons operating and transporting water-related equipment shall inspect the equipment for aquatic invasive species when the equipment is removed from, or before entering waters of the state. If an aquatic invasive species is present on or within the water-related equipment, the aquatic invasive species shall be removed immediately. Any water-related equipment is subject to inspection by a representative of the department. A representative of the department may prohibit a person from placing or operating water-related equipment in waters of the state if the person refuses to allow an inspection of the water-related equipment or refuses to remove and dispose of aquatic invasive species, aquatic plants, or water on or within the water-related equipment.

96 Acts, ch 1042, §1; 2001 Acts, ch 137, §5; 2004 Acts, ch 1137, §1; 2005 Acts, ch 137, §2, 3; 2005 Acts, ch 179, §70, 71; 2013 Acts, ch 67, §1; 2014 Acts, ch 1026, §104

Referred to in §805.8B(5), 805.8B(5)(a), 805.8B(5)(b), 805.8B(5)(c)

456A.38 Lease to beginning farmers program.

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

a. *"Agricultural land"*, *"beginning farmer"*, and *"farming"* mean the same as defined in section 16.58.

b. *"Authority"* means the same as defined in section 16.1.

c. *"Program"* means the lease to beginning farmers program as provided in this section.

2. The department of natural resources shall establish and administer a lease to beginning farmers program. The department shall annually lease agricultural land that it holds or manages as wildlife habitat in each county to beginning farmers seeking to participate in the program. The department shall advertise the program in a manner that encourages wide participation by beginning farmers to lease the agricultural land.

3. The department shall establish annual lease payments for available agricultural land under the program by using the following criteria:

a. Market factors.

b. Prior leases for the same or comparable agricultural land.

c. The cost of establishment or maintenance of soil conservation practices, if applicable.

d. Other criteria established by the department.

4. The department shall execute a lease with a beginning farmer selected to participate in the program after such person has been certified by the authority as a beginning farmer who meets the requirements of the authority, which shall be based on section 16.75, subsection 3, paragraphs *"a"*, *"c"*, *"f"*, and *"g"*.

5. *a.* If two or more beginning farmers seek to execute a lease under the program for the same agricultural land, the department shall select the beginning farmer to participate in the program by drawing lots.

b. If no beginning farmer seeks to participate in the program, or no beginning farmer is found qualified to participate in the program, the department shall lease the agricultural land under another lease program that it administers pursuant to chapter 461A, including as provided in 571 IAC ch. 21.

6. The department shall establish terms and conditions in the lease for beginning farmers participating in the program. The lease executed by the department under the program shall at least include all of the following:

a. The number of acres leased. The department shall not lease more than two hundred forty acres of agricultural land to a beginning farmer for the production of crops. However, this restriction does not apply to agricultural land leased for grazing livestock.

b. The term of the lease. The term may be based on the use of the agricultural land. A lease shall not be for more than seven years. A beginning farmer shall not sublease the agricultural land.

c. The required and permitted uses of the agricultural land during the lease term. The department may require the establishment of a conservation system, crop rotation, or cover crop, if appropriate. The department may require that a beginning farmer adopt generally accepted farming practices or soil conservation practices, so long as such practices are compatible with the department's policies related to resource management and outdoor recreation.

7. At the end of a lease term, a beginning farmer who leased agricultural land under the program is eligible to be selected again to lease the same agricultural land. However, the department shall provide a preference to an available beginning farmer who has not previously participated in the program.

8. The department is not required to lease agricultural land under the program that it would not otherwise lease for farming. The department may lease agricultural land for farming under another lease program administered by the department pursuant to its authority under chapter 461A, including as provided in 571 IAC ch. 21, only after it has made agricultural land available for lease to all beginning farmers seeking to participate in the program.

9. The department shall adopt rules necessary to administer this section.

2013 Acts, ch 64, §1; 2014 Acts, ch 1080, §91, 92, 98; 2014 Acts, ch 1092, §154, 197, 200; 2016 Acts, ch 1073, §126, 127

CHAPTER 456B

SPECIAL PROVISIONS — NATURAL RESOURCES DEPARTMENT

Referred to in §455A.4, 455A.5, 456A.14, 456A.24, 481A.1

This chapter not enacted as a part of this title; transferred from chapter 108 in Code 1993

GENERAL PROVISIONS

456B.1 Definitions.
456B.2 through 456B.6 Reserved.
456B.7 Stream control on private lands.
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456B.10 Artificial lakes — soil conservation.
456B.11 Agricultural drainage wells — wetlands — conservation easements.

PROTECTED WETLANDS

456B.12 Inventory of protected wetlands.
456B.13 Protection of wetlands.
456B.14 Civil penalty.

GENERAL PROVISIONS

456B.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.
4. *"Protected wetlands"* means type 3, type 4, and type 5 wetlands as described in circular 39, "Wetlands of the United States", 1971 Edition, published by the United States department of the interior. However, a protected wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.
5. *"Wetlands"* means an area of two or more acres in a natural condition that is mostly under water or waterlogged during the spring growing season and is characterized by vegetation of hydric soils.

86 Acts, ch 1245, §1846
C87, §108.1
90 Acts, ch 1199, §1
C93, §456B.1
Referred to in §427.1(23)(a), 459.102

456B.2 through 456B.6 Reserved.

456B.7 Stream control on private lands.

1. Upon receiving consent in writing from the landowner, the department may enter upon private lands containing waters and streams draining into state-owned lakes and streams, for any or all of the following purposes:

a. Deepening.
b. Filling.
c. Widening.
d. Contracting.
e. Improving and protecting banks.
f. Constructing spillways and discharge structures.
g. Controlling erosion on tributary land.
h. Providing structures or other works conducive to the regulation of stream flow.

2. Any action taken by the commission under this section is subject to the approval of the environmental protection commission.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.7; 82 Acts, ch 1199, §53, 96]
86 Acts, ch 1245, §1847

C93, §456B.7
2011 Acts, ch 25, §143
Referred to in §456B.8

456B.8 Jurisdiction — public access.

Any such agreement with any landowner shall give the commission jurisdiction of such land, waters, and streams to accomplish the purposes set out in said agreement and in case any improvement contemplated by section 456B.7 is for the sole purpose of improving any stream and not mainly for the purpose of preventing silting in a state-owned lake, then said agreement with the landowner shall include an easement of public access to said stream where improved and along the banks thereof.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.8]
C93, §456B.8

456B.9 Accreted land.

Any land created, by any such improvement, in areas now under the jurisdiction of the state will remain under such jurisdiction until otherwise disposed of.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §108.9]
C93, §456B.9

456B.10 Artificial lakes — soil conservation.

In the construction of artificial lakes on intermittent streams, for which funds are appropriated by the general assembly, the commission shall not proceed with actual construction work unless and until soil conservation practices are in effect on at least seventy-five percent of the land comprising the watershed of the proposed impoundment, or a willingness to carry on such practices has been shown by the owners or operators of seventy-five percent of the land by signing of a soil conservation farm plan and cooperative agreements with the local soil and water conservation district governing body.

[C35, §1703-g28; C39, §**1703.58;** C46, 50, 54, §108.5; C58, 62, 66, 71, 73, 75, 77, 79, 81, §108.10]
86 Acts, ch 1245, §1854; 87 Acts, ch 23, §3
C93, §456B.10
2012 Acts, ch 1023, §157

456B.11 Agricultural drainage wells — wetlands — conservation easements.

The department shall develop and implement a program for the acquisition of wetlands and conservation easements on and around wetlands that result from the closure or change in use of agricultural drainage wells upon implementation of the programs specified in section 460.302 to eliminate groundwater contamination caused by the use of agricultural drainage wells. The program shall be coordinated with the department of agriculture and land stewardship. The department may use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund in addition to other moneys available for wetland acquisition, protection, development, and management.

87 Acts, ch 225, §301
CS87, §108.11
C93, §456B.11

PROTECTED WETLANDS

456B.12 Inventory of protected wetlands.

1. The department shall inventory the wetlands and marshes of each county and make a preliminary designation as to which constitute protected wetlands. The department shall consult with the county conservation board in making the preliminary designations. Upon completion of the inventory with preliminary designations, the department shall use an existing map or prepare a map and a list of the marshes and wetlands which are designated

as protected wetlands in each county. The department shall file at least one copy of the list and map with the county conservation board and the county recorder. The department shall notify the landowners affected by the preliminary wetlands designation by certified mail. The notice shall state that any person may challenge the designation of the protected wetlands or may request the designation of additional marshes or wetlands as protected wetlands, by doing one of the following:

a. Filing a petition for a hearing with the director within sixty days following the date of notice. The petition shall state specifically the reasons for disputing the preliminary designations of the department. The hearing shall be held in the county within sixty days following the expiration of the sixty-day period for filing petitions.

b. Filing a request for mediation with the farm mediation service as provided in section 654A.16 within sixty days following the date of the notice. The department shall participate in mediation as provided in section 654A.16.

2. Within sixty days following the completion of the hearing, or the issuance of a mediation release in which both parties agree to the designation or no agreement is reached, the director shall issue an order designating the protected wetlands in the county. The order shall be considered a final decision of the department in a contested case for the purposes of judicial review pursuant to chapter 17A.

90 Acts, ch 1199, §2
C91, §108.12
C93, §456B.12
2011 Acts, ch 25, §143
Referred to in §427.1(23), 654A.16

456B.13 Protection of wetlands.

1. A person shall not drain a protected wetland without first obtaining a permit from the department.

2. The department shall not issue a permit to drain a protected wetland except under one of the following conditions:

a. The protected wetland is replaced by the applicant with a wetland of equal or greater value as determined by the department.

b. The protected wetland does not meet the criteria for continued designation as a protected wetland.

3. This section does not prohibit any of the following:

a. A landowner utilizing the bed of a protected wetland for pasture or cropland if there is no construction of dikes, ditches, tile lines, or buildings and the agricultural use does not result in drainage.

b. A person maintaining, repairing, or replacing an improvement to a drainage district as provided in chapter 468, as long as the improvement continues to serve the drainage district and the functions of the improvement are not expanded beyond the scope of functions as designed prior to the maintenance, repair, or replacement.

90 Acts, ch 1199, §3
C91, §108.13
91 Acts, ch 172, §1
C93, §456B.13
98 Acts, ch 1025, §1
Referred to in §456B.14

456B.14 Civil penalty.

A person who violates the permit requirement of section 456B.13 is subject to a civil penalty of not more than five hundred dollars for each day that the violation continues. A civil penalty assessed under this section shall not apply until the fourth day after a violator is given written notification of the violation.

90 Acts, ch 1199, §4
C91, §108.14
C93, §456B.14

CHAPTER 457
RESERVED

CHAPTER 457A
CONSERVATION EASEMENTS

Referred to in §455A.4, 455A.5, 456A.24, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 111D in Code 1993

457A.1	Acquisition by other than condemnation.	457A.4	Statement of extent.
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457A.1 Acquisition by other than condemnation.

The department of natural resources, soil and water conservation districts as provided in chapter 161A, the historical division of the department of cultural affairs, the state archaeologist appointed by the state board of regents pursuant to section 263B.1, any county conservation board, and any city or agency of a city may acquire by purchase, gift, contract, or other voluntary means, but not by eminent domain, conservation easements in land to preserve scenic beauty, wildlife habitat, riparian lands, wetlands, or forests; promote outdoor recreation, agriculture, soil or water conservation, or open space; or otherwise conserve for the benefit of the public the natural beauty, natural and cultural resources, and public recreation facilities of the state.

[C71, 73, 75, 77, 79, 81, §111D.1; 82 Acts, ch 1199, §58, 96]
86 Acts, ch 1245, §1873
C93, §457A.1
2002 Acts, ch 1012, §1; 2003 Acts, ch 128, §1
Referred to in §457A.2, 457A.5

457A.2 Definitions.

1. *"Conservation easement"* means an easement in, servitude upon, restriction upon the use of, or other interest in land owned by another, created for any of the purposes set forth in section 457A.1. A conservation easement shall be transferable to any other public body authorized to acquire conservation easements. A conservation easement shall be perpetual unless expressly limited to a lesser term, or unless released by the holder, or unless a change of circumstances renders the easement no longer beneficial to the public. A comparative economic test shall not be used to determine whether a conservation easement is beneficial to the public. A conservation easement shall be enforceable during the term of the easement notwithstanding sections 614.24 through 614.38.

2. *"Natural and cultural resources"* includes, but is not limited to, archaeological and historical resources.

[C71, 73, 75, 77, 79, 81, §111D.2]
86 Acts, ch 1245, §1874
C93, §457A.2
2002 Acts, ch 1012, §2; 2003 Acts, ch 44, §70
Referred to in §457A.8, 462B.1

457A.3 Recording.

Conservation easements shall be recorded as other instruments affecting real estate are recorded, and each public body acquiring one or more conservation easements shall maintain

a current inventory thereof. Unrecorded and uninventoried conservation easements shall be deemed abandoned.
[C71, 73, 75, 77, 79, 81, §111D.3]
C93, §457A.3

457A.4 Statement of extent.
A conservation easement shall clearly state its extent and purpose.
[C71, 73, 75, 77, 79, 81, §111D.4]
C93, §457A.4

457A.5 Rule of construction.
The powers accorded by this chapter shall be in addition to, and not in derogation of, all powers provided by law with respect to the public bodies named in section 457A.1.
[C71, 73, 75, 77, 79, 81, §111D.5]
C93, §457A.5

457A.6 and 457A.7 Reserved.

457A.8 Privately held easements.
A conservation easement may be held by a private, nonprofit organization for public benefit if the instrument granting the easement or the bylaws of the organization provide that the easement will be transferred either to a public body or another private, nonprofit organization upon the dissolution of the private, nonprofit organization. A conservation easement meeting these requirements acquired after July 1, 1984 is transferable and perpetual as provided in section 457A.2.
84 Acts, ch 1115, §1
C85, §111D.8
C93, §457A.8

CHAPTER 457B

MIDWEST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT

This chapter not enacted as a part of this title;
transferred from chapter 8C in Code 1993

457B.1 Low-level radioactive waste compact.

457B.1 Low-level radioactive waste compact.
The midwest interstate low-level radioactive waste compact is entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:
1. *Article I — Policy and purpose.*
a. (1) There is created the *"Midwest Interstate Low-Level Radioactive Waste Compact"*.
(2) The states party to this compact recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act, as amended by the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. §2021b-j, has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposing of such waste. The party states acknowledge that the Congress declared that each state is responsible for providing for the availability of capacity either within or outside the state for the disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of certain defense activities of the federal government or federal research and development activities. The party states also recognize that the disposal of low-level radioactive waste is handled most efficiently on a regional basis; and that the

safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

b. It is the policy of the party states to enter into a regional low-level radioactive waste disposal compact for the purpose of:

(1) Providing the instrument and framework for a cooperative effort;

(2) Providing sufficient facilities for the proper disposal of low-level radioactive waste generated in the region;

(3) Protecting the health and safety of the citizens of the region;

(4) Limiting the number of facilities required to effectively and efficiently dispose of low-level radioactive waste generated in the region;

(5) Encouraging source reduction and the environmentally sound treatment of waste that is generated to minimize the amount of waste to be disposed of;

(6) Ensuring that the costs, expenses, liabilities, and obligations of low-level radioactive waste disposal are paid by generators and other persons who use compact facilities to dispose of their waste;

(7) Ensuring that the obligations of low-level radioactive waste disposal that are the responsibility of the party states are shared equitably among them;

(8) Ensuring that the party states that comply with the terms of this compact and fulfill their obligations under it share equitably in the benefits of the successful disposal of low-level radioactive waste; and

(9) Ensuring the environmentally sound, economical, and secure disposal of low-level radioactive wastes.

c. Implicit in the congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the compact commission and the individual party states to this compact by:

(1) Expeditious enforcement of federal rules, regulations, and laws;

(2) Imposition of sanctions against those found to be in violation of federal rules, regulations, and laws; and

(3) Timely inspection of their licensees to determine their compliance with these rules, regulations, and laws.

2. *Article II — Definitions.* As used in this compact, unless the context clearly requires a different construction:

a. *"Care"* means the continued observation of a facility after closing for the purposes of detecting a need for maintenance, ensuring environmental safety, and determining compliance with applicable licensure and regulatory requirements and including the correction of problems which are detected as a result of that observation.

b. *"Close"*, *"closed"*, or *"closing"* means that the compact facility with respect to which any of those terms are used has ceased to accept low-level radioactive waste for disposal. *"Permanently closed"* means that the compact facility with respect to which the term is used has ceased to accept low-level radioactive waste because a compact facility has operated for twenty years or a longer period of time as authorized by article VI, paragraph *"i"*, its capacity has been reached, the commission has authorized it to close pursuant to article III, paragraph *"h"*, subparagraph (7), the host state of such facility has withdrawn from the compact or had its membership revoked, or this compact has been dissolved.

c. *"Commission"* means the midwest interstate low-level radioactive waste commission.

d. *"Compact facility"* means a waste disposal facility that is located within the region and that is established by a party state pursuant to the designation of that state as a host state by the commission.

e. *"Development"* includes the characterization of potential sites for a waste disposal facility, siting of such a facility, licensing of such a facility, and other actions taken by a host state prior to the commencement of construction of a facility to fulfill its obligations as a host state.

f. *"Disposal"* with regard to low-level radioactive waste, means the permanent isolation of that waste in accordance with the requirements established by the United States nuclear regulatory commission or the licensing agreement state.

g. *"Disposal plan"* means the plan adopted by the commission for the disposal of low-level radioactive waste within the region.

h. *"Facility"* means a parcel of land or site, together with the structures, equipment, and improvements on or appurtenant to the land or site, which is or has been used for the disposal of low-level radioactive waste, which is being developed for that purpose, or upon which the construction of improvements or installation of equipment is occurring for that purpose.

i. *"Final decision"* means a final action of the commission determining the legal rights, duties, or privileges of any person. *"Final decision"* does not include preliminary, procedural, or intermediate actions by the commission, actions regulating the internal administration of the commission, or actions of the commission to enter into or refrain from entering into contracts or agreements with vendors to provide goods or services to the commission.

j. *"Generator"* means a person who first produces low-level radioactive waste, including, without limitation, any person who does so in the course of or incident to manufacturing, power generation, processing, waste treatment, waste storage, medical diagnosis and treatment, research, or other industrial or commercial activity. If the person who first produced an item or quantity of low-level radioactive waste cannot be identified, *"generator"* means the person first possessing the low-level radioactive waste who can be identified.

k. *"Host state"* means any state which is designated by the commission to host a compact facility or has hosted a compact facility.

l. *"Long-term care"* means those activities taken by a host state after a compact facility is permanently closed to ensure the protection of air, land, and water resources and the health and safety of all people who may be affected by the compact facility.

m. *"Low-level radioactive waste"* or *"waste"* means radioactive waste that is not classified as high-level radioactive waste and that is Class A, B, or C low-level radioactive waste as defined in 10 C.F.R. §61.55, as that section existed on January 26, 1983. *"Low-level radioactive waste"* or *"waste"* does not include any such radioactive waste that is owned or generated by the United States department of energy; by the United States navy as a result of the decommissioning of its vessels; or as a result of research, development, testing, or production of an atomic weapon.

n. *"Operates"*, *"operational"*, or *"operating"* means that the compact facility with respect to which any of those terms is used accepts low-level radioactive waste for disposal.

o. *"Party state"* means an eligible state that enacts this compact into law, pays any eligibility fee established by the commission, and has not withdrawn from this compact or had its membership in this compact revoked, provided that a state that has withdrawn from this compact or had its membership revoked becomes a party state if it is readmitted to membership in this compact pursuant to article VIII, paragraph *"a"*. *"Party state"* includes a host state. *"Party state"* also includes statutorily created administrative departments, agencies, or instrumentalities of a party state, but does not include municipal corporations, regional or local units of government, or other political subdivisions of a party state that are responsible for governmental activities on less than a statewide basis.

p. *"Person"* means any individual, corporation, association, business enterprise, or other legal entity either public or private and any legal successor, representative, agent, or agency of that individual, corporation, association, business enterprise, or other legal entity. *"Person"* also includes the United States, states, political subdivisions of states, and any department, agency, or instrumentality of the United States or a state.

q. *"Region"* means the area of the party states.

r. *"Site"* means the geographic location of a facility.

s. *"State"* means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or other territorial possession of the United States.

t. *"Storage"* means the temporary holding of low-level radioactive waste.

u. *"Treatment"* means any method, technique or process, including storage for radioactive decay, designed to change the physical, chemical or biological characteristics or composition of low-level radioactive waste in order to render the low-level radioactive waste safer for transport or management, amenable to recovery, convertible to another usable material or reduced in volume.

v. *"Waste management"*, *"manage waste"*, *"management of waste"*, *"management"*, or *"managed"* means the storage, treatment, or disposal of low-level radioactive waste.

3. *Article III — The commission.*

a. There is created the midwest interstate low-level radioactive waste commission. The commission consists of one voting member from each party state. The governor of each party state shall notify the commission in writing of its member and any alternates. An alternate may act on behalf of the member only in that member's absence. The method for selection and the expenses of each commission member shall be the responsibility of the member's respective state.

b. Each commission member is entitled to one vote. Except as otherwise specifically provided in this compact, an action of the commission is binding if a majority of the total membership casts its vote in the affirmative. A party state may direct its member or alternate member of the commission how to vote or not vote on matters before the commission.

c. The commission shall elect annually from among its members a chairperson. The commission shall adopt and publish, in convenient form, bylaws and policies which are not inconsistent with this compact, including procedures for the use of binding arbitration under article VI, paragraph *"o"*, and procedures which substantially conform with the provisions of the federal Administrative Procedure Act, 5 U.S.C. §500 – 559, in regard to notice, conduct, and recording of meetings; access by the public to records; provision of information to the public; conduct of adjudicatory hearings; and issuance of decisions.

d. The commission shall meet at least once annually and shall also meet upon the call of the chairperson or any other commission member.

e. All meetings of the commission shall be open to the public with reasonable advance notice. The commission may, by majority vote, close a meeting to the public for the purpose of considering sensitive personnel or legal strategy matters. However, all commission actions and decisions shall be made in open meetings and appropriately recorded.

f. The commission may establish advisory committees for the purpose of advising the commission on any matters pertaining to waste management.

g. The office of the commission shall be in a party state. The commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall have the responsibilities and authority delegated to it by the commission in its bylaws. The staff shall serve at the commission's pleasure with the exception that staff hired as the result of securing federal funds shall be hired and governed under applicable federal statutes and regulations. In selecting any staff, the commission shall assure that the staff has adequate experience and formal training to carry out the functions assigned to it by the commission.

h. The commission may do any or all of the following:

(1) Appear as an intervenor or party in interest before any court of law or any federal, state, or local agency, board, or commission in any matter related to waste management. In order to represent its views, the commission may arrange for any expert testimony, reports, evidence, or other participation.

(2) Review any emergency closing of a compact facility, determine the appropriateness of that closing, and take whatever lawful actions are necessary to ensure that the interests of the region are protected.

(3) Take any action which is appropriate and necessary to perform its duties and functions as provided in this compact.

(4) Approve the disposal of naturally occurring and accelerator-produced radioactive material at a compact facility. The commission shall not approve the acceptance of such material without first making an explicit determination of the effect of the new low-level radioactive waste stream on the compact facility's maximum capacity. Such approval requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the host state of the compact facility that would accept the material for disposal. Any such host state may at any time rescind its vote granting the approval and, thereafter, additional naturally occurring and accelerator-produced radioactive material shall not be disposed of at a compact facility unless the disposal is again approved. All provisions of this compact apply to the disposal of naturally occurring and accelerator-produced

radioactive material that has been approved for disposal at a compact waste facility pursuant to this subparagraph.

(5) Enter into contracts in order to perform its duties and functions as provided in this compact.

(6) When approved by the commission, with the member from each host state in which an affected compact facility is operating or being developed or constructed voting in the affirmative, enter into agreements to do any of the following:

(a) Import for disposal within the region low-level radioactive waste generated outside the region.

(b) Export for disposal outside the region low-level radioactive waste generated inside the region.

(c) Dispose of low-level radioactive waste generated within the region at a facility within the region that is not a compact facility.

(7) Authorize a host state to permanently close a compact facility located within its borders earlier than otherwise would be required by article VI, paragraph *"i"*. Such closing requires the affirmative vote of a majority of the commission, including the affirmative vote of the member from the state in which the affected compact facility is located.

i. The commission shall do all of the following:

(1) Submit an annual report to, and otherwise communicate with, the governors and the appropriate officers of the legislative bodies of the party states regarding the activities of the commission.

(2) Adopt and amend, by a two-thirds vote of the membership, in accordance with the procedures and criteria developed pursuant to article IV, a regional disposal plan which designates host states for the establishment of needed compact facilities.

(3) Adopt an annual budget.

(4) Establish and implement a procedure for determining the capacity of a compact facility. The capacity of a compact facility shall be established as soon as reasonably practical after the host state of the compact facility is designated and shall not be changed thereafter without the consent of the host state. The capacity of a compact facility shall be based on the projected volume, radioactive characteristics, or both, of the low-level radioactive waste to be disposed of at the compact facility during the period set forth in article VI, paragraph *"i"*.

(5) Provide a host state with funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

(6) Establish and implement procedures for making payments from the remedial action fund provided for in paragraph *"p"*.

(7) Establish and implement procedures to investigate a complaint joined in by two or more party states regarding another party state's performance of its obligations.

(8) Adopt policies promoting source reduction and the environmentally sound treatment of low-level radioactive waste in order to minimize the amount of low-level radioactive waste to be disposed of at compact facilities.

(9) Establish and implement procedures for obtaining information from generators regarding the volume and characteristics of low-level radioactive waste projected to be disposed of at compact facilities and regarding generator activities with respect to source reduction, recycling, and treatment of low-level radioactive waste.

(10) Prepare annual reports regarding the volume and characteristics of low-level radioactive waste projected to be disposed of at compact facilities.

j. Funding for the commission shall be provided as follows:

(1) When no compact facility is operating, the commission may assess fees to be collected from generators of low-level radioactive waste in the region. The fees shall be reasonable and equitable. The commission shall establish and implement procedures for assessing and collecting the fees. The procedures may allow the assessing of fees against less than all generators of low-level radioactive waste in the region; provided that if fees are assessed against less than all generators of waste in the region, generators paying the fees shall be reimbursed the amount of the fees, with reasonable interest, out of the revenues of operating compact facilities.

(2) When a compact facility is operating, funding for the commission shall be provided

through a surcharge collected by the host state as part of the fee system provided for in article VI, paragraph "*j*". The surcharge to be collected by the host state shall be determined by the commission and shall be reasonable and equitable.

(3) In the aggregate, the fees or surcharges, as the case may be, shall be no more than is necessary to:

(a) Cover the annual budget of the commission.

(b) Provide a host state with the funds necessary to pay reasonable development expenses incurred by the host state after it is designated to host a compact facility.

(c) Provide moneys for deposit in the remedial action fund established pursuant to paragraph "*p*".

(d) Provide moneys to be added to an inadequately funded long-term care fund as provided in article VI, paragraph "*o*".

k. Financial statements of the commission shall be prepared according to generally accepted accounting principles. The commission shall contract with an independent certified public accountant to annually audit its financial statements and to submit an audit report to the commission. The audit report shall be made a part of the annual report of the commission required by this article.

l. The commission may accept for any of its purposes and functions and may utilize and dispose of any donations, grants of money, equipment, supplies, materials and services from any state or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation. The nature, amount, and condition, if any, attendant upon any donation or grant accepted or received by the commission together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the commission.

m. The commission is a legal entity separate and distinct from the party states. Members of the commission and its employees are not personally liable for actions taken by them in their official capacity. The commission is not liable or otherwise responsible for any costs, expenses, or liabilities resulting from the development, construction, operation, regulation, closing, or long-term care of any compact facility or any noncompact facility made available to the region by any contract or agreement entered into by the commission under paragraph "*h*", subparagraph (6). Nothing in this paragraph relieves the commission of its obligations under this article or under contracts to which it is a party. Any liabilities of the commission are not liabilities of the party states.

n. Final decisions of the commission shall be made, and shall be subject to judicial review, in accordance with all of the following conditions:

(1) Every final decision shall be made at an open meeting of the commission. Before making a final decision, the commission shall provide an opportunity for public comment on the matter to be decided. Each final decision shall be reduced to writing and shall set forth the commission's reasons for making the decision.

(2) Before making a final decision, the commission may conduct an adjudicatory hearing on the proposed decision.

(3) Judicial review of a final decision shall be initiated by filing a petition in the United States district court for the district in which the person seeking the review resides or in which the commission's office is located not later than sixty days after issuance of the commission's written decision. Concurrently with filing the petition for review with the court, the petitioner shall serve a copy of the petition on the commission. Within five days after receiving a copy of the petition, the commission shall mail a copy of it to each party state and to all other persons who have notified the commission of their desire to receive copies of such petitions. Any failure of the commission to so mail copies of the petition does not affect the jurisdiction of the reviewing court. Except as otherwise provided in this subparagraph, standing to obtain judicial review of final decisions of the commission and the form and scope of the review are subject to and governed by 5 U.S.C. §706.

(4) (a) If a party state seeks judicial review of a final decision of the commission that does any of the following, the facts shall be subject to trial de novo by the reviewing court unless trial de novo of the facts is affirmatively waived in writing by the party state:

(i) Imposes financial penalties on a party state.

(ii) Suspends the right of a party state to have waste generated within its borders disposed of at a compact facility or at a noncompact facility made available to the region by an agreement entered into by the commission under paragraph "*h*", subparagraph (6).

(iii) Terminates the designation of a party state as a host state.

(iv) Revokes the membership of a party state in this compact.

(v) Establishes the amounts of money that a party state that has withdrawn from this compact or had its membership in this compact revoked is required to pay under article VIII, paragraph "*e*".

(b) Any such trial de novo of the facts shall be governed by the federal rules of civil procedure and the federal rules of evidence.

(5) Preliminary, procedural, or intermediate actions by the commission that precede a final decision are subject to review only in conjunction with review of the final decision.

(6) Except as provided in subparagraph (5), actions of the commission that are not final decisions are not subject to judicial review.

o. Unless approved by a majority of the commission, with the member from each host state in which an affected compact facility is operating or is being developed or constructed voting in the affirmative, no person shall do any of the following:

(1) Import low-level radioactive waste generated outside the region for disposal within the region.

(2) Export low-level radioactive waste generated within the region for disposal outside the region.

(3) Manage low-level radioactive waste generated outside the region at a facility within the region.

(4) Dispose of low-level radioactive waste generated within the region at a facility within the region that is not a compact facility.

p. (1) The commission shall establish a remedial action fund to pay the costs of reasonable remedial actions taken by a party state if an event results from the development, construction, operation, closing, or long-term care of a compact facility that poses a threat to human health, safety, or welfare or to the environment. The amount of the remedial action fund shall be adequate to pay the costs of all reasonably foreseeable remedial actions. A party state shall notify the commission as soon as reasonably practical after the occurrence of any event that may require the party state to take a remedial action. The failure of a party state to notify the commission does not limit the rights of the party state under this paragraph "*p*".

(2) If the moneys in the remedial action fund are inadequate to pay the costs of reasonable remedial actions, the amount of the deficiency is a liability with respect to which generators shall provide indemnification under article VII, paragraph "*g*". Generators who provide the required indemnification have the rights of contribution provided in article VII, paragraph "*g*". This paragraph "*p*" applies to remedial action taken by a party state regardless of whether the party state takes the remedial action on its own initiative or because it is required to do so by a court or regulatory agency of competent jurisdiction.

q. If the commission makes payment from the remedial action fund provided for in paragraph "*p*", the commission is entitled to obtain reimbursement under applicable rules of law from any person who is responsible for the event giving rise to the remedial action. Reimbursement may be obtained from a party state only if the event giving rise to the remedial action resulted from the activities of that party state as a generator of waste.

r. If this compact is dissolved, all moneys held by the commission shall be used first to pay for any ongoing or reasonably anticipated remedial actions. Remaining moneys shall be distributed in a fair and equitable manner to those party states that have operating or closed compact facilities within their borders and shall be added to the long-term care funds maintained by those party states.

4. *Article IV — Regional disposal plan.* The commission shall adopt and periodically update a regional disposal plan designed to ensure the safe and efficient disposal of low-level radioactive waste generated within the region. In adopting a regional low-level radioactive waste disposal plan, the commission shall do all of the following:

a. Adopt procedures for determining, consistent with considerations for public health and safety, the type and number of compact facilities which are presently necessary and which

are projected to be necessary to dispose of low-level radioactive waste generated within the region;

b. Develop and adopt procedures and criteria for identifying a party state as a host state for a compact facility. In developing these criteria, the commission shall consider all of the following:

(1) The health, safety, and welfare of the citizens of the party states.

(2) The existence of compact facilities within each party state.

(3) The minimization of low-level radioactive waste transportation.

(4) The volumes and types of low-level radioactive wastes projected to be generated within each party state.

(5) The environmental impacts on the air, land, and water resources of the party states.

(6) The economic impacts on the party states.

c. Conduct such hearings, and obtain such reports, studies, evidence, and testimony required by its approved procedures prior to identifying a party state as a host state for a needed compact facility;

d. Prepare a draft disposal plan and any update thereof, including procedures, criteria, and host states, which shall be made available in a convenient form to the public for comment. Upon the request of a party state, the commission shall conduct a public hearing in that state prior to the adoption or update of the disposal plan. The disposal plan and any update thereof shall include the commission's response to public and party state comment.

5. *Article V — Rights and obligations of party states.*

a. Each party state shall act in good faith in the performance of acts and courses of conduct which are intended to ensure the provision of facilities for regional availability and usage in a manner consistent with this compact.

b. Except for low-level radioactive waste attributable to radioactive material or low-level radioactive waste imported into the region in order to render the material or low-level radioactive waste amenable to transportation, storage, disposal, or recovery, or in order to convert the low-level radioactive waste or material to another usable material, or to reduce it in volume or otherwise treat it, each party state has the right to have all low-level radioactive wastes generated within its borders disposed of at compact facilities subject to the payment of all fees established by the host state under article VI, paragraph "*j*", and to the provisions contained in article VI, paragraphs "*l*" and "*s*", article VIII, paragraph "*d*", article IX, paragraphs "*c*" and "*d*", and article X. All party states have an equal right of access to any facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), subject to the provisions of article VI, paragraphs "*l*" and "*s*", article VIII, paragraphs "*c*" and "*d*", and article X.

c. If a party state's right to have waste generated within its borders disposed of at compact facilities, or at any noncompact facility made available to the region by an agreement entered into by the commission under article III, paragraph "*h*", subparagraph (6), is suspended, low-level radioactive waste generated within its borders by any person shall not be disposed of at any such facility during the period of the suspension.

d. To the extent permitted by federal law, each party state may enforce any applicable federal and state laws, regulations, and rules pertaining to the packaging and transportation of waste generated within or passing through its borders. Nothing in this paragraph shall be construed to require a party state to enter into any agreement with the United States nuclear regulatory commission.

e. Each party state shall provide to the commission any data and information the commission requires to implement its responsibilities. Each party state shall establish the capability to obtain any data and information required by the commission.

f. (1) If, notwithstanding the sovereign immunity provision in article VII, paragraph "*f*", subparagraph (1), and the indemnification provided for in article III, paragraph "*p*", article VI, paragraph "*o*", and article VII, paragraph "*g*", a party state incurs a cost as a result of an inadequate remedial action fund or an exhausted long-term care fund, or incurs a liability as a result of an action described in article VII, paragraph "*f*", subparagraph (1), and not described in article VII, paragraph "*f*", subparagraph (2), the cost or liability shall be the pro rata obligation of each party state and each state that has withdrawn from this compact or had

its membership in this compact revoked. The commission shall determine each state's pro rata obligation in a fair and equitable manner based on the amount of low-level radioactive waste from each such state that has been or is projected to be disposed of at the compact facility with respect to which the cost or liability to be shared was incurred. No state shall be obligated to pay the pro rata obligation of any other state.

(2) The pro rata obligations provided for in this paragraph "*f*" do not result in the creation of state debt. Rather, the pro rata obligations are contractual obligations that shall be enforced by only the commission or an affected party state.

g. If the party states make payment pursuant to this paragraph, the surcharge or fee provided for in article III, paragraph "*j*", shall be used to collect the funds necessary to reimburse the party states for those payments. The commission shall determine the time period over which reimbursement shall take place.

6. *Article VI — Development, operation, and closing of compact facilities.*

a. A party state may volunteer to become a host state, and the commission may designate that state as a host state.

b. If not all compact facilities required by the regional disposal plan are developed pursuant to paragraph "*a*", the commission may designate a host state.

c. After a state is designated a host state by the commission, it is responsible for the timely development and operation of the compact facility it is designated to host. The development and operation of the compact facility shall not conflict with applicable federal and host state laws, rules, and regulations, provided that the laws, rules, and regulations of a host state and its political subdivisions shall not prevent, nor shall they be applied so as to prevent, the host state's discharge of the obligation set forth in this paragraph. The obligation set forth in this paragraph is contingent upon the discharge by the commission of its obligation set forth in article III, paragraph "*i*", subparagraph (5).

d. If a party state designated as a host state fails to discharge the obligations imposed upon it by paragraph "*c*", its host state designation may be terminated by a two-thirds vote of the commission with the member from the host state of any then operating compact facility voting in the affirmative. A party state whose host state designation has been terminated has failed to fulfill its obligations as a host state and is subject to the provisions of article VIII, paragraph "*d*".

e. Any party state designated as a host state may request the commission to relieve that state of the responsibility to serve as a host state. Except as set forth in paragraph "*d*", the commission may relieve a party state of its responsibility only upon a showing by the requesting party state that, based upon criteria established by the commission that are consistent with applicable federal criteria, no feasible potential compact facility site exists within its borders. A party state relieved of its host state responsibility shall repay to the commission any funds provided to that state by the commission for the development of a compact facility, and also shall pay to the commission the amount the commission determines is necessary to ensure that the commission and the other party states do not incur financial loss as a result of the state being relieved of its host state responsibility. Any funds so paid to the commission with respect to the financial loss of the other party states shall be distributed forthwith by the commission to the party states that would otherwise incur the loss. In addition, until the state relieved of its responsibility is again designated as a host state and a compact facility located in that state begins operating, it shall annually pay to the commission, for deposit in the remedial action fund, an amount the commission determines is fair and equitable in light of the fact the state has been relieved of the responsibility to host a compact facility, but continues to enjoy the benefits of being a member of this compact.

f. The host state shall select the technology for the compact facility. If requested by the commission, information regarding the technology selected by the host state shall be submitted to the commission for its review. The commission may require the host state to make changes in the technology selected by the host state if the commission demonstrates that the changes do not decrease the protection of air, land, and water resources and the health and safety of all people who may be affected by the compact facility. If requested by the host state, any commission decision requiring the host state to make changes in the

technology shall be preceded by an adjudicatory hearing in which the commission shall have the burden of proof.

g. A host state may assign to a private contractor the responsibility, in whole or in part, to develop, construct, operate, close, or provide long-term care for a compact facility. Assignment of such responsibility by a host state to a private contractor does not relieve the host state of any responsibility imposed upon it by this compact. A host state may secure indemnification from the private contractor for any costs, liabilities, and expenses incurred by the host state resulting from the development, construction, operation, closing, or long-term care of a compact facility.

h. To the extent permitted by federal and state law, a host state shall regulate and license any compact facility within its borders and ensure the long-term care of that compact facility.

i. A host state shall accept waste for disposal for a period of twenty years from the date the compact facility in the host state becomes operational, or until its capacity has been reached, whichever occurs first. At any time before the compact facility closes, the host state and the commission may enter into an agreement to extend the period during which the host state is required to accept such waste or to increase the capacity of the compact facility. Except as specifically authorized by paragraph "*l*", subparagraph (4), the twenty-year period shall not be extended, and the capacity of the facility shall not be increased, without the consent of the affected host state and the commission.

j. A host state shall establish a system of fees to be collected from the users of any compact facility within its borders. The fee system, and the costs paid through the system, shall be reasonable and equitable. The fee system shall be subject to the commission's approval. The fee system shall provide the host state with sufficient revenue to pay costs associated with the compact facility, including, but not limited to operation, closing, long-term care, debt service, legal costs, local impact assistance, and local financial incentives. The fee system also shall be used to collect the surcharge provided in article III, paragraph "*j*", subparagraph (2). The fee system shall include incentives for source reduction and shall be based on the hazard of the low-level radioactive waste as well as the volume.

k. A host state shall ensure that a compact facility located within its borders that is permanently closed is properly cared for so as to ensure protection of air, land, and water resources and the health and safety of all people who may be affected by the facility.

l. The development of subsequent compact facilities shall be as follows:

(1) No compact facility shall begin operating until the commission designates the host state of the next compact facility.

(2) (a) The following actions shall be taken by the state designated to host the next compact facility within the specified number of years after the compact facility it is intended to replace begins operation:

(i) Within three years, enact legislation providing for the development of the next compact facility.

(ii) Within seven years, initiate site characterization investigations and tests to determine licensing suitability for the next compact facility.

(iii) Within eleven years, submit a license application for the next compact facility that the responsible licensing authority deems complete.

(b) If a host state fails to take any of these actions within the specified time, all low-level radioactive waste generated by a person within that state shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), until the action is taken. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. A host state that fails to take any of these actions within the specified time has failed to fulfill its obligations as a host state and is subject to the provisions of this paragraph "*l*", and article VIII, paragraph "*d*".

(3) Within fourteen years after a compact facility begins operating, the state designated to host the next compact facility shall have obtained a license from the responsible licensing authority to construct and operate the compact facility the state has been designated to host. If the license is not obtained within the specified time, all low-level radioactive waste generated

by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility, and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), until the license is obtained. The state designated to host the next compact facility shall have failed in its obligations as a host state and shall be subject to paragraph "*d*", and article VIII, paragraph "*d*". In addition, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under paragraph "*i*", shall be denied access to the then operating compact facility, and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), until the license is obtained. Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative.

(4) If twenty years after a compact facility begins operating, the next compact facility is not ready to begin operating, the state designated to host the next compact facility shall have failed in its obligation as a host state and shall be subject to paragraph "*d*", and article VIII, paragraph "*d*". If at the time the capacity of the then operating compact facility has been reached, or twenty years after the facility began operating, whichever occurs first, the next compact facility is not ready to begin operating, the host state of the then operating compact facility, without the consent of any other party state or the commission, may continue to operate the facility until a compact facility in the next host state is ready to begin operating. During any such period of continued operation of a compact facility, all low-level radioactive waste generated by any person within the state designated to host the next compact facility shall be denied access to the then operating compact facility and to a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6). In addition, during such period, at the sole option of the host state of the then operating compact facility, all low-level radioactive waste generated by any person within any party state that has not fully discharged its obligations under paragraph "*i*", shall be denied access to the then operating compact facility and to any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6). Denial of access may be rescinded by the commission, with the member from the host state of the then operating compact facility voting in the affirmative. The provisions of this subparagraph shall not apply if their application is inconsistent with an agreement between the host state of the then operating compact facility and the commission as authorized in paragraph "*i*", or inconsistent with paragraph "*p*" or "*q*".

(5) During any period that access is denied for low-level radioactive waste disposal pursuant to paragraph "*l*", subparagraph (2), (3), or (4), the party state designated to host the next compact disposal facility shall pay to the host state of the then operating compact facility an amount the commission determines is reasonably necessary to ensure that the host state, or an agency or political subdivision thereof, does not incur financial loss as a result of the denial of access.

(6) The commission may modify any of the requirements contained in paragraph "*l*", subparagraphs (2) and (3), if it finds that circumstances have changed so that the requirements are unworkable or unnecessarily rigid or no longer serve to ensure the timely development of a compact facility. The commission may adopt such a finding by a two-thirds vote, with the member from the host state of the then operating compact facility voting in the affirmative.

m. This compact shall not prevent an emergency closing of a compact facility by a host state to protect air, land, and water resources and the health and safety of all people who may be affected by the compact facility. A host state that has an emergency closing of a compact facility shall notify the commission in writing within three working days of its action and shall, within thirty working days of its action, demonstrate justification for the closing.

n. A party state that has fully discharged its obligations under paragraph "*i*" shall not again be designated a host state of a compact facility without its consent until each party state has been designated to host a compact facility and has fully discharged its obligations

under paragraph "*i*", or has been relieved under paragraph "*e*", of its responsibility to serve as a host state.

o. Each host state of a compact facility shall establish a long-term care fund to pay for monitoring, security, maintenance, and repair of the facility after it is permanently closed. The expenses of administering the long-term care fund shall be paid out of the fund. The fee system established by the host state that establishes a long-term care fund shall be used to collect moneys in amounts that are adequate to pay for all long-term care of the compact facility. The moneys shall be deposited into the long-term care fund. Except where the matter is resolved through arbitration, the amount to be collected through the fee system for deposit into the fund shall be determined through an agreement between the commission and the host state establishing the fund. Not less than three years, nor more than five years, before the compact facility it is designated to host is scheduled to begin operating, the host state shall propose to the commission the amount to be collected through the fee system for deposit into the fund. If, one hundred eighty days after such proposal is made to the commission, the host state and the commission have not agreed, either the commission or the host state may require the matter to be decided through binding arbitration. The method of administration of the fund shall be determined by the host state establishing the long-term care fund, provided that moneys in the fund shall be used only for the purposes set forth in this paragraph, and shall be invested in accordance with the standards applicable to trustees under the laws of the host state establishing the fund. If, after a compact facility is closed, the commission determines the long-term care fund established with respect to that compact facility is not adequate to pay for all long-term care for that compact facility, the commission shall collect and pay over to the host state of the closed compact facility, for deposit into the long-term care fund, an amount determined by the commission to be necessary to make the amount in the fund adequate to pay for all long-term care of the compact facility. If a long-term care fund is exhausted and long-term care expenses for the compact facility with respect to which the fund was created have been reasonably incurred by the host state of the compact facility, those expenses are a liability with respect to which generators shall provide indemnification as provided in article VII, paragraph "*g*". Generators that provide indemnification shall have contribution rights as provided in article VII, paragraph "*g*".

p. A host state that withdraws from the compact or has its membership revoked shall immediately and permanently close any compact facility located within its borders, except that the commission and a host state may enter into an agreement under which the host state may continue to operate, as a noncompact facility, a facility within its borders that, before the host state withdrew or had its membership revoked, was a compact facility.

q. If this compact is dissolved, the host state of any then operating compact facility shall immediately and permanently close the compact facility, provided that a host state may continue to operate a compact facility or resume operating a previously closed compact facility, as a noncompact facility, subject to all of the following requirements:

(1) The host state shall pay to the other party states the portion of the funds provided to that state by the commission for the development, construction, operation, closing, or long-term care of a compact facility that is fair and equitable, taking into consideration the period of time the compact facility located in that state was in operation and the amount of waste disposed of at the compact facility, provided that a host state that has fully discharged its obligations under paragraph "*i*", shall not be required to make such payment.

(2) The host state shall physically segregate low-level radioactive waste disposed of at the compact facility after this compact is dissolved from low-level radioactive waste disposed of at the compact facility before this compact is dissolved.

(3) The host state shall indemnify and hold harmless the other party states from all costs, liabilities, and expenses, including reasonable attorneys' fees and expenses, caused by operating the compact facility after this compact is dissolved, provided that this indemnification and hold-harmless obligation shall not apply to costs, liabilities, and expenses resulting from the activities of a host state as a generator of waste.

(4) Moneys in the long-term care fund established by the host state that are attributable to the operation of the compact facility before this compact is dissolved, and investment earnings thereon, shall be used only to pay the cost of monitoring, securing, maintaining,

or repairing that portion of the compact facility used for the disposal of low-level radioactive waste before this compact is dissolved. Such moneys and investment earnings, and moneys added to the long-term care fund through a distribution authorized by article III, paragraph "*r*", also may be used to pay the cost of any remedial action made necessary by an event resulting from the disposal of waste at the facility before this compact is dissolved.

r. Financial statements of a compact facility shall be prepared according to generally accepted accounting principles. The commission may require the financial statements to be audited on an annual basis by a firm of certified public accountants selected and paid by the commission.

s. (1) Low-level radioactive waste may be accepted for disposal at a compact facility only if the generator of the low-level radioactive waste has signed, and there is on file with the commission, an agreement to provide indemnification to a party state, or employee of that state, for all of the following:

(a) Any cost of a remedial action described in article III, paragraph "*p*", that, due to inadequacy of the remedial action fund, is not paid as set forth in that provision.

(b) Any expense for long-term care described in paragraph "*o*" that, due to exhaustion of the long-term care fund, is not paid as set forth in that provision.

(c) Any liability for damages to persons, property, or the environment incurred by a party state, or employee of that state while acting within the scope of employment, resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), or other matter arising from this compact. The agreement also shall require generators to indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending an action for such damages. This indemnification shall not extend to liability based on any of the following:

(i) The activities of the party states as generators of waste.

(ii) The obligations of the party states to each other and the commission imposed by this compact or other contracts related to the disposal of low-level radioactive waste under this compact.

(iii) Activities of a host state or employees thereof that are grossly negligent or willful and wanton.

(2) The agreement shall provide that the indemnification obligation of generators shall be joint and several, except that the indemnification obligation of the party states with respect to their activities as generators of low-level radioactive waste shall not be joint and several, but instead shall be prorated according to the amount of waste that each state had disposed of at the compact facility giving rise to the liability. Such proration shall be calculated as of the date of the event giving rise to the liability. The agreement shall be in a form approved by the commission with the member from the host state of any then operating compact facility voting in the affirmative. Among generators there shall be rights of contribution based on equitable principles, and generators shall have rights of contribution against another person responsible for such damages under common law, statute, rule, or regulation, provided that a party state that through its own activities did not generate any low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of such a party state, and the commission shall not have a contribution obligation. The commission may waive the requirement that the party state sign and file such an indemnification agreement as a condition to being able to dispose of low-level radioactive waste generated as a result of the party state's activities. Such a waiver shall not relieve a party state of the indemnification obligation imposed by article VII, paragraph "*g*".

7. *Article VII — Other laws and regulations.*

a. Nothing in this compact:

(1) Abrogates or limits the applicability of any act of Congress or diminishes or otherwise impairs the jurisdiction of any federal agency expressly conferred thereon by the Congress;

(2) Prevents the enforcement of any other law of a party state which is not inconsistent with this compact;

(3) Prohibits any generator from storing or treating, on its own premises, low-level radioactive waste generated by it within the region;

(4) Affects any administrative or judicial proceeding pending on the effective date of this compact;

(5) Alters the relations between and the respective internal responsibility of the government of a party state and its subdivisions;

(6) Affects the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the secretary of the United States department of energy or successor agencies or federal research and development activities as described in 42 U.S.C. §2021;

(7) Affects the rights and powers of any party state or its political subdivisions, to the extent not inconsistent with this compact, to regulate and license any facility or the transportation of waste within its borders.

(8) Requires a party state to enter into any agreement with the United States nuclear regulatory commission.

(9) Limits, expands, or otherwise affects the authority of a state to regulate low-level radioactive waste classified by any agency of the United States government as below regulatory concern or otherwise exempt from federal regulation.

b. If a court of the United States finally determines that a law of a party state conflicts with this compact, this compact shall prevail to the extent of the conflict. The commission shall not commence an action seeking such a judicial determination unless commencement of the action is approved by a two-thirds vote of the membership of the commission.

c. Except as authorized by this compact, no law, rule, or regulation of a party state or of any of its subdivisions or instrumentalities may be applied in a manner which discriminates against the generators of another party state.

d. Except as provided in article III, paragraph "*m*", and paragraph "*f*" of this article, no provision of this compact shall be construed to eliminate or reduce in any way the liability or responsibility, whether arising under common law, statute, rule, or regulation, of any person for penalties, fines, or damages to persons, property, or the environment resulting from the development, construction, operation, closing, or long-term care of a compact facility, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6), or other matter arising from this compact. The provisions of this compact shall not alter otherwise applicable laws relating to compensation of employees for workplace injuries.

e. Except as provided in 28 U.S.C. §1251(a), the district courts of the United States have exclusive jurisdiction to decide cases arising under this compact. This paragraph does not apply to proceedings within the jurisdiction of state or federal regulatory agencies or to judicial review of proceedings before state or federal regulatory agencies. This paragraph shall not be construed to diminish other laws of the United States conferring jurisdiction on the courts of the United States.

f. For the purposes of activities pursuant to this compact, the sovereign immunity of party states and employees of party states shall be as follows:

(1) A party state or employee thereof, while acting within the scope of employment, shall not be subject to suit or held liable for damages to persons, property, or the environment resulting from the development, construction, operation, regulation, closing, or long-term care of a compact facility, or any noncompact facility made available to the region by any agreement entered into by the commission pursuant to article III, paragraph "*h*", subparagraph (6). This applies whether the claimed liability of the party state or employee is based on common law, statute, rule, or regulation.

(2) The sovereign immunity granted in subparagraph (1) does not apply to any of the following:

(a) Actions based upon the activities of the party states as generators of low-level radioactive waste. With regard to those actions, the sovereign immunity of the party states shall not be affected by this compact.

(b) Actions based on the obligations of the party states to each other and the commission imposed by this compact, or other contracts related to the disposal of low-level radioactive

waste under this compact. With regard to those actions, the party states shall have no sovereign immunity.

(c) Actions against a host state, or employee thereof, when the host state or employee acted in a grossly negligent or willful and wanton manner.

g. If in an action described in paragraph "*f*", subparagraph (1), and not described in paragraph "*f*", subparagraph (2), it is determined that, notwithstanding paragraph "*f*", subparagraph (1), a party state, or employee of that state who acted within the scope of employment, is liable for damages or has liability for other matters arising under this compact as described in article VI, paragraph "*s*", subparagraph (3), subparagraph division (c), the generators who caused waste to be placed at the compact facility with respect to which the liability was incurred shall indemnify the party state or employee against that liability. Those generators also shall indemnify the party state or employee against all reasonable attorney's fees and expenses incurred in defending against any such action. The indemnification obligation of generators under this paragraph shall be joint and several, except that the indemnification obligation of party states with respect to their activities as generators of waste shall not be joint and several, but instead shall be prorated according to the amount of waste each state has disposed of at the compact facility giving rise to the liability. Among generators, there shall be rights of contribution based upon equitable principles, and generators shall have rights of contribution against another person responsible for damages under common law, statute, rule, or regulation. A party state that through its own activities did not generate low-level radioactive waste disposed of at the compact facility giving rise to the liability, an employee of a party state, and the commission shall have no contribution obligation under this paragraph. This paragraph shall not be construed as a waiver of the sovereign immunity provided for in paragraph "*f*", subparagraph (1).

h. The sovereign immunity of a party state provided for in paragraph "*f*", subparagraph (1), shall not be extended to a private contractor assigned responsibilities as authorized in article VI, paragraph "*g*".

8. *Article VIII — Eligible parties, withdrawal, revocation, suspension of access, entry into force, and termination.*

a. Any state may petition the commission to be eligible for membership in the compact. The commission may establish appropriate eligibility requirements. These requirements may include, but are not limited to, an eligibility fee or designation as a host state. A petitioning state becomes eligible for membership in the compact upon the approval of the commission, including the affirmative vote of the member from each host state in which a compact facility is operating or being developed or constructed. Any state becoming eligible upon the approval of the commission becomes a member of the compact when the state enacts this compact into law and pays the eligibility fee established by the commission.

b. The commission is formed upon the appointment of commission members and the tender of the membership fee payable to the commission by three party states. The governor of the first state to enact this compact shall convene the initial meeting of the commission. The commission shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall take action necessary to organize the commission and implement the provisions of this compact.

c. A party state that has fully discharged its obligations under article VI, paragraph "*i*", or has been relieved under article VI, paragraph "*e*", of its responsibilities to serve as a host state, may withdraw from this compact by repealing the authorizing legislation and by receiving the unanimous consent of the commission. Withdrawal takes effect on the date specified in the commission resolution consenting to withdrawal. All legal rights of the withdrawn state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of withdrawal, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in paragraph "*e*" continue until they are fulfilled.

d. Any party state that fails to comply with the terms of this compact or fails to fulfill its obligations may have reasonable financial penalties imposed against it, may have the

right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered into by the commission pursuant to article III, paragraph *"h"*, subparagraph (6), suspended, or may have its membership in the compact revoked by a two-thirds vote of the commission, provided that the membership of the party state designated to host the next compact facility shall not be revoked unless the member from the host state of a then operating compact facility votes in the affirmative. Revocation takes effect on the date specified in the resolution revoking the party state's membership. All legal rights of the revoked party state established under this compact, including, but not limited to, the right to have low-level radioactive waste generated within its borders disposed of at compact facilities, cease upon the effective date of revocation, but any legal obligations of that party state under this compact, including, but not limited to, those set forth in paragraph *"e"* continue until they are fulfilled. The chairperson of the commission shall transmit written notice of a revocation of a party state's membership in the compact, suspension of a party state's low-level radioactive waste disposal rights, or imposition of financial penalties immediately following the vote of the commission to the governor of the affected party state, governors of all the other party states, and the Congress of the United States.

e. A party state that withdraws from this compact or has its membership in the compact revoked before it has fully discharged its obligations under article VI forthwith shall repay to the commission the portion of the funds provided to that state by the commission for the development, construction, operation, closing, or long-term care of a compact facility that the commission determines is fair and equitable, taking into consideration the period of time the compact facility located in that host state was in operation and the amount of low-level radioactive waste disposed of at the compact facility. If at any time after a compact facility begins operating, a party state withdraws from the compact or has its membership revoked, the withdrawing or revoked party state shall be obligated forthwith to pay to the commission, the amount the commission determines would have been paid under the fee system established by the host state of the compact facility, to dispose of at the compact facility the estimated volume of low-level radioactive waste generated in the withdrawing or revoked party state that would have been disposed of at the compact facility from the time of withdrawal or revocation until the time the compact facility is closed. Any funds so paid to the commission shall be distributed by the commission to the persons who would have been entitled to receive the funds had they originally been paid to dispose of low-level radioactive waste at the facility. Any person receiving funds from the commission shall apply the funds to the purposes to which they would have been applied had they originally been paid to dispose of low-level radioactive waste at the compact facility. In addition, a withdrawing or revoked party state forthwith shall pay to the commission an amount the commission determines to be necessary to cover all other costs and damages incurred by the commission and the remaining party states as a result of the withdrawal or revocation. The intention of this paragraph is to eliminate a decrease in revenue resulting from withdrawal of a party state or revocation of a party state's membership, to eliminate financial harm to the remaining party states, and to create an incentive for party states to continue as members of the compact and to fulfill their obligations. This paragraph shall be construed and applied so as to effectuate this intention.

f. Any party state whose right to have low-level radioactive waste generated within its borders disposed of at compact facilities is suspended by the commission, shall pay to the host state of the compact facility to which access has been suspended the amount the commission determines is reasonably necessary to ensure that the host state, or any political subdivision thereof, does not incur financial loss as a result of the suspension of access.

g. This compact becomes effective upon enactment by at least three eligible states and consent to this compact by the Congress. The consent given to this compact by the Congress shall extend to any future admittance of new party states and to the power of the commission to regulate the shipment and disposal of waste and disposal of naturally occurring and accelerator-produced radioactive material pursuant to this compact. Amendments to this compact are effective when enacted by all party states and, if necessary, consented to by the Congress. To the extent required by the Low-Level Radioactive Waste Policy Amendments

Act of 1985, 42 U.S.C. §2021(d)(4)(d), every five years after this compact has taken effect, the Congress by law may withdraw its consent.

h. The withdrawal of a party state from this compact, the suspension of low-level radioactive waste disposal rights, the termination of a party state's designation as a host state, or the revocation of a state's membership in this compact does not affect the applicability of this compact to the remaining party states.

i. (1) This compact may be dissolved and the obligations arising under this compact may be terminated only as follows:

(a) Through unanimous agreement of all party states expressed in duly enacted legislation; or

(b) Through withdrawal of consent to this compact by the Congress under Article I, section 10, of the United States Constitution, in which case dissolution shall take place one hundred twenty days after the effective date of the withdrawal of consent.

(2) Unless explicitly abrogated by the state legislation dissolving this compact, or if dissolution results from withdrawal of congressional consent, the limitations on the investment and use of long-term care funds in article VI, paragraph "*o*" and paragraph "*q*", subparagraph (4), the contractual obligations in article V, paragraph "*f*", the indemnification obligations and contribution rights in article VI, paragraphs "*o*" and "*s*", and article VII, paragraph "*g*", and the operation rights indemnification and hold-harmless obligations in article VI, paragraph "*q*", shall remain in force notwithstanding dissolution of this compact.

9. *Article IX — Penalties and enforcement.*

a. Each party state shall prescribe and enforce penalties against any person who is not an official of another state for violation of any provision of this compact.

b. The parties to this compact intend that the courts of the United States shall specifically enforce the obligations, including the obligations of party states and revoked or withdrawn party states, established by this compact.

c. The commission, an affected party state, or both may obtain injunctive relief, recover damages, or both to prevent or remedy violations of this compact.

d. Each party state acknowledges that the transport into a host state of low-level radioactive waste packaged or transported in violation of applicable laws, rules, and regulations may result in the imposition of sanctions by the host state which may include reasonable financial penalties assessed against any generator, transporter, or collector responsible for the violation, or suspension or revocation of access to the compact facility in the host state by a generator, transporter, or collector responsible for the violation.

e. Each party state has the right to seek legal recourse against a party state which acts in violation of this compact.

f. This compact shall not be construed to create a cause of action for a person other than a party state or the commission. Nothing in this paragraph shall limit the right of judicial review set forth in article III, paragraph "*n*", subparagraph (3), or the rights of contribution set forth in article III, paragraph "*p*", article VI, paragraphs "*o*" and "*s*", and article VII, paragraph "*g*".

10. *Article X — Severability and construction.* The provisions of this compact shall be severable and if any provision of this compact is finally determined by a court of competent jurisdiction to be contrary to the constitution of a participating state or of the United States or the application thereof to a person or circumstance is held invalid, the validity of the remainder of this compact to that person or circumstance and the applicability of the entire compact to any other person or circumstance shall not be affected thereby. If a provision of this compact shall be held contrary to the constitution of a state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. If any provision of this compact imposing a financial obligation upon a party state, or a state that has withdrawn from this compact or had its membership in this compact revoked, is finally determined by a court of competent jurisdiction to be unenforceable due to the state's constitutional limitations on its ability to pay the obligation, then that state shall use its best efforts to obtain an appropriation to pay the obligation, and, if the state is a party state, its right to have low-level radioactive waste generated within its borders disposed of at compact facilities, or a noncompact facility made available to the region by an agreement entered

into by the commission pursuant to article III, paragraph *"h"*, subparagraph (6), shall be suspended until the appropriation is obtained.

83 Acts, ch 8, §1
CS83, §8C.1
85 Acts, ch 67, §3
C93, §457B.1
96 Acts, ch 1051, §1; 97 Acts, ch 23, §54; 2008 Acts, ch 1032, §201; 2009 Acts, ch 41, §263
Referred to in §136C.12, 455B.482

CHAPTER 458

RESERVED

CHAPTER 458A

OIL, GAS, AND OTHER MINERALS

Referred to in §455A.4, 455A.6

This chapter not enacted as a part of this title;
transferred from chapter 84 in Code 1993

458A.1 Declaration of policy.
458A.2 Definitions.
458A.3 Waste prohibited.
458A.4 Duties and powers of director.
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458A.1 Declaration of policy.

It is declared to be in the public interest to foster, to encourage, and to promote the development, production, and utilization of natural resources of oil and gas and metallic minerals in the state in such a manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas and metallic minerals properties in such a manner that a greater ultimate recovery of oil and gas and metallic minerals be had and that the correlative rights of all owners be fully protected; and to encourage and to authorize such measures as will result in the greatest possible economic recovery of oil and gas and metallic minerals within the state to the end that the landowners, the royalty owners, the producers, and the general public realize and enjoy the greatest possible good from these vital natural resources. It is further declared that the general welfare of the people requires that the

underground and surface water of the state be protected from pollution and conserved in the best interests of the people of the state.

[C39, §**1360.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §84.1; 81 Acts, ch 41, §1]
C93, §458A.1

458A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Certificate of clearance"* means a permit prescribed by the department for the transportation or the delivery of oil or gas or product and issued or registered in accordance with the rule or order requiring the permit.
2. *"Commission"* means the environmental protection commission of the department.
3. *"Department"* means the department of natural resources created under section 455A.2.
4. *"Director"* means the director of the department or a designee.
5. *"Exploration"* means an on-site geologic examination from the surface of an area by core, rotary, percussion, or other drilling for the purpose of obtaining stratigraphic or metallic mineral resource information or establishing the nature of a known metallic mineral deposit.
6. *"Field"* means the general area underlaid by one or more pools.
7. *"Gas"* means and includes all natural gas and all other fluid hydrocarbons which are produced at the wellhead and not hereinabove defined as oil.
8. *"Illegal gas"* means gas which has been produced from any well within this state in excess of the quantity permitted by any rule or order of the department.
9. *"Illegal oil"* means oil which has been produced from any well within the state in excess of the quantity permitted by any rule or order of the department.
10. *"Illegal product"* means any product derived in whole or in part from illegal oil or illegal gas.
11. *"Metallic mineral resources"* means the valuable minerals of an area containing metals such as, but not restricted to, lead, copper, zinc, and iron that are presently recoverable or may be recoverable in the future.
12. *"Oil"* means and includes crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form and the liquid hydrocarbons known as distillate or condensate recovered or extracted from gas, other than gas produced in association with oil and commonly known as casinghead gas.
13. *"Owner"* means the person who has the right to drill into and produce from a pool and to appropriate the oil or gas that person produces therefrom either for that person or others or for that person and others.
14. *"Person"* means and includes any natural person, corporation, association, partnership, receiver, trustee, personal representative, guardian, fiduciary or other representative of any kind, and includes any department, agency, or instrumentality of the state or of any governmental subdivision thereof.
15. *"Pool"* means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.
16. *"Producer"* means the owner of a well or wells capable of producing oil or gas or both.
17. *"Product"* means any commodity made from oil or gas and includes refined crude oil, crude tops, topped crude, processed crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, fuel oil, treated crude oil, residuum, gas oil, casinghead gasoline, natural-gas gasoline, kerosene, benzine, wash oil, waste oil, blended gasoline, lubricating oil, blends or mixtures of oil with one or more liquid products or by-products derived from oil or gas, and blends or mixtures of two or more liquid products or by-products derived from oil or gas, whether hereinabove enumerated or not.
18. *"Reasonable market demand"* means the demand for oil or gas for reasonable current requirements for consumption and use within and without the state, together with such quantities as are reasonably necessary for building up or maintaining reasonable working stocks and reasonable reserves of oil or gas or product.
19. *"Waste"* means and includes:

a. Physical waste, as that term is generally understood in the oil and gas industry,

b. The inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy,

c. The location, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas,

d. The inefficient storing of oil, and

e. The production of oil or gas in excess of transportation or marketing facilities or in excess of reasonable market demand.

20. *"Well"* means any hole drilled to determine stratigraphic sequence, mineralization, or for the discovery of oil or gas.

21. The word *"and"* includes the word *"or"* and the use of the word "or" includes the word "and". The use of the plural includes the singular and the use of the singular includes the plural.

[C66, 71, 73, 75, 77, 79, 81, §84.2; 81 Acts, ch 41, §2; 82 Acts, ch 1199, §37, 38, 96]
86 Acts, ch 1245, §1810 – 1812
C93, §458A.2

458A.3 Waste prohibited.

Waste of oil and gas is prohibited.

[C66, 71, 73, 75, 77, 79, 81, §84.3]
C93, §458A.3

458A.4 Duties and powers of director.

The director shall administer this chapter. The director shall make investigations the director deems proper to determine whether waste exists or is imminent or whether other facts exist which justify action. The director has the authority:

1. To require:

a. Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the refining or intrastate transportation of oil and gas;

b. The making and filing of all mechanical well logs and the filing of directional surveys if taken, and the filing of reports on well location, drilling and production, and the filing free of charge of samples and core chips and of complete cores less tested sections when requested in the department within six months after the completion or abandonment of the well;

c. The drilling, casing, operation, and plugging of wells in such manner as to prevent the escape of oil or gas out of one stratum into another, the intrusion of water into oil or gas stratum, the pollution of fresh water supplies by oil, gas, or highly mineralized water, to prevent blowouts, cavings, seepages, and fires, and to prevent the escape of oil, gas, or water into workable coal or other mineral deposits;

d. The furnishing of a reasonable bond with good and sufficient surety, conditioned upon the full compliance with this chapter, and the rules of the department prescribed to govern the production of oil and gas on state and private lands within the state of Iowa;

e. That the production from wells be separated into gaseous and liquid hydrocarbons, and that each be accurately measured by the means and upon standards prescribed by the department;

f. The operation of wells with efficient gas-oil and water-oil ratios, and to fix these ratios;

g. Certificates of clearance in connection with the transportation or delivery of any native and indigenous Iowa produced crude oil, gas, or any product;

h. Metering or other measuring of any native and indigenous Iowa produced crude oil, gas, or product in pipelines, gathering systems, barge terminals, loading racks, refineries, or other places; and

i. That every person who produces, sells, purchases, acquires, stores, transports, refines, or processes native and indigenous Iowa produced crude oil or gas in this state shall keep and maintain within this state complete and accurate records of the quantities of oil or gas, which records shall be available for examination by the department at all reasonable times,

and that every such person file with the department the reports it may prescribe with respect to the oil or gas or the products of the oil or gas.

2. To regulate:

a. The drilling, producing, and plugging of wells, and all other operations for the production of oil or gas;

b. The shooting and chemical treatment of wells;

c. The spacing of wells;

d. Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations; and

e. Disposal of highly mineralized water and oil field wastes.

3. To limit and to allocate the production of oil and gas from any field, pool, or area.

4. To classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

5. To promulgate and to enforce rules and orders to effectuate the purposes and the intent of this chapter.

6. To make rules or orders for the classification of wells as oil wells or dry natural gas wells; or wells drilled, or to be drilled, for geological information, or as wells for secondary recovery projects, or wells for the disposal of highly mineralized water, brine, or other oil field wastes, or wells for the storage of dry natural gas, or casinghead gas, or wells for the development of reservoirs for the storage of liquid petroleum gas and for the exploration and production of metallic mineral resources.

[C39, §**1360.04, 1360.05;** C46, 50, 54, 58, 62, §84.4, 84.5; C66, 71, 73, 75, 77, 79, 81, §84.4; 81 Acts, ch 41, §3; 82 Acts, ch 1199, §39, 40, 96]

86 Acts, ch 1245, §1813 – 1815

C93, §458A.4

458A.5 Drilling permit required.

It is unlawful to commence operations for the drilling of a well for oil or gas or the production of metallic minerals or to commence operations to deepen any well to a different geological formation without first giving the director notice of intention to drill, and without first obtaining a permit from the director, under rules prescribed by the department and paying to the department a fee established by rule of the department for the well. The fee shall be deposited in the general fund of the state.

[C39, §**1360.03;** C46, 50, 54, 58, 62, §84.3; C66, 71, 73, 75, 77, 79, 81, §84.5; 81 Acts, ch 41, §4; 82 Acts, ch 1199, §41, 96]

86 Acts, ch 1245, §1815, 1816

C93, §458A.5

458A.6 Department shall determine market demand and regulate the amount of production.

The department shall determine market demand for each marketing district and regulate the amount of production as follows:

1. The department shall limit the production of oil and gas within each marketing district to that amount which can be produced without waste, and which does not exceed the reasonable market demand.

2. When the department limits the total amount of oil or gas which may be produced in the state or a marketing district, the department shall allocate or distribute the allowable production among the pools in the district on a reasonable basis, giving, where reasonable under the circumstances to each pool with small wells of settled production, an allowable production which prevents the general premature abandonment of the wells in the pool.

3. When the department limits the total amount of oil or gas which may be produced in any pool in this state to an amount less than that amount which the pool could produce if no restriction were imposed, which limitation is imposed either incidental to, or without, a limitation of the total amount of oil or gas produced in the marketing district wherein the pool is located, the department shall allocate or distribute the allowable production among

the wells or producing properties in the pool on a reasonable basis, preventing or minimizing reasonable avoidable drainage, so that each property will have the opportunity to produce or to receive its just and equitable share, subject to the reasonable necessities for the prevention of waste.

4. In allocating the market demand for gas between pools within marketing districts, the department shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of its energy for oil production.

5. The department is not required to determine the reasonable market demand applicable to any single pool, except in relation to all other pools within the same marketing district, and in relation to the demand applicable to the marketing district. In allocating allowables to pools, the department may consider, but is not bound by nominations of purchasers to purchase from particular fields, pools, or portions thereof. The department shall allocate the total allowable for the state in a manner which prevents undue discrimination between marketing districts, fields, pools, or portions thereof resulting from selective buying or nomination by purchasers.

[C66, 71, 73, 75, 77, 79, 81, §84.6; 82 Acts, ch 1199, §42, 96]

C93, §458A.6

458A.7 Department shall set spacing units.

The department shall set spacing units as follows:

1. When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights, the department shall establish spacing units for a pool. Spacing units when established shall be of uniform size and shape for the entire pool, except that when found to be necessary for any of the purposes above mentioned, the department may divide any pool into zones and establish spacing units for each zone, which units may differ in size and shape from those established in any other zone.

2. The size and shape of spacing units are to be such as will result in the efficient and economical development of the pool as a whole.

3. An order establishing spacing units for a pool shall specify the size and shape of each unit and the location of the permitted well thereon in accordance with a reasonably uniform spacing plan. Upon application, if the director finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the director is authorized to enter an order permitting the well to be drilled at a location other than that prescribed by such spacing order; however, the director shall include in the order suitable provisions to prevent the production from the spacing unit of more than its just and equitable share of the oil and gas in the pool.

4. An order establishing units for a pool shall cover all lands determined or believed to be underlaid by the pool, and may be modified by the director from time to time to include additional areas determined to be underlaid by the pool. When found necessary for the prevention of waste, or to avoid the drilling of unnecessary wells or to protect correlative rights, an order establishing spacing units in a pool may be modified by the director to increase the size of spacing units in the pool or any zone of the pool, or to permit the drilling of additional wells on a reasonable uniform plan in the pool, or any zone of the pool. Orders of the director may be appealed to the department within thirty days.

[C39, §**1360.02;** C46, 50, 54, 58, 62, §84.2; C66, 71, 73, 75, 77, 79, 81, §84.7; 82 Acts, ch 1199, §43, 96]

86 Acts, ch 1245, §1816

C93, §458A.7

458A.8 Integration of fractional tracts.

1. When two or more separately owned tracts are embraced within a spacing unit, or when there are separately owned interests in all or a part of the spacing unit, then the owners and royalty owners of the tracts may pool their interests for the development and operation of the spacing unit. In the absence of voluntary pooling the department upon the application of any interested person, shall enter an order pooling all interests in the spacing unit for the

development and operations of the unit. Each pooling order shall be made after notice and hearing, and shall be upon terms and conditions that are just and reasonable, and that afford to the owner of each tract or interest in the spacing unit the opportunity to recover or receive, without unnecessary expense, a just and equitable share. Operations incident to the drilling of a well upon any portion of a spacing unit covered by a pooling order shall be deemed for all purposes to be the conduct of the operations upon each separately owned tract in the drilling unit by the several owners of the unit. That portion of the production allocated to each tract included in a spacing unit covered by a pooling order shall, when produced, be deemed for all purposes to have been produced from the tract by a well drilled on it.

2. Each pooling order shall make provision for the drilling and operation of a well on the spacing unit, and for the payment of the reasonable actual cost of the well by the owners of interests in the spacing unit, plus a reasonable charge for supervision. In the event of any dispute as to such costs the department shall determine the proper costs. If an owner shall drill and operate, or pay the expenses of drilling and operating the well for the benefit of others, then, the owner so drilling or operating shall, upon complying with the terms of section 458A.10, have a lien on the share of production from the spacing unit accruing to the interest of each of the other owners for the payment of a proportionate share of the expenses. All the oil and gas subject to the lien shall be marketed and sold and the proceeds applied in payment of the expenses secured by the lien as provided for in section 458A.10.

[C66, 71, 73, 75, 77, 79, 81, §84.8; 82 Acts, ch 1199, §44, 96]

C93, §458A.8

Referred to in §458A.10

458A.9 Voluntary agreements for unit operation valid.

An agreement for the unit or cooperative development and operation of a field or pool, in connection with the conduct of a repressuring or pressure maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas, or any other method of operation, including water floods, may be performed without being in violation of any of the statutes of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade, if the agreement is approved by the department as being in the public interest, protective of correlative rights, and reasonably necessary to increase ultimate recovery or to prevent waste of oil or gas. The agreements bind only the persons who execute them, and their heirs, successors, assigns, and legal representatives.

[C66, 71, 73, 75, 77, 79, 81, §84.9; 82 Acts, ch 1199, §45, 96]

C93, §458A.9

458A.10 Liens for development and operating costs.

A person to whom another is indebted for expenses incurred in drilling and operating a well on a drilling unit required to be formed as provided for in section 458A.8, may, in order to secure payment of the amount due, fix a lien upon the interest of the debtor in the production from the drilling unit or the unit area, as the case may be, by filing for record, with the recorder of the county where property involved, or any part thereof, is located, an affidavit setting forth the amount due and the interest of the debtor in such production. The person to whom the amount is payable may, at the expense of the debtor, store all or any part of the production upon which the lien exists until the total amount due, including reasonable storage charges, is paid or the commodity is sold at foreclosure sale and delivery is made to the purchaser. The lien may be foreclosed as provided for with respect to foreclosure of a lien on chattels.

[C66, 71, 73, 75, 77, 79, 81, §84.10]

C93, §458A.10

Referred to in §458A.8

458A.11 Rules covering practice before department.

1. The department shall prescribe rules governing the practice and procedure before it.

2. An order or amendment of an order, except in an emergency, shall not be made by the department without a public hearing upon at least ten days' notice. The public hearing shall be held at the time and place prescribed by the department, and any interested person is

entitled to be heard. The applicable time frames for the issuance and appeal of the order are defined in section 455B.110.

3. When an emergency requiring immediate action is found to exist the department may issue an emergency order without notice of hearing, which shall be effective upon promulgation. An emergency order shall not remain effective for more than fifteen days.

4. Any notice required by this chapter shall be given at the election of the department either by personal service or by letter to the last recorded address and one publication in a newspaper of general circulation in the state capital city and in a newspaper of general circulation in the county where the land affected or some part of the land is situated. The notice shall issue in the name of the state, shall be signed by the director, shall specify the style and number of the proceeding, the time and place of the hearing, and shall briefly state the purpose of the proceeding. Should the department elect to give notice by personal service, the service may be made by any officer authorized to serve process, or by any agent of the department, in the same manner as is provided by law for the service of original notices in civil actions in the district court of the state. Proof of the service by such agent shall be by the affidavit of the person making personal service.

5. All orders issued by the department shall be in writing, shall be entered in full and indexed in books to be kept by the director for that purpose, and shall be public records open for inspection at all times during reasonable office hours. A copy of any rule or order certified by the director or any officer of the department shall be received in evidence in all courts of this state with the same effect as the original.

6. The department may act upon its own motion, or upon the petition of any interested person. On the filing of a petition concerning any matter within the jurisdiction of the department, the department shall promptly fix a date for a hearing and shall cause notice of the hearing to be given. The hearing shall be held without undue delay after the filing of the petition. The department shall enter its order within thirty days after the hearing.

[C66, 71, 73, 75, 77, 79, 81, §84.11; 82 Acts, ch 1199, §46, 96]
86 Acts, ch 1245, §1815, 1816
C93, §458A.11
2019 Acts, ch 97, §9
Subsection 2 amended

458A.12 Summoning witnesses, administering oaths, requiring production of records — hearing examiners appointed.

1. The department may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted. A person shall not be excused from attending and testifying, or from producing books, papers, and records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However this subsection does not require a person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the department or court for determination. A natural person is not subject to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of objections, the person may be required to testify or produce as evidence, documentary or otherwise, before the department or court, or in obedience to subpoena. However, a person testifying shall not be exempted from prosecution and punishment for perjury committed in so testifying.

2. In case of failure or refusal on the part of any person to comply with the subpoena issued by the department, or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated, any court in the state, upon the application of the department, may issue an attachment for the person and compel the person to comply with the subpoena, and to attend before the department and produce the records, books, and documents for examination, and to give testimony. The courts may punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify.

3. The department may appoint a hearing examiner or examiners to conduct hearings

required by this chapter. When appointed, the hearing examiner may exercise all of the powers delegated to the department by this section.

[C66, 71, 73, 75, 77, 79, 81, §84.12; 82 Acts, ch 1199, §47, 96]
C93, §458A.12

458A.13 Reserved.

458A.14 Appeal to district court — procedure of appeal.

Judicial review of an action of the department may be sought in accordance with the terms of chapter 17A. Notwithstanding that chapter, petitions for judicial review may be filed in the district court of Polk county or in the district court of any county in which the property affected or some portion of the property is located.

[C66, 71, 73, 75, 77, 79, 81, §84.14; 82 Acts, ch 1199, §48, 49, 96]
C93, §458A.14

458A.15 Acquisition and handling of illegal oil and gas prohibited — seizure and sale of illegal oil and gas.

1. The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, illegal gas, or illegal product is prohibited. However, a penalty by way of fine shall not be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, illegal gas, or illegal product unless:

a. The person knows, or is put on notice, of facts indicating that illegal oil, illegal gas, or illegal product is involved.

b. The person fails to obtain a certificate of clearance with respect to the oil, gas, or product where prescribed by order of the department, or fails to follow any other method prescribed by an order of the department for the identification of the oil, gas or product.

2. Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale; seizure and sale to be in addition to any other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. When the department believes that any oil, gas or product is illegal, the department acting by the attorney general, shall bring a civil action in rem in the district court of the county where the oil, gas, or product is found, to seize and sell the same, or the department may include an action in rem for the seizure and sale of illegal oil, illegal gas, or illegal product in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. Any person claiming an interest in oil, gas, or product affected by the action may intervene as an interested party in the action.

3. Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem, and shall proceed in the name of the state as plaintiff against the illegal oil, illegal gas, or illegal products as defendant. No bond or similar undertaking shall be required of the plaintiff. Upon the filing of the petition for seizure and sale, the attorney general shall issue a notice, with a copy of the complaint attached thereto, which shall be served in the manner provided for service of original notices in civil actions, upon any and all persons having or claiming any interest in the illegal oil, illegal gas, or illegal products described in the petition. Service shall be completed by the filing of an affidavit by the person making the service, stating the time and manner of making such service. Any person who fails to appear and answer within the period of thirty days shall be forever barred by the judgment based on such service. If the court, on a properly verified petition, or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized and directing the sheriff of the county to take such oil, gas, or product into the sheriff's custody, actual or constructive, and to hold the same subject to the further order of the court. The court, in such order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by the sheriff under the order to an agent appointed by the court as the agent of the court; such agent to give bond in an amount and with such surety as the court may direct, conditioned upon the agent's compliance with the orders of the court concerning the custody and disposition of such oil, gas, or product.

4. Any person having an interest in oil, gas, or product described in an order of seizure and

contesting the right of the state to the seizure and sale thereof may, prior to the sale thereof as herein provided, obtain the release thereof, upon furnishing bond to the sheriff approved by the court, in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released, and conditioned as the court may direct upon redelivery to the sheriff of such product released or upon payment to the sheriff of the market value thereof as the court may direct, if and when ordered by the court, and upon full compliance with the further orders of the court.

5. If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that such oil, gas, or product is contraband, the court shall order the sale thereof by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action except that the court may order that the illegal oil, illegal gas, or illegal product be sold in specified lots or portions and at specified intervals. Upon such sale, title to the oil, gas, or product sold shall vest in the purchaser free of the claims of any and all persons having any title thereto or interest therein at or prior to the seizure thereof, and the same shall be legal oil, legal gas, or legal product, as the case may be, in the hands of the purchaser.

6. All proceeds derived from the sale of illegal oil, illegal gas, or illegal product, as above provided, after payment of costs of suit and expenses incident to the sale and all amounts paid as penalties provided for by this chapter shall be paid to the state treasurer and credited to the general fund.

[C66, 71, 73, 75, 77, 79, 81, §84.15; 82 Acts, ch 1199, §50, 96]

C93, §458A.15

Referred to in §331.653

Section not amended; headnote revised

458A.16 Penalties.

1. Any person who violates any provision of this chapter, or any rule or order of the department where no other penalty is provided is guilty of a simple misdemeanor.

2. If any person, for the purpose of evading this chapter, or any rule or order of the department, makes or causes to be made any false entry or statement in a report required by this chapter or by any rule or order, or makes or causes to be made any false entry in any record, account, or memorandum required by this chapter, or by any rule or order, or omits, or causes to be omitted, from any record, account, or memorandum, full, true, and correct entries as required by this chapter, or by any rule or order, or removes from this state or destroys, mutilates, alters, or falsifies any such record, account, or memorandum, the person is guilty of a fraudulent practice.

3. Any person knowingly aiding or abetting any other person in the violation of any provision of this chapter, or any rule or order of the department is subject to the same penalty as that prescribed by this chapter for the violation by the other person.

[C66, 71, 73, 75, 77, 79, 81, §84.16; 82 Acts, ch 1199, §51, 96]

C93, §458A.16

Fraudulent practices, see §714.8 – 714.14

458A.17 Action to restrain violation or threatened violation.

1. If it appears that any person is violating or threatening to violate any provision of this chapter, or any rule or order of the department, the department shall bring suit against the person in the district court of any county where the violation occurs or is threatened, to restrain the person from continuing the violation or from carrying out the threat of violation. In the suit, the court has jurisdiction to grant to the department, without bond or other undertaking, the prohibitory and mandatory injunctions as the facts may warrant, including temporary restraining orders, preliminary injunctions, temporary, preliminary, or final orders restraining the movement or disposition of any illegal oil, illegal gas, or illegal product, any of which the court may order to be impounded or placed in the custody of an agent appointed by the court.

2. If the department fails to bring suit to enjoin a violation or threatened violation of any provision of this chapter, or any rule or order of the department, within ten days after receipt of written request to do so by any person who is or will be adversely affected by

the violation, the person making the request may bring suit in the person's own behalf to restrain the violation or threatened violation in any court in which the department might have brought suit. The department shall be made a party defendant in the suit in addition to the person violating or threatening to violate a provision of this chapter, or a rule or order of the department, and the action shall proceed and injunctive relief may be granted to the department or the petitioner without bond in the same manner as if suit had been brought by the department.

[C66, 71, 73, 75, 77, 79, 81, §84.17; 82 Acts, ch 1199, §52, 96]
C93, §458A.17

458A.18 Mineral rights taxed separately.

All rights and interests in or to oil, gas or other minerals underlying land, whether created by or arising under deed, lease, reservation of rights, or otherwise, which rights or interests are owned by any person other than the owner of the land, shall be assessed and taxed separately to the owner of such rights or interests in the same manner as other real estate. The taxes on such rights or interests which are not owned by the owner of the land shall not be a lien on the land.

[C66, 71, 73, 75, 77, 79, 81, §84.18]
C93, §458A.18

458A.19 Rate.

In order to pay the costs of assessment and collection and provide a reasonable minimum standard of taxation, the taxes on any such rights or interests not owned by the owner of the land, shall be not less than five cents per acre.

[C66, 71, 73, 75, 77, 79, 81, §84.19]
C93, §458A.19

458A.20 Tax sale — redemption by owner.

When any such rights or interests not owned by the owner of the land are sold at tax sale, and when the owner of such rights or interests does not redeem under the provisions of chapter 447 within ninety days after such tax sale, the owner of the land shall thereafter have the same right of redemption as the owner of such rights or interests has, and redemption by the owner of the land shall terminate all right of redemption of the owner of such rights or interests.

[C66, 71, 73, 75, 77, 79, 81, §84.20]
C93, §458A.20

458A.21 Lease of public lands.

The state, counties and cities and other political subdivisions may lease publicly owned lands under their respective jurisdictions for the purpose of oil or gas or metallic minerals exploration and production. Any such leases shall be entered into on behalf of the state by the executive council, on behalf of a county by the board of supervisors, on behalf of a city by the council and on behalf of another political subdivision by the governing body. The leases shall be upon terms and conditions as agreed upon.

Revenues derived from the leasing of state-owned lands shall be paid into the general fund of the state. Revenues derived from the leasing of other public lands shall be paid into the general fund of the respective lessor political subdivision.

[C39, §**1360.10;** C46, 50, 54, 58, 62, §84.10; C66, 71, 73, 75, 77, 79, 81, §84.21; 81 Acts, ch 41, §5]
C93, §458A.21
Referred to in §331.361, 331.427

458A.22 Duty to have forfeited lease released — affidavit of noncompliance — notice to landowner — remedies.

1. When any oil, gas, or metallic mineral lease given on land situated in Iowa and recorded, becomes forfeited by failure of the lessee to comply with its provisions or the Iowa law, the

lessee shall, within sixty days after date of forfeiture of the lease, have the lease surrendered in writing, duly acknowledged, and placed on record in the county where the leased land is situated. If the lessee fails to execute and record a release of the recorded lease within the time provided for, the owner of the land may execute an affidavit of noncompliance in substantially the following form:

AFFIDAVIT OF NONCOMPLIANCE

State of Iowa)
County of .....) ss.

....., being first duly sworn, upon oath deposes and says that the deponent is ..... as referred to in an (oil and gas) (metallic mineral) mining lease dated the ..... day of ..... (month), ... (year), which lease is recorded in Volume ....., Page ....., or as Instrument # ..... of the County Records of ..... County, ..., and which lease covers the following described lands: .....
.....

And further, deponent says that on the ..... day of ..... (month), ... (year), under the terms of said lease, there should have been paid to the deponent or deposited to the deponent's credit in the ..... Bank of ..... the sum of ..... Dollars ($.....), the payment of which was necessary in order to keep the above described lease in force and effect. Deponent hereby swears the above payment has never been made to the deponent or the deponent's representatives, in money or otherwise, nor has same been deposited to the deponent's credit in the above bank.

And further, deponent says that there has been no drilling or development of any nature or kind whatsoever done on the land covered by the lease referred to herein, as called for under the terms of said lease.

.....
.....

Subscribed and sworn to before me, a Notary Public for the State of Iowa, this ..... day of ..... (month), ... (year)

.....
Notary Public
My commission expires .....

AFFIDAVIT OF THE BANKER

State of .....)
County of .....) ss.

I, ..., (Cashier) (President) of the ..... Bank of ....., being first duly sworn, upon my oath declare that there has not been deposited to the credit of ..... in the ..... Bank of ....., by ..... or any other party, any sum of money whatsoever, in payment of rental under the terms of the (oil and gas) (metallic mineral) mining lease referred to in this affidavit.

Witness my hand this ..... day of ..... (month), ... (year)

.....
(Cashier) (President) of ..... Bank

Subscribed and sworn to before me, a Notary Public for the State of Iowa on the ..... day of ..... (month), ... (year)

.....

Notary Public

My commission expires .....

2. The owner of the land shall retain the original affidavit and shall mail a copy of the affidavit by restricted certified mail, as defined in section 618.15, to the lessee. If the lessee, within thirty days after receipt of the affidavit, gives notice in writing, by restricted certified mail, to the owner of the land that the lease has not been forfeited and that the lessee still claims that the lease is in full force and effect, then the owner of the land shall be entitled to the remedies provided by this chapter for the cancellation of such disputed lease.

3. If the lessee does not notify the owner of the land as provided in subsection 2, then the owner shall file the original affidavit for recording with the county recorder, and thereafter the record of the lease shall not be notice to the public of the existence of the lease or of any interest therein or rights thereunder, and the record shall not be received in evidence in any court of the state on behalf of the lessee against the lessor, and the lease shall stand forfeited.

[C39, §**1360.06;** C46, 50, 54, 58, 62, §84.6; C66, 71, 73, 75, 77, 79, 81, §84.22; 81 Acts, ch 41, §6, 7]

C93, §458A.22

2000 Acts, ch 1058, §56; 2006 Acts, ch 1031, §6

Referred to in §331.602

458A.23 Action to obtain release — damages, costs and attorney fees — attachment.

Should the owner of such lease neglect or refuse to execute a release as provided by this chapter, or contend lease is in full force and effect, then the owner of the leased premises may sue in any court of competent jurisdiction to obtain such release, and may also recover in such action the sum of one hundred dollars as damages, and all costs, together with a reasonable attorney fee for preparing and prosecuting the suit, and may also recover any additional damages that the evidence in the case will warrant. In all such actions, writs of attachment may issue as in other cases.

[C39, §**1360.07;** C46, 50, 54, 58, 62, §84.7; C66, 71, 73, 75, 77, 79, 81, §84.23]

C93, §458A.23

458A.24 Extension upon contingency — affidavit.

If a recorded lease contains the statement of any contingency upon the happening of which the term of any such lease may be extended, the owner of said lease may at any time before the expiration of the definite term of said lease file with said county recorder an affidavit setting forth the description of the lease, that the affiant is the owner thereof and the facts showing that the required contingency has happened, or the record of such lease shall not impart notice to the public of the continuance of said lease. This affidavit shall be recorded in full by the county recorder and such record together with that of the lease shall be due notice to the public of the existence and continuing validity of said lease, until the same shall be forfeited, canceled, set aside, or surrendered according to law.

[C39, §**1360.08;** C46, 50, 54, 58, 62, §84.8; C66, 71, 73, 75, 77, 79, 81, §84.24]

C93, §458A.24

Referred to in §331.602

458A.25 Liens for labor or materials and of contractor and subcontractor — manner of perfecting liens — enforcement of liens.

Provisions of chapter 572 as to mechanic's liens or labor and materials furnished for improvements on real estate and of contractors and subcontractors, shall apply to labor and materials furnished for gas or oil wells, or pipe lines, and such liens shall not attach on the real estate, but shall attach to the whole of the lease held, and upon the gas or oil

wells, buildings and appurtenances and pipe lines for which said labor or materials were furnished, and shall be perfected and enforced as provided by said chapter.

[C39, §**1360.09;** C46, 50, 54, 58, 62, §84.9; C66, 71, 73, 75, 77, 79, 81, §84.25]
C93, §458A.25

CHAPTER 459

ANIMAL AGRICULTURE COMPLIANCE ACT

Referred to in §16.79, 455A.4, 455A.6, 455B.103, 455B.103A, 455B.105, 455B.107, 459A.103, 459A.104, 459B.104, 459B.307

Chapter transferred from sections in chapter 455B and from chapter 455J in Code 2003 pursuant to Code editor directive; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

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SUBCHAPTER I

GENERAL PROVISIONS

Referred to in §455B.111, 455B.112, 455B.113, 455B.115, 455E.8

459.101 Title.

This chapter shall be known and may be cited as the *"Animal Agriculture Compliance Act"*.
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Aerobic structure"* means an animal feeding operation structure other than an egg washwater storage structure which employs bacterial action which is maintained by the utilization of air or oxygen and which includes aeration equipment.

2. *"Anaerobic lagoon"* means an unformed manure storage structure, if the primary function of the structure is to store and stabilize manure, the structure is designed to receive manure on a regular basis, and the structure's design waste loading rates provide that the predominant biological activity is anaerobic. An anaerobic lagoon does not include any of the following:

a. A settled open feedlot effluent basin as defined in section 459A.102.

b. An anaerobic treatment system that includes collection and treatment facilities for all off gases.

3. *"Animal"* means cattle, swine, horses, sheep, chickens, turkeys, or fish.

4. *"Animal feeding operation"* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for forty-five days or more in any twelve-month period, and all structures used for the storage of manure from animals in the operation. Except as required for a national pollutant discharge elimination system permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, an animal feeding operation does not include a livestock market.

5. *"Animal feeding operation structure"* means a confinement building, manure storage structure, dry bedded confinement feeding operation structure as defined in section 459B.102, or egg washwater storage structure.

6. *"Animal unit"* means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor as follows:

a. Slaughter or feeder cattle 1.000
b. Immature dairy cattle 1.000
c. Mature dairy cattle 1.400
d. Butcher or breeding swine weighing more than fifty-five pounds 0.400
e. Swine weighing fifteen pounds or more but not more than fifty-five pounds 0.100
f. Sheep or lambs 0.100
g. Horses 2.000
h. Turkeys weighing one hundred twelve ounces or more 0.018
i. Turkeys weighing less than one hundred twelve ounces 0.0085
j. Chickens weighing forty-eight ounces or more 0.010
k. Chickens weighing less than forty-eight ounces 0.0025
l. Fish weighing twenty-five grams or more..... 0.001
m. Fish weighing less than twenty-five grams..... 0.00006

7. *"Animal unit capacity"* means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in sections 459.201 and 459.301.

8. *"Animal weight capacity"* means the product of multiplying the maximum number of animals which the owner or operator confines in an animal feeding operation at any one time by the average weight during a production cycle.

9. *"Cemetery"* means a space held for the purpose of permanent burial, entombment, or interment of human remains that is owned or managed by a political subdivision or private entity, or a cemetery regulated pursuant to chapter 523I. However, *"cemetery"* does not include a pioneer cemetery as defined in section 331.325.

10. *"Commercial enterprise"* means a building which is used as a part of a business that manufactures goods, delivers services, or sells goods or services, which is customarily and regularly used by the general public during the entire calendar year and which is connected to electric, water, and sewer systems. A commercial enterprise does not include a farm operation.

11. *"Commercial manure service"* means a sole proprietor or business association as defined in section 202B.102, engaged in the business of transporting, handling, storing, or applying manure for a fee.

12. *"Commercial manure service representative"* means a natural person who is any of the following:

a. A manager of a commercial manure service. As used in this paragraph a *"manager"* is a person who is actively involved in the operation of a commercial manure service and takes an important part in making management decisions substantially contributing to or affecting the success of the commercial manure service.

b. An employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling, storing, or applying manure on behalf of the commercial manure service.

13. *"Commission"* means the environmental protection commission created pursuant to section 455A.6.

14. *"Confinement feeding operation"* means an animal feeding operation in which animals are confined to areas which are totally roofed.

15. *"Confinement feeding operation building"* or *"confinement building"* means a building used in conjunction with a confinement feeding operation to house animals.

16. *"Confinement feeding operation structure"* means an animal feeding operation structure that is part of a confinement feeding operation.

17. *"Confinement site manure applicator"* means a person, other than a commercial manure service or a commercial manure service representative, who applies manure on land if the manure originates from a manure storage structure.

18. *"Covered"* means organic or inorganic material placed upon an animal feeding operation structure used to store manure as provided by rules adopted by the department after receiving recommendations which shall be submitted to the department by the college of agriculture and life sciences at Iowa state university of science and technology.

19. *"Critical public area"* means land as designated by the department pursuant to rules adopted pursuant to chapter 17A, if all of the following apply:

a. The land is part of a public park, preserve, or recreation area that is owned or managed by the federal government; by the department, including under chapter 461A or 465C; or by a political subdivision.

b. The land has a unique scenic, cultural, archaeological, scientific, or historic significance or contains a rare or valuable ecological system.

20. *"Department"* means the department of natural resources created pursuant to section 455A.2.

21. *"Designated area"* means a known sinkhole, a cistern, an abandoned well, an unplugged agricultural drainage well, an agricultural drainage well surface inlet, a drinking water well, a designated wetland, or a water source. However, *"designated area"* does not include a terrace tile inlet or a surface tile inlet other than an agricultural drainage well surface tile inlet.

22. *"Designated wetland"* means land designated as a protected wetland by the United States department of the interior or the department of natural resources, including but not limited to a protected wetland as defined in section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district.

23. *"Director"* means the director of the department of natural resources.

24. *"Document"* means any form required to be processed by the department under this chapter regulating animal feeding operations, including but not limited to applications or related materials for permits as provided in section 459.303, manure management plans as provided in section 459.312, comment or evaluation by a county board of supervisors considering an application for a construction permit, the department's analysis of the application including using and responding to a master matrix pursuant to section 459.304, and notices required under those sections.

25. *"Dry manure"* means manure which meets all of the following conditions:

a. The manure does not flow perceptibly under pressure.

b. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.

c. The constituent molecules of the manure do not flow freely among themselves but may show a tendency to separate under stress.

26. *"Earthen manure storage basin"* means an earthen cavity, either covered or uncovered, which, on a regular basis, receives waste discharges from a confinement feeding operation if accumulated wastes from the basin are completely removed at least once each year.

27. *"Educational institution"* means a building in which an organized course of study or training is offered to students enrolled in kindergarten through grade twelve and served by local school districts, accredited or approved nonpublic schools, area education agencies, community colleges, institutions of higher education under the control of the state board of regents, and accredited independent colleges and universities.

28. *"Egg washwater storage structure"* means an aerobic or anaerobic structure used to store the wastewater resulting from the washing and in-shell packaging of eggs.

29. *"Family member"* means a person related to another person as parent, grandparent, child, grandchild, sibling, or a spouse of such a related person.

30. *"Formed manure storage structure"* means a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

31. *"Frozen ground"* means soil that is impenetrable due to frozen soil moisture but does not include soil that is only frozen to a depth of two inches or less.

32. *"High-quality water resource"* means that part of a water source or wetland that the department has designated as any of the following:

a. A high-quality water (Class "HQ") or a high-quality resource water (Class "HQR") according to 567 IAC ch. 61, in effect on January 1, 2001.

b. A protected water area system, according to a state plan adopted by the department in effect on January 1, 2001.

33. *"Indemnity fee"* means a fee provided in section 459.502 or 459.503.

34. *"Karst terrain"* means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves.

35. *"Liquid manure"* means manure that meets all of the following requirements:

a. It flows perceptibly under pressure.

b. It is capable of being transported through a mechanical pumping device designated to move a liquid.

c. Its constituent molecules flow freely among themselves and show the tendency to separate under stress.

36. *"Livestock market"* means any place where animals are assembled from two or more sources for public auction, private sale, or on a commission basis, which is under state or federal supervision, including a livestock sale barn or auction market, if such animals are kept for ten days or less.

37. *"Long-term stockpile location"* means an area where a person stockpiles manure for more than six months in any two-year period.

38. *"Major water source"* means a water source that is a lake, reservoir, river, or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding, which has been identified by rules adopted by the commission.

39. *"Manure"* means animal excreta or other commonly associated wastes of animals, including but not limited to bedding, litter, or feed losses.

40. *"Manure storage structure"* means a formed manure storage structure or an unformed manure storage structure.

a. A manure storage structure includes a dry bedded manure storage structure as defined in section 459B.102.

b. A manure storage structure does not include an egg washwater storage structure.

41. *"One hundred year floodplain"* means the land adjacent to a major water source, if there is at least a one percent chance that the land will be inundated in any one year, according to calculations adopted by rules adopted pursuant to section 459.103. In making the calculations, the department shall consider available maps or data compiled by the federal emergency management agency.

42. *"Permittee"* means a person who, pursuant to section 459.303, obtains a permit for the construction of a manure storage structure, or a confinement feeding operation, if a manure storage structure is connected to the confinement feeding operation.

43. *"Professional engineer"* means a person engaged in the practice of engineering as defined in section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to section 542B.17.

44. *"Public thoroughfare"* means a road, street, or bridge that is constructed or maintained by the state or a political subdivision.

45. *"Public use area"* means any of the following:

a. A portion of land owned by the United States, the state, or a political subdivision with facilities which attract the public to congregate and remain in the area for significant periods of time, as provided by rules which shall be adopted by the department pursuant to chapter 17A.

b. A cemetery.

46. *"Qualified confinement feeding operation"* means a confinement feeding operation having an animal unit capacity of any of the following:

a. For a confinement feeding operation maintaining animals other than swine as part of a farrowing and gestating operation or farrow-to-finish operation or cattle as part of a cattle operation, five thousand three hundred thirty-three or more animal units.

b. (1) For a confinement feeding operation maintaining swine as part of a farrowing and gestating operation, two thousand five hundred or more animal units.

(2) In calculating the animal unit capacity of a confinement feeding operation under subparagraph (1), an animal unit does not include replacement breeding swine, if all of the following apply:

(a) The replacement breeding swine are raised at the confinement feeding operation.

(b) The replacement breeding swine are used in the farrowing and gestating operation.

(3) The method of calculating animal units under subparagraph (2) shall only be used for purposes of determining whether a confinement feeding operation is a qualified confinement feeding operation subject to section 459.206.

c. For a confinement feeding operation maintaining swine as part of a swine farrow-to-finish operation, five thousand four hundred or more animal units.

d. For a confinement feeding operation maintaining cattle, eight thousand five hundred or more animal units.

47. *"Qualified stockpile cover"* means a barrier impermeable to precipitation that is used to protect a stockpile from precipitation.

48. *"Qualified stockpile structure"* means any of the following:

a. A building.

b. A roofed structure other than a building that is all of the following:

(1) Impermeable to precipitation.

(2) Constructed using wood, steel, aluminum, vinyl, plastic, or other similar materials.

(3) Constructed with walls or other means to prevent precipitation-induced surface runoff from contacting the stockpile.

49. *"Religious institution"* means a building in which an active congregation is devoted to worship.

50. *"Restricted spray irrigation equipment"* means spray irrigation equipment which disperses manure through an orifice at a maximum pressure of eighty pounds per square inch or more.

51. *"Small animal feeding operation"* means an animal feeding operation which has an animal unit capacity of five hundred or fewer animal units.

52. *"Snow covered ground"* means soil covered by one inch or more of snow or soil covered by one-half inch or more of ice.

53. *"Spray irrigation equipment"* means mechanical equipment used for the aerial application of manure, if the equipment receives manure from a manure storage structure during application via a pipe or hose connected to the structure, and includes a type of equipment customarily used for the aerial application of water to aid the growing of general farm crops.

54. *"Stockpile"* means dry manure originating from a confinement feeding operation that is stored at a particular location outside a manure storage structure.

55. *"Stockpile dry manure"* means to create or add to a stockpile.

56. *"Surface water drain tile intake"* means an opening to a drain tile which allows surface water to enter the drain tile without filtration through the soil profile.

57. *"Swine farrow-to-finish operation"* means a confinement feeding operation in which porcine animals are produced and in which a primary portion of the phases of the production

cycle are conducted at one confinement feeding operation. Phases of the production cycle include but are not limited to gestation, farrowing, growing, and finishing.

58. *"Unformed manure storage structure"* means a covered or uncovered impoundment used to store manure, other than a formed manure storage structure, which includes an anaerobic lagoon, aerobic structure, or earthen manure storage basin.

59. *"Water of the state"* means the same as defined in section 455B.171.

60. *"Water source"* means a lake, river, reservoir, creek, stream, ditch, or other body of water or channel having definite banks and a bed with water flow, except lakes or ponds without outlet to which only one landowner is riparian.

95 Acts, ch 195, §15

CS95, §455B.161

98 Acts, ch 1209, §12, 13, 53; 2002 Acts, ch 1137, §7, 8, 32, 68, 71; 2002 Acts, ch 1138, §1 – 3, 5; 2002 Acts, 2nd Ex, ch 1003, §248, 260, 262

C2003, §459.102

2003 Acts, ch 44, §71, 72; 2003 Acts, ch 52, §1, 6; 2003 Acts, ch 108, §82; 2003 Acts, ch 138, §1, 2; 2003 Acts, ch 163, §1, 2, 23; 2004 Acts, ch 1086, §77; 2005 Acts, ch 136, §34, 35; 2008 Acts, ch 1032, §59; 2008 Acts, ch 1191, §143, 147, 148; 2009 Acts, ch 38, §1, 16; 2009 Acts, ch 155, §1, 32, 34; 2012 Acts, ch 1036, §2; 2012 Acts, ch 1085, §1, 2; 2015 Acts, ch 30, §141; 2018 Acts, ch 1078, §1 – 3; 2019 Acts, ch 24, §62

Referred to in §16.79, 101.21, 165B.1, 202.1, 202C.1, 331.304A, 455B.171, 455H.107, 459A.102, 459A.103, 459A.404, 459B.102, 562.1A, 579B.1, 654C.1, 657.11, 657.11A, 716.11

Subsection 6, paragraphs l and m amended

459.103 General authority — commission and department.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of animal feeding operations, including related animal feeding operation structures. The requirements shall include but are not limited to minimum manure control, the issuance of permits, and departmental investigations, inspections, and testing.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to animal feeding operations also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or manure management plans required under subchapter III. However, for purposes of approving or disapproving an application for a construction permit as provided in section 459.304, conditions for the approval of an application based on results produced by a master matrix are not requirements of this chapter until the department approves or disapproves an application based on those results.

98 Acts, ch 1209, §25

C99, §455B.200

2002 Acts, ch 1137, §27, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §250, 259, 260, 262

C2003, §459.103

2003 Acts, ch 163, §3, 23; 2007 Acts, ch 82, §2

Referred to in §459.102, 459.304, 459.318, 459A.205, 459A.404

459.104 through 459.200 Reserved.

SUBCHAPTER II

ANIMAL FEEDING OPERATIONS — AIR QUALITY

Referred to in §15E.208, 172D.3, 306.27, 364.22, 455A.6, 455B.103A, 455B.111, 455B.112, 455B.113, 455B.115, 455B.134, 455B.135, 455B.137, 455B.138, 455B.142, 455E.6, 455E.8, 459.311A, 459.401, 459.602

459.201 Special terms.

For purposes of this subchapter, all of the following shall apply:

1. Two or more animal feeding operations under common ownership or management are

deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. For purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after March 21, 1996.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) (a) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand two hundred fifty feet for a confinement feeding operation having an animal unit capacity of less than one thousand two hundred fifty animal units for swine maintained as part of a farrowing and gestating operation, less than two thousand seven hundred animal units for swine maintained as part of a farrow-to-finish operation, or less than four thousand animal units for cattle maintained as part of a cattle operation.

(2) (a) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of three thousand or more but less than five thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) One thousand five hundred feet for a confinement feeding operation having an animal unit capacity of one thousand two hundred fifty or more but less than two thousand animal units for swine maintained as part of a swine farrowing and gestating operation, two thousand seven hundred or more but less than five thousand four hundred animal units for swine maintained as part of a farrow-to-finish operation, or four thousand or more but less than six thousand five hundred animal units for cattle maintained as part of a cattle operation.

(3) (a) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of five thousand or more animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation, or cattle maintained as part of a cattle operation.

(b) Two thousand five hundred feet for a confinement feeding operation having an animal unit capacity of two thousand or more animal units for swine maintained as part of a swine farrowing and gestating operation, five thousand four hundred animal units or more for swine maintained as part of a farrow-to-finish operation, or six thousand five hundred or more animal units for cattle maintained as part of a cattle operation.

2. A confinement feeding operation structure is *"constructed"* when any of the following occurs:

a. Excavation for a proposed confinement feeding operation structure or proposed expansion of an existing confinement feeding operation structure, including excavation for the footings of the confinement feeding operation structure.

b. Forms for concrete are installed for a proposed confinement feeding operation structure or the proposed expansion of an existing confinement feeding operation structure.

c. Piping for the movement of manure is installed within or between confinement feeding operation structures as proposed or proposed to be expanded.

3. In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned.

4. A confinement feeding operation structure is abandoned if the confinement feeding operation structure has been razed, removed from the site of a confinement feeding operation, filled in with earth, or converted to uses other than a confinement feeding operation structure so that it cannot be used as a confinement feeding operation structure without significant reconstruction.

5. All distances between locations of objects provided in this part shall be measured in

feet from their closest points, as provided by rules adopted by the department. However, a distance between a public thoroughfare and a confinement feeding operation structure shall be measured from the portion of the right-of-way which is closest to the confinement feeding operation structure.

98 Acts, ch 1209, §14, 53
C99, §455B.161A
2002 Acts, ch 1137, §9, 10, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.201
Referred to in §459.102, 459.301

459.202 Confinement feeding operations structures — separation distances.

The following shall apply to confinement feeding operation structures:

1. *a.* Except as provided in subsection 3 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after May 31, 1995, but prior to January 1, 1999; and to the expansion of structures constructed prior to January 1, 1999.

b. The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,000	1,500	2,000
Covered earthen manure storage basin	750	1,000	1,500
Covered formed manure storage structure	750	1,000	1,500
Confinement building	750	1,000	1,500
Egg washwater storage structure	750	1,000	1,500

2. *a.* Except as provided in subsection 3 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after January 1, 1999, but prior to March 1, 2003, and to the expansion of structures constructed on or after January 1, 1999, but prior to March 1, 2003.

b. The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the

owner of the confinement feeding operation, or a commercial enterprise, bona fide religious institution, or an educational institution:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Anaerobic lagoon	1,250	1,875	2,500
Uncovered earthen manure storage basin	1,250	1,875	2,500
Uncovered formed manure storage structure	1,250	1,500	2,000
Covered earthen manure storage basin	1,000	1,250	1,875
Covered formed manure storage structure	1,000	1,250	1,875
Confinement building	1,000	1,250	1,875
Egg washwater storage structure	750	1,000	1,500

3. *a.* Except as provided in sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after May 31, 1995, but prior to March 1, 2003; to the expansion of structures constructed on or after May 31, 1995, but prior to March 1, 2003; and to the expansion of structures constructed prior to May 31, 1995.

b. The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Type of structure	Minimum separation distance in feet for operations having an animal weight capacity of less than 625,000 pounds for animals other than cattle, or less than 1,600,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 625,000 or more pounds but less than 1,250,000 pounds for animals other than cattle, or 1,600,000 or more pounds but less than 4,000,000 pounds for cattle	Minimum separation distance in feet for operations having an animal weight capacity of 1,250,000 or more pounds for animals other than cattle, or 4,000,000 or more pounds for cattle
Confinement feeding operation structure	1,250	1,875	2,500

4. *a.* Except as provided in subsection 5 and sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

b. The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or an educational institution:

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Anaerobic lagoon	1,875	2,500	3,000
Uncovered earthen manure storage basin	1,875	2,500	3,000
Uncovered formed manure storage structure	1,500	2,000	2,500
Covered earthen manure storage basin	1,250	1,875	2,375
Covered formed manure storage structure	1,250	1,875	2,375
Confinement building	1,250	1,875	2,375
Egg washwater storage structure	1,000	1,500	2,000

5. *a.* Except as provided in sections 459.203, 459.205, and 459.206, this subsection applies to confinement feeding operation structures constructed on or after March 1, 2003, and to the expansion of confinement feeding operation structures constructed on or after March 1, 2003.

b. The following table represents the minimum separation distance in feet required between a confinement feeding operation structure and a public use area; or between a confinement feeding operation structure and a residence not owned by the owner of the confinement feeding operation, a commercial enterprise, a bona fide religious institution, or

an educational institution, if the residence, commercial enterprise, religious institution, or educational institution is located within the corporate limits of a city:

Type of structure	For a confinement feeding operation having an animal unit capacity of less than 1,000 animal units	For a confinement feeding operation having an animal unit capacity of 1,000 or more but less than 3,000 animal units	For a confinement feeding operation having an animal unit capacity of 3,000 or more animal units
Confinement feeding operation structure	1,875	2,500	3,000

6. Except as provided in section 459.205, a confinement feeding operation structure shall not be constructed or expanded within one hundred feet from a public thoroughfare.

95 Acts, ch 195, §16

CS95, §455B.162

98 Acts, ch 1209, §15 – 17, 53; 99 Acts, ch 114, §58, 59; 2002 Acts, ch 1137, §11 – 17, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.202

2013 Acts, ch 30, §104 – 108

Referred to in §459.203, 459.205, 459.207, 459.303, 459.304, 459.305, 654C.1

For separation distance requirements established between an anaerobic lagoon or earthen waste slurry storage basin constructed or expanded within certain dates prior to May 31, 1995, and a residence not owned by the owner of the feeding operation, see §455B.134

For prohibition against constructing or expanding an earthen storage structure within an agricultural drainage well area, see §460.205

459.203 Separation distance requirements for confinement feeding operations — expansion of prior constructed operations.

A confinement feeding operation constructed or expanded prior to the date that a distance requirement became effective under section 459.202 and which does not comply with the section's distance requirement may continue to operate regardless of the distance requirement. The confinement feeding operation may be expanded if any of the following applies:

1. *a.* For a confinement feeding operation constructed prior to January 1, 1999, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 1 and 3.

b. For a confinement feeding operation constructed on or after January 1, 1999, but prior to March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 2 and 3.

c. For a confinement feeding operation constructed on or after March 1, 2003, any construction or expansion of a confinement feeding operation structure complies with the distance requirements applying to that structure as provided in section 459.202, subsections 4 and 5.

2. All of the following apply to the expansion of the confinement feeding operation:

a. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required under section 459.202.

b. For a confinement feeding operation that includes a confinement feeding operation structure constructed prior to March 1, 2003, the animal weight capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal weight capacity on the following dates:

(a) May 31, 1995, for a confinement feeding operation that includes a confinement feeding operation structure constructed prior to January 1, 1999.

(b) January 1, 1999, for a confinement feeding operation that only includes a confinement

feeding operation structure constructed on or after January 1, 1999, but does include a confinement feeding operation structure constructed prior to March 1, 2003.

(2) Either of the following:

(a) Six hundred twenty-five thousand pounds animal weight capacity for animals other than cattle.

(b) One million six hundred thousand pounds animal weight capacity for cattle.

c. For a confinement feeding operation that does not include a confinement feeding operation structure constructed prior to March 1, 2003, the animal unit capacity of the confinement feeding operation as expanded is not more than the lesser of the following:

(1) Double its animal unit capacity on March 1, 2003.

(2) One thousand animal units.

3. The confinement feeding operation includes a confinement feeding operation structure that is constructed prior to March 1, 2003, and is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures, if all of the following apply:

a. The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

b. Use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

c. The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any fourteen-month period.

d. No portion of the replacement formed manure storage structure is closer to an object or location for which separation is required under section 459.202 than any other confinement feeding operation structure which is part of the operation.

95 Acts, ch 195, §17

CS95, §455B.163

98 Acts, ch 1209, §18, 53; 99 Acts, ch 114, §58, 59; 2002 Acts, ch 1137, §18 – 20, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.203

Referred to in §459.202

459.204 Liquid manure application — separation distance.

Except as provided in section 459.205, a person shall not apply liquid manure from a confinement feeding operation on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

C2001, §455B.162(5)

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.204

Referred to in §459.205, 459.207, 459.304, 459.305, 654C.1

459.204A Stockpiling dry manure.

A person may stockpile dry manure so long as the person stockpiles the dry manure in compliance with restrictions applicable to stockpiling as provided in this subchapter and subchapter III.

2009 Acts, ch 38, §2, 16

459.204B Stockpiling dry manure — minimum separation distance requirements.

Except as provided in section 459.205, a person shall not stockpile dry manure within one thousand two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

2009 Acts, ch 38, §3, 16

Referred to in §459.205

459.205 Separation distance requirements — exemptions.

A separation distance requirement provided in this subchapter shall not apply to the following:

1. A confinement feeding operation structure, if the structure is part of a confinement feeding operation which qualifies as a small animal feeding operation. However, this subsection shall not apply if the confinement feeding operation structure is an unformed manure storage structure.

2. *a.* A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure is located. If a confinement feeding operation structure is constructed or expanded within the separation distance required between a confinement feeding operation structure and a public thoroughfare as required pursuant to section 459.202, the state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the distance separation requirement may execute a written waiver with the titleholder of the land where the structure is located. The confinement feeding operation structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

b. A written waiver under this subsection becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The filed waiver shall preclude enforcement by the state of section 459.202 as it relates to a distance requirement between the confinement feeding operation structure and the location or object benefiting from the separation distance requirement.

3. A confinement feeding operation structure which is constructed or expanded within any distance from a residence, educational institution, commercial enterprise, bona fide religious institution, city, or public use area, if the residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or the boundaries of the city or public use area were expanded, after the date that the confinement feeding operation was established. The date the confinement feeding operation was established is the date on which the confinement feeding operation commenced operating. A change in ownership or expansion of the confinement feeding operation shall not change the established date of operation.

4. The application of liquid manure on land within a separation distance required between the applied manure and an object or location for which separation is required under section 459.204, if any of the following apply:

a. The liquid manure is injected into the soil or incorporated within the soil not later than twenty-four hours from the original application, as provided by rules adopted by the commission.

b. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the manure is applied.

c. The liquid manure originates from a small animal feeding operation.

d. The liquid manure is applied by spray irrigation equipment using a center pivot mechanism as provided by rules adopted by the department, if all of the following apply:

(1) The spray irrigation equipment uses hoses which discharge the liquid manure in a downward direction at a height of not more than nine feet above the soil.

(2) The spray irrigation equipment disperses manure through an orifice at a maximum pressure of not more than twenty-five pounds per square inch.

(3) The liquid manure is not applied within two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

5. The stockpiling of dry manure within a separation distance required between a stockpile and an object or location for which separation is required under section 459.204B if any of the following apply:

a. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the stockpile is located.

b. The stockpile consists of dry manure originating from a small animal feeding operation.

c. The stockpile consists of dry manure originating from a confinement feeding operation

that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

6. The distance between a confinement feeding operation structure and a cemetery, if any of the following applies:

a. The confinement feeding operation structure was constructed or expanded prior to January 1, 1999.

b. The construction or expansion of the confinement feeding operation structure began prior to January 1, 1999.

95 Acts, ch 195, §19

CS95, §455B.165

98 Acts, ch 1209, §20, 21, 53; 2000 Acts, ch 1154, §31; 2002 Acts, ch 1137, §21, 22, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.205

2009 Acts, ch 38, §4, 16

Referred to in §459.202, 459.204, 459.204B, 654C.1, 654C.5

459.206 Qualified confinement feeding operations — manure storage structures.

1. Except as provided in subsection 2, a qualified confinement feeding operation storing manure in a manure storage structure shall only use a manure storage structure that employs bacterial action which is maintained by the utilization of air or oxygen, and which shall include aeration equipment. The type and degree of treatment technology required to be installed shall be based on the size of the confinement feeding operation, according to rules adopted by the department. The equipment shall be installed, operated, and maintained in accordance with the manufacturer's instructions and requirements of rules adopted pursuant to this section.

2. The requirements of subsection 1 do not apply to any of the following:

a. A qualified confinement feeding operation which includes a confinement feeding operation structure constructed prior to May 31, 1995.

b. A qualified confinement feeding operation that stores dry manure.

C2001, §455B.162(6)

2002 Acts, ch 1137, §16, 17, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.206

2009 Acts, ch 38, §5, 16

Referred to in §459.102, 459.202

459.207 Animal feeding operations — airborne pollutants control.

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

a. *"Airborne pollutant"* means hydrogen sulfide, ammonia, or odor.

b. *"Separated location"* means a location or object from which a separation distance is required under section 459.202 or 459.204, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants emitted from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure.

3. *a.* After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. The department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.

b. Any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location. In providing for the enforcement of the standards, the

department shall take all initial measurements at the separated location. If the department determines that a violation of the standards exists, the department may conduct an investigation to trace the source of the airborne pollutant. This section does not prohibit the department from entering the premises of an animal feeding operation in compliance with section 455B.103. The department shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

c. The department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.

d. The department shall provide a procedure for the approval and monitoring of alternative or experimental practices, mechanisms, processes, or infrastructure to reduce the airborne pollutants emitted from an animal feeding operation, which may be incorporated as part of the comprehensive plans and programs developed under this section.

2002 Acts, ch 1137, §23, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

459.208 through 459.300 Reserved.

SUBCHAPTER III

ANIMAL FEEDING OPERATIONS — WATER QUALITY

Referred to in §15E.208, 306.27, 364.22, 455A.6, 455B.103A, 455B.111, 455B.112, 455B.113, 455B.115, 455B.173, 455B.174, 455B.175, 455B.179, 455B.182, 455B.185, 455E.6, 455E.8, 459.103, 459.204A, 459.401, 459.601, 459.603

459.301 Special terms.

For purposes of this subchapter, all of the following shall apply:

1. Two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. In addition, for purposes of determining whether two or more confinement feeding operations are adjacent, all of the following must apply:

a. At least one confinement feeding operation structure must be constructed on or after May 21, 1998.

b. A confinement feeding operation structure which is part of one confinement feeding operation is separated by less than a minimum required distance from a confinement feeding operation structure which is part of the other confinement feeding operation. The minimum required distance shall be as follows:

(1) One thousand two hundred fifty feet for confinement feeding operations having a combined animal unit capacity of less than one thousand animal units.

(2) Two thousand five hundred feet for confinement feeding operations having a combined animal unit capacity of one thousand animal units or more.

2. A confinement feeding operation structure is *"constructed"* in the same manner as provided in section 459.201.

3. *a.* In calculating the animal unit capacity of a confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all confinement feeding operation buildings which are part of the confinement feeding operation, unless a confinement feeding operation building has been abandoned as provided in section 459.201.

b. In calculating animal unit capacity for purposes of an election to be considered a small animal feeding operation as provided in section 459.312A, the animal unit capacity of a confinement feeding operation shall include all confinement feeding operation buildings that are used to do any of the following:

(1) House animals.

(2) Store manure.

4. All distances between locations or objects provided in this subchapter shall be measured in feet from their closest points.

5. *a.* The department shall designate by rule each one hundred year floodplain in this state according to the location of the one hundred year floodplain. A person shall not be prohibited from constructing a confinement feeding operation structure on a one hundred year floodplain unless the one hundred year floodplain is designated by rule in accordance with this subsection.

b. (1) Until the effective date of rules adopted by the department to designate the location of each one hundred year floodplain in this state, a person shall not construct a confinement feeding operation structure on land that contains a soil type classified as alluvial unless one of the following applies:

(a) If the person does not apply for a construction permit as provided in section 459.303, the person must petition the department for a declaratory order pursuant to section 17A.9 to determine whether the location of the proposed confinement feeding operation structure is located on a one hundred year floodplain. The department shall issue a declaratory order in response to the petition, notwithstanding any other provision provided in section 17A.9 to the contrary, within thirty days from the date that the petition is filed with the department.

(b) If the person does apply for a construction permit as provided in section 459.303, the person must identify that the land contains a soil type classified as alluvial. The department shall determine whether the land is located on a one hundred year floodplain.

(2) The department shall provide in its declaratory order or its approval or disapproval of a construction permit application a determination regarding whether the confinement feeding operation structure is to be located on a one hundred year floodplain, whether the confinement feeding operation structure may be constructed at the location, and any conditions for the construction.

(3) This paragraph *"b"* is repealed on the effective date that rules are adopted by the department pursuant to paragraph *"a"*. The department shall provide a caption on the adopted rule as published in the Iowa administrative bulletin as provided in section 17A.4, stating that this paragraph is repealed as provided in this subparagraph. The director of the department shall deliver a copy of the adopted rule to the Iowa Code editor.

6. Dry manure that is stockpiled within a distance of one thousand two hundred fifty feet from another stockpile shall be considered part of the same stockpile.

98 Acts, ch 1209, §27, 53
C99, §455B.200B
2002 Acts, ch 1137, §30 – 32, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §252, 259, 260, 262
C2003, §459.301
2003 Acts, ch 44, §73; 2009 Acts, ch 38, §6, 16; 2013 Acts, ch 106, §1
Referred to in §459.102, 459.310

459.302 Document processing requirements.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this subchapter including forms for documents that the department shall make available on the internet.

2. *a.* The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format, including but not limited to the transmission of documents by the internet. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of permits and manure management plans required under this subchapter using electronic systems, including programming, necessary to ensure the completeness and accuracy of the documents in accordance with the requirements of this subchapter.

2002 Acts, ch 1137, §34, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
Referred to in §459.312, 459A.201

459.303 Confinement feeding operations — permit requirements.

1. The department shall approve or disapprove applications for permits for the construction, including the expansion, of confinement feeding operation structures, as provided by rules adopted pursuant to this chapter. The department's decision to approve or

disapprove a permit for the construction of a confinement feeding operation structure shall be based on whether the application is submitted according to procedures required by the department and the application meets standards established by the department. A person shall not begin construction of a confinement feeding operation structure requiring a permit under this section, unless the department first approves the person's application and issues to the person a construction permit. The department shall provide conditions for requiring when a person must obtain a construction permit.

a. Except as provided in paragraph "*b*", a person must obtain a permit to construct any of the following:

(1) A confinement feeding operation structure if after construction its confinement feeding operation would have an animal unit capacity of at least one thousand animal units.

(2) The confinement feeding operation structure is an unformed manure storage structure.

b. A person is not required to obtain a permit to construct a confinement feeding operation structure if any of the following apply:

(1) The confinement feeding operation structure, if constructed, would be part of a small animal feeding operation. However, the person must obtain a permit under this section if the confinement feeding operation structure is an unformed manure storage structure.

(2) The confinement feeding operation structure is part of a confinement feeding operation which is owned by a research college conducting research activities as provided in section 459.318.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application if the application is submitted to the county board of supervisors in the county where the proposed confinement feeding operation structure is to be located as required pursuant to section 459.304, and the application meets the requirements of this chapter. If a county submits an approved recommendation pursuant to a construction evaluation resolution filed with the department, the application must also achieve a satisfactory rating produced by the master matrix used by the board or department under section 459.304. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. An indemnity fee as provided in section 459.502 that the department shall deposit into the livestock remediation fund created in section 459.501.

b. A manure management plan as provided in section 459.312 and manure management plan filing fee as provided in section 459.400.

c. A construction permit application fee as provided in section 459.400.

d. A livestock odor mitigation evaluation certificate issued by Iowa state university as provided in section 266.49. The department shall not obtain, maintain, or consider the results of an evaluation. The applicant is not required to submit the certificate if any of the following applies:

(1) The confinement feeding operation is twice the minimum separation distance required from the nearest object or location from which a separation distance is required pursuant to section 459.202 on the date of the application, not including a public thoroughfare.

(2) The owner of each object or location which is less than twice the minimum separation distance required pursuant to section 459.202 from the confinement feeding operation on the date of the application, other than a public thoroughfare, executes a document consenting to the construction.

(3) The applicant submits a document swearing that Iowa state university has failed to furnish a certificate to the applicant within forty-five days after the applicant requested the university to conduct a livestock odor mitigation evaluation as provided in section 266.49.

(4) The application is for a permit to expand a confinement feeding operation, if the confinement feeding operation was first constructed before January 1, 2009.

(5) Iowa state university does not provide for a livestock odor mitigation evaluation effort as provided in section 266.49, for any reason, including because funding is not available.

4. The applicant may submit a master matrix as completed by the applicant.

5. *a.* A confinement feeding operation meets threshold requirements under this subsection if the confinement feeding operation after construction of a proposed confinement feeding operation structure would have a minimum animal unit capacity of the following:

(1) Three thousand animal units for animals other than swine maintained as part of a swine farrowing and gestating operation or farrow-to-finish operation or cattle maintained as part of a cattle operation.

(2) One thousand two hundred fifty animal units for swine maintained as part of a swine farrowing and gestating operation.

(3) Two thousand seven hundred fifty animal units for swine maintained as part of a farrow-to-finish operation.

(4) Four thousand animal units for cattle maintained as part of a cattle operation.

b. The department shall not approve an application for a construction permit unless the following apply:

(1) If the application is for a permit to construct an unformed manure storage structure, the application must include a statement approved by a professional engineer certifying that the construction of the unformed manure storage structure complies with the construction design standards required in this subchapter.

(2) If the application is for a permit to construct three or more confinement feeding operation structures, the application must include a statement providing that the construction of the confinement feeding operation structures will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction. For a confinement feeding operation that meets threshold requirements, the statement must be approved by a professional engineer. Otherwise, if the application is for a permit to construct a formed manure storage structure, the statement must be part of the construction design statement as provided in section 459.306.

(3) If the application is for a permit to construct a formed manure storage structure, other than for a confinement feeding operation meeting threshold requirements, the applicant must include a construction design statement as provided in section 459.306. An application for a permit to construct a formed manure storage structure as part of a confinement feeding operation that meets threshold requirements must include a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the requirements of this subchapter.

(4) The department may only require that an application for a permit to construct a formed manure storage structure or egg washwater storage structure that is part of a confinement feeding operation meeting threshold requirements include an engineering report, construction plans, or specifications prepared by a licensed professional engineer or the natural resources conservation service of the United States department of agriculture.

6. As a condition to approving an application for a construction permit, the department may require any of the following:

a. The installation of a related pollution control device or practice, including but not limited to the installation and operation of a water pollution monitoring system for an unformed manure storage structure.

b. The department's approval of the installation of any proposed system to permanently lower the groundwater table at a site as part of the construction of an unformed manure storage structure, as is necessary to ensure that the unformed manure storage structure does not pollute groundwater sources, including providing for standards as provided in section 459.308.

7. *a.* The department shall not issue a permit to a person under this section if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending, as provided in section 459.317.

b. The department shall not issue a permit to a person under this section for five years after the date of the last violation committed by a person or confinement feeding operation

in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under section 459.604.

98 Acts, ch 1209, §26, 53

C99, §455B.200A

2002 Acts, ch 1137, §28, 29, 68, 70, 71; 2002 Acts, 2nd Ex, ch 1003, §251, 259 – 262

C2003, §459.303

2003 Acts, ch 44, §74; 2003 Acts, ch 108, §83; 2008 Acts, ch 1174, §11 – 14; 2011 Acts, ch 81, §11

Referred to in §266.46, 459.102, 459.301, 459.304, 459.305, 459.306, 459.308, 459.310, 459.312, 459.400, 459.401, 459.403, 459.502, 459.503, 459A.205

Implementation of subsection 3, paragraph d, is contingent upon receipt of sufficient funds by Iowa state university; 2008 Acts, ch 1174, §13

459.304 Construction permit application procedure — county participation — comments — master matrix.

1. *a.* The department shall deliver a copy or require the applicant to deliver a copy of the application for a permit to construct, including expanding, a confinement feeding operation structure pursuant to section 459.303, including supporting documents, to the county board of supervisors in the county where the confinement feeding operation structure subject to the permit is proposed to be constructed.

b. The county auditor or other county officer designated by the county board of supervisors may accept the application on behalf of the board. If the department requires the applicant to deliver a copy of the application to the county board of supervisors, the board shall notify the department that the board has received the application according to procedures required by the department.

2. Regardless of whether the county board of supervisors has adopted a construction evaluation resolution, the county may provide comment to the department on a construction permit application for a confinement feeding operation structure.

a. The board shall provide for comment as follows:

(1) The board shall publish a notice that the board has received the application in a newspaper having a general circulation in the county.

(2) The notice shall include all of the following:

(a) The name of the person applying to receive the construction permit.

(b) The name of the township where the confinement feeding operation structure is to be constructed.

(c) Each type of confinement feeding operation structure proposed to be constructed.

(d) The animal unit capacity of the confinement feeding operation if the construction permit were to be approved.

(e) The time when and the place where the application may be examined as provided in section 22.2.

(f) Procedures for providing public comments to the board as provided by the board.

b. The board may hold a public hearing to receive public comments regarding the application. The county board of supervisors may submit comments by the board and the public to the department as provided in this section, including but not limited to all of the following:

(1) The existence of an object or location not included in the application that benefits from a separation distance requirement as provided in section 459.202 or 459.204 or 459.310.

(2) The suitability of soils and the hydrology of the site where construction of a confinement feeding operation structure is proposed.

(3) The availability of land for the application of manure originating from the confinement feeding operation.

(4) Whether the construction of a proposed confinement feeding operation structure will impede drainage through established tile lines, laterals, or other improvements which are constructed to facilitate the drainage of land not owned by the person applying for the construction permit.

3. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit

such resolution to the department for filing. If the board has submitted such resolution to the department, the board may evaluate the construction permit application and submit an adopted recommendation to the department to approve or disapprove a construction permit application as provided in this subsection. The board must make its decision to recommend approval or disapproval of the permit application as provided in this subsection.

a. For the expansion of a confinement feeding operation that includes a confinement feeding operation structure constructed prior to April 1, 2002, the board shall not evaluate a construction permit application for the construction or expansion of a confinement feeding operation structure if after the expansion of the confinement feeding operation, its animal unit capacity is one thousand six hundred sixty-six animal units or less.

b. The board must conduct an evaluation of the application using the master matrix as provided in section 459.305. The board's recommendation may be based on the master matrix or may be based on comments under this section regardless of the results of the master matrix.

c. In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which is part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in section 459.312.

d. The board's adopted recommendation to the department shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

4. The department must receive the county board of supervisor's comments or evaluation for approval or disapproval of an application for a construction permit not later than thirty days following the applicant's delivery of the application to the department. Regardless of whether the department receives comments or an evaluation by a county board of supervisors, the department must approve or disapprove an application for a construction permit within sixty days following the applicant's delivery of the application to the department. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the county or department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the board. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant and the board of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

5. *a.* The department shall approve an application for a construction permit if the board of supervisors which has filed a county construction evaluation resolution submits an adopted recommendation to approve the construction permit application which may be based on a satisfactory rating produced by the master matrix to the department and the department determines that the application meets the requirements of this chapter. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of the adopted recommendation of the board. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

b. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter as provided in section 459.103. The department shall disapprove an application that does not satisfy the requirements of this chapter regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter, the department shall conduct an independent evaluation of the application using the master matrix. The department shall approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall disapprove the application if it produces an

unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter. The department shall consider any timely filed comments made by the board as provided in this section to determine if an application meets the requirements of this chapter.

c. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter as provided in section 459.103.

6. The department may conduct an inspection of the site on which the construction is proposed after providing at a minimum twenty-four hours' notice or upon receiving consent from the construction permit applicant. The county board of supervisors that has adopted a construction evaluation resolution may designate a county employee to accompany a departmental official during the site inspection. The county employee shall have the same right to access to the site's real estate as the departmental official conducting the inspection during the period that the county employee accompanies the departmental official. The departmental official and the county employee shall comply with standard biosecurity requirements customarily required by the confinement feeding operation that are necessary in order to control the spread of disease among an animal population.

7. Upon written request by a county resident, the county board of supervisors shall forward to the county resident a copy of the board's adopted recommendation, any county comments to the department on the permit application, and the department's responses, as provided in chapter 22.

8. *a.* The department shall deliver a notice to the applicant within three days of the department's decision to approve or disapprove an application for a construction permit. If the board of supervisors has submitted an adopted recommendation to the department for the approval or disapproval of a construction permit application as provided in this section, the department shall notify the board of the department's decision to approve or disapprove the application at the same time.

b. (1) The applicant may contest the department's decision by requesting a hearing and may elect to have the hearing conducted before an administrative law judge pursuant to chapter 17A or before the commission. If the applicant and a board of supervisors are both contesting the department's decision, the applicant may request that the commission conduct the hearing on a consolidated basis. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The department, upon petition by the applicant, shall deliver to the administrative law judge or the commission a copy of the board of supervisors' recommendation together with the results produced by its master matrix and any supporting data or documents submitted with the results, comments submitted by the board to the department, and the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. If the commission hears the case, its decision shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the applicant or board files a demand for a hearing.

(2) A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's decision by requesting a hearing before the commission. The commission shall hear the case according to procedures established by rules adopted by the department. The commission may hear the case as a contested case proceeding under chapter 17A. The board may request that the department submit a copy of the department's evaluation of the application including the results produced by its matrix and any supporting data or documents. The decision by the commission shall be the department's final agency action. The commission shall render a decision within thirty-five days from the date that the board initiates the proceeding.

c. Judicial review of the decision of either the department or the commission may be sought in accordance with the terms of chapter 17A.

9. An applicant for a construction permit may withdraw the permit application from consideration by the department at any time by filing a written request with the department.

The filing of the request shall not prejudice the right of the applicant to resubmit the application.

2002 Acts, ch 1137, §35, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §255, 259, 260, 262
Referred to in §459.102, 459.103, 459.303

459.305 Master matrix.

1. The department shall adopt rules for the development and use of a master matrix. The purpose of the master matrix is to provide a comprehensive assessment mechanism in order to produce a statistically verifiable basis for determining whether to approve or disapprove an application for the construction, including expansion, of a confinement feeding operation structure requiring a permit pursuant to section 459.303.

a. The master matrix shall be used to establish conditions for the construction of a confinement feeding operation structure and for the implementation of manure management practices, which conditions shall be included in the approval of the construction permit or the original manure management plan as applicable. The master matrix shall be used to determine all of the following:

(1) The appropriate location to construct a confinement feeding operation structure, including the proximity and orientation of a proposed confinement feeding operation structure to objects or locations for which separation distances are required pursuant to sections 459.202 or 459.204 and 459.310.

(2) The appropriate type of a confinement feeding operation structure required to be constructed, including the type and size of the manure storage structure, or the installation of a related pollution-control device.

b. The master matrix shall be designed to produce quantifiable results based on the scoring of objective criteria according to an established value scale. Each criterion shall be assigned points corresponding to the value scale. The master matrix shall consider risks and factors mitigating risks if the confinement feeding operation structure were constructed according to the application.

c. The master matrix may be a computer model. However, the master matrix must be a practical tool for use by persons when completing applications and by persons when scoring applications. To every extent feasible, the master matrix shall include criteria presented in the form of questions that may be readily scored according to ascertainable data and upon which reasonable persons familiar with the location of a proposed construction site would not ordinarily disagree.

2. The master matrix shall include criteria valuing environmental and community impacts for use by county boards of supervisors and the department. The master matrix shall include definite point selections for all criteria provided in the master matrix. The master matrix shall provide only for scoring of positive points and shall not provide for deduction of points. The master matrix shall provide for a minimum threshold score required to receive a satisfactory rating. The master matrix shall be structured to ensure that it feasibly provides for a satisfactory rating. Criteria valuing environmental impacts shall account for animal agriculture's relationship to quality of the environment and the conservation of natural resources, and may include factors that refer to all of the following:

a. Topography.

b. Surface water drainage characteristics.

c. The suitability of the soils and the hydrology or hydrogeology of the site.

d. The proximity to public use areas and critical public areas.

e. The proximity to water sources, including high-quality water resources.

2002 Acts, ch 1137, §36, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
Referred to in §459.304, 459.312A

459.306 Construction design statement — formed manure storage structures.

1. *a.* Except as provided in paragraph "*b*", a person shall not construct a formed manure storage structure, unless the person submits a construction design statement for filing with the department.

b. The following persons are not required to submit a construction design statement with the department:

(1) A person who constructs a formed manure storage structure as part of a small animal feeding operation.

(2) A person who submits a statement approved by a professional engineer certifying that the construction of the formed manure storage structure complies with the construction design standards required in this subchapter, including a person required to submit such a statement as part of an application for a construction permit pursuant to section 459.303.

2. The construction design statement must include all of the following:

a. A summary description of the type of formed manure storage structure proposed to be constructed, including whether such formed manure storage structure is to be constructed of concrete.

b. (1) If the formed manure storage structure is to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

(2) If the formed manure storage structure is not to be constructed of concrete, a statement by the person responsible for constructing the formed manure storage structure certifying that such person will construct the formed manure storage structure in accordance with the construction design standards required in this subchapter.

c. If a construction permit is required pursuant to section 459.303 for the construction of three or more confinement feeding operation structures that include a formed manure storage structure, the person responsible for constructing the formed manure storage structure must provide that the construction of the formed manure storage structure will not impede drainage through established drainage tile lines which cross property boundary lines unless measures are taken to reestablish the drainage prior to completion of construction.

d. A manure management plan as required in section 459.312 which may be submitted as part of an application for a construction permit as provided in section 459.303.

3. Unless the construction design statement is part of a construction permit application as provided in section 459.303, the department shall file the construction design statement. Otherwise, the department shall approve or disapprove the construction design statement as part of the construction permit application. The construction design statement shall be considered filed on the date that it is first received by the department. The department may request information from the person submitting the construction design statement if the department determines that it is incorrect or incomplete. Within thirty days after filing the construction design statement, the department shall notify the person that the construction design statement is filed and request any additional information.

2002 Acts, ch 1137, §33, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §254, 259, 260, 262

Referred to in §459.303, 459.312, 459.312A, 459A.205

459.307 Construction design standards — formed manure storage structures.

The department shall adopt rules establishing construction design standards for formed manure storage structures that are part of confinement feeding operations other than small animal feeding operations. However, the construction design standards shall apply to a formed manure storage structure that is part of a small animal feeding operation as provided in section 459.310.

1. The department may provide for different standards based on criteria developed by the department, which may include any of the following:

a. The animal unit capacity of the manure storage structure's confinement feeding operation or the manure storage structure's manure volume capacity.

b. Whether the manure storage structure stores only dry manure.

c. Whether the manure storage structure is part of a confinement feeding operation building.

d. The use of concrete, including its use for the structure's footings, walls, or floor.

2. The construction design standards shall be based, to every extent possible, on uniform standards such as available standards promulgated by ASTM (American society for testing

and materials) international. The department may require that all or any part of a formed manure storage structure be constructed of concrete.

3. The construction design standards for concrete shall provide for all of the following:

a. The concrete's minimum compressive strength calculated on a pounds-per-square-inch basis.

b. The use of reinforcement, including but not limited to the grade, amount, and location of steel rebar or fiberglass, wire mesh or fabric, or similar materials set in the concrete, or the use of exterior braces to support joints.

c. The depth of footings.

d. The thickness of the footings, the floor, and walls.

4. A person shall only construct a formed manure storage structure on karst terrain or an area which drains into a known sinkhole pursuant to upgraded construction design standards necessary to ensure that the structure does not pollute groundwater sources.

2002 Acts, ch 1137, §50, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262; 2003 Acts, ch 84, §1, 6; 2004 Acts, ch 1086, §106; 2009 Acts, ch 38, §7, 16

Referred to in §459.310, 459A.205

459.308 Unformed manure storage structures — construction standards — inspections.

1. The department shall adopt rules requiring construction design standards for unformed manure storage structures required to be constructed pursuant to a construction permit issued pursuant to section 459.303.

2. The construction design standards for unformed manure storage structures established by the department shall account for special design characteristics of confinement feeding operations, including all of the following:

a. The lining of the structure shall be constructed with materials deemed suitable by the department in order to minimize seepage loss through the lining's seal.

b. The structure shall be constructed with materials deemed suitable by the department in order to control erosion on the structure's berm, side slopes, and base.

c. The structure shall be constructed to minimize seepage into near-surface water sources.

d. The top of the floor of the structure's liner must be above the groundwater table as determined by the department. If the groundwater table is less than two feet below the top of the liner's floor, the structure shall be installed with a synthetic liner. If the department allows an unformed manure storage structure to be located at a site by permanently lowering the groundwater table, the department shall confirm that the proposed system meets standards necessary to ensure that the structure does not pollute groundwater sources. If the department allows drain tile installed to lower a groundwater table to remain where located, the department shall require that a device be installed to allow monitoring of the water in the drain tile line. The department shall also require the installation of a device to allow shutoff of the drain tile lines, if the drain tile lines do not have a surface outlet accessible on the property where the structure is located.

3. A person shall not construct an unformed manure storage structure on karst terrain or on an area that drains into a known sinkhole. However, a person may construct an unformed manure storage structure, if there is a twenty-five-foot vertical separation distance between the bottom of the unformed manure storage structure and underlying limestone, dolomite, or other soluble rock.

4. *a.* The department shall conduct a routine inspection of each unformed manure storage structure at least once each year. A routine inspection conducted pursuant to this subsection shall be limited to a visual inspection of the site where the unformed manure storage structure is located. The department shall inspect the site at a reasonable time after providing at least twenty-four hours' notice to the person owning or managing the confinement feeding operation. The visual inspection shall include, but not be limited to, determining whether any of the following exists:

(1) An adequate freeboard level.

(2) The seepage of manure from the unformed manure storage structure.

(3) Erosion.

(4) Inadequate vegetation cover.

(5) The presence of an opening allowing manure to drain from the unformed manure storage structure.

b. Nothing in this subsection restricts the department from conducting an inspection of a confinement feeding operation which is not routine.

98 Acts, ch 1209, §36
C99, §455B.205
2002 Acts, ch 1137, §47 – 49, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259 – 261
C2003, §459.308
2003 Acts, ch 84, §2, 6
Referred to in §459.303

459.309 Settled open feedlot effluent basins — construction design standards. Repealed by 2005 Acts, ch 136, §37. See §459A.301.

459.310 Distance requirements.

1. Except as provided in subsections 3 and 4, the following shall apply:

a. A confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole. However, the department may adopt rules requiring an increased separation distance under this paragraph in order to protect the integrity of a water of the state. The increased separation distance shall not be more than two thousand feet. If the department exercises its discretion to increase the separation distance requirement, the department shall not approve an application for the construction of a confinement feeding operation structure within that separation distance as provided in section 459.303.

b. A confinement feeding operation structure shall not be constructed if the confinement feeding operation structure as constructed is closer than any of the following:

(1) Five hundred feet away from a water source other than a major water source.

(2) One thousand feet away from a major water source.

(3) Two thousand five hundred feet away from a designated wetland.

c. (1) A water source, other than a major water source, shall not be constructed, expanded, or diverted, if the water source as constructed, expanded, or diverted is closer than five hundred feet away from a confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted, if the major water source as constructed, expanded, or diverted is closer than one thousand feet from a confinement feeding operation structure.

(3) A designated wetland shall not be established, if the designated wetland is closer than two thousand five hundred feet away from a confinement feeding operation structure.

2. Except as provided in subsection 4, a confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain as designated by rules adopted by the department pursuant to section 459.301.

3. A separation distance required in subsection 1 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A confinement feeding operation building, an egg washwater storage structure, or a manure storage structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier, including construction design standards.

4. A separation distance required in subsection 1 or the prohibition against construction of a confinement feeding operation structure on a one hundred year floodplain as provided in subsection 2 shall not apply to a confinement feeding operation that includes a confinement feeding operation structure that was constructed prior to March 1, 2003, if any of the following apply:

a. One or more unformed manure storage structures that are part of the confinement

feeding operation are replaced with one or more formed manure storage structures on or after April 28, 2003, and all of the following apply:

(1) The animal weight capacity or animal unit capacity, whichever is applicable, is not increased for that portion of the confinement feeding operation that utilizes all replacement formed manure storage structures.

(2) The use of each replaced unformed manure storage structure is discontinued within one year after the construction of the replacement formed manure storage structure.

(3) The capacity of all replacement formed manure storage structures does not exceed the amount required to store manure produced by that portion of the confinement feeding operation utilizing the formed manure storage structures during any eighteen-month period.

(4) No portion of the replacement formed manure storage structure is closer to the location or object from which separation is required under subsection 1 than any other confinement feeding operation structure which is part of the operation.

(5) The formed manure storage structure meets or exceeds the requirements of section 459.307.

b. (1) A formed manure storage structure that is part of the confinement feeding operation is constructed on or after April 28, 2003, pursuant to a variance granted by the department. In granting the variance, the department shall make a finding of all of the following:

(a) The replacement formed manure storage structure replaces the confinement feeding operation's existing manure storage and handling facilities.

(b) The replacement formed manure storage structure complies with standards adopted pursuant to section 459.307.

(c) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation's existing manure storage and handling facilities.

(2) If the formed manure storage structure will replace any existing manure storage structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

5. A person shall not construct or expand an unformed manure storage structure within an agricultural drainage well area as provided in section 460.205.

95 Acts, ch 195, §26

CS95, §455B.204

98 Acts, ch 1209, §35, 53; 2002 Acts, ch 1137, §44, 45, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.310

2003 Acts, ch 84, §3 – 6; 2003 Acts, ch 108, §84, 85; 2011 Acts, ch 25, §143

Referred to in §459.304, 459.305, 459.307, 459.318, 459A.404

For regulation of surface water entry into and closure of agricultural drainage wells, see chapter 460

459.311 Minimum requirements for manure control.

1. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. For purposes of this section, dry manure may be retained by stockpiling as provided in this subchapter. A confinement feeding operation shall not discharge manure directly into water of the state or into a tile line that discharges directly into water of the state.

2. Notwithstanding subsection 1, a confinement feeding operation that is a concentrated animal feeding operation as defined in 40 C.F.R. §122.23(b) shall comply with applicable national pollutant discharge elimination system permit requirements as provided in the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412, pursuant to rules that shall be adopted by the commission. Any rules adopted pursuant to this subsection shall be no more stringent than requirements under the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

3. Manure from an animal feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law,

including this chapter, guidelines adopted pursuant to this chapter, and section 459.314, shall be deemed as compliance with this requirement.

4. The department may require that the owner of a confinement feeding operation install and operate a water pollution monitoring system as part of an unformed manure storage structure.

5. The owner of the confinement feeding operation which discontinues the use of the operation shall remove all manure from related confinement feeding operation structures used to store manure, by a date specified in an order issued to the operation by the department, or six months following the date that the confinement feeding operation is discontinued, whichever is earlier.

95 Acts, ch 195, §24

CS95, §455B.201

98 Acts, ch 1209, §28; 99 Acts, ch 114, §57; 2002 Acts, ch 1137, §37, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.311

2009 Acts, ch 38, §8, 16; 2010 Acts, ch 1029, §2

Referred to in §459.311E, 459.313A, 459.318, 459.319, 459B.307

459.311A Stockpiling dry manure.

A person may stockpile dry manure so long as the person stockpiles the dry manure in compliance with restrictions applicable to stockpiling as provided in this subchapter and subchapter II.

2009 Acts, ch 38, §9, 16

459.311B Stockpiling dry manure — minimum separation distance requirements and prohibitions.

1. A person shall not stockpile dry manure within the following distances from any of the following:

a. A terrace tile inlet or surface tile inlet, two hundred feet. However, this paragraph does not apply to a person who stockpiles the dry manure in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the terrace tile inlet or surface tile inlet. A terrace tile inlet or surface tile inlet does not include a tile inlet that is not directly connected to a tile line that discharges directly into a water of the state.

b. (1) A designated area, four hundred feet. However, an increased separation distance of eight hundred feet shall apply to all of the following:

(a) A high-quality water resource.

(b) An agricultural drainage well.

(c) A known sinkhole.

(2) Subparagraph (1) does not apply to a person who stockpiles dry manure in a manner that does not allow precipitation-induced runoff to drain from the stockpile to the designated area.

2. A person shall not stockpile dry manure in a grassed waterway.

3. A person shall not stockpile dry manure on land having a slope of more than three percent. However, this subsection shall not apply to a person who stockpiles dry manure using methods, structures, or practices that contain the stockpile, including but not limited to silt fences, temporary earthen berms, or other effective measures, and that prevent or diminish precipitation-induced runoff from the stockpile.

2009 Acts, ch 38, §10, 16

459.311C Stockpiling dry manure on terrain other than karst terrain.

A person stockpiling dry manure on terrain, other than karst terrain, for more than fifteen consecutive days shall comply with any of the following:

1. Stockpile dry manure using any of the following:

a. A qualified stockpile structure.

b. A qualified stockpile cover. However, the person shall not stockpile dry manure using a qualified stockpile cover at a long-term stockpile location unless the person stockpiles the

dry manure on compacted soil, compacted granular aggregates, asphalt, concrete, or other similar materials.

2. Deliver a stockpile inspection statement to the department as follows:

a. The department must receive the statement by the fifteenth day of each month.

b. The stockpile inspection statement shall provide the location of the stockpile and document the results of an inspection conducted by the person during the previous month. The inspection must evaluate whether precipitation-induced runoff is draining away from the stockpile and, if so, describe actions taken to prevent the runoff. If an inspection by the department documents that precipitation-induced runoff is draining away from a stockpile, the person shall immediately remove dry manure from the stockpile in compliance with this chapter or comply with all directives of the department to prevent the runoff.

c. The stockpile inspection statement must be in writing and may be on a form prescribed by the department.

2009 Acts, ch 38, §11, 16

459.311D Stockpiling dry manure on karst terrain.

A person stockpiling dry manure on karst terrain shall comply with all of the following:

1. The person shall stockpile the dry manure at a location where there is a vertical separation distance of at least five feet between the bottom of the stockpile and the underlying limestone, dolomite, or other soluble rock.

2. A person who stockpiles dry manure for more than fifteen consecutive days shall use any of the following:

a. A qualified stockpile structure.

b. A qualified stockpile cover. However, the person shall not stockpile dry manure using a qualified stockpile cover at a long-term stockpile location unless the stockpile is located on reinforced concrete at least five inches thick.

2009 Acts, ch 38, §12, 16

459.311E Stockpiling — required practices.

1. A person stockpiling dry manure shall comply with applicable requirements of the national pollutant discharge elimination system pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

2. A person stockpiling dry manure shall remove the dry manure and apply it in accordance with the provisions of this chapter, including but not limited to section 459.311, within six months after the dry manure is first stockpiled.

2009 Acts, ch 38, §13, 16

459.312 Manure management plan — requirements.

1. The following persons shall submit a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section to the department:

a. The owner of a confinement feeding operation, other than a small animal feeding operation, if any of the following apply:

(1) The confinement feeding operation was constructed after May 31, 1985, regardless of whether the confinement feeding operation structure was required to be constructed pursuant to a construction permit.

(2) The owner constructs a manure storage structure, regardless of whether the person is required to be issued a permit for the construction pursuant to section 459.303 or whether the person has submitted a prior manure management plan.

b. A person who applies manure from a confinement feeding operation, other than a small animal feeding operation, which is located in another state, if the manure is applied on land located in this state.

2. Not more than one confinement feeding operation shall be covered by a single manure management plan.

3. The owner of a confinement feeding operation who is required to submit a manure management plan under this section shall submit an updated manure management plan

to the department on an annual basis. The department shall provide for a date that each updated manure management plan is required to be submitted to the department. The department may provide for staggering the dates on which updated manure management plans are due. To satisfy the requirements of an updated manure management plan, an owner of a confinement feeding operation may, in lieu of submitting a complete plan, file a document stating that the manure management plan has not changed, or state all of the changes made since the original manure management plan or a previous updated manure management plan was submitted and approved.

4. *a.* The department shall deliver a copy of the manure management plan or require the person submitting the manure management plan to deliver a copy of the manure management plan to all of the following:

(1) The county board of supervisors in the county where the manure storage structure owned by the person is located.

(2) The county board of supervisors in the county where the manure storage structure is proposed to be constructed. If the person is required to be issued a permit for the construction of the manure storage structure as provided in section 459.303, the manure management plan shall accompany the application for the construction permit as provided in section 459.303.

(3) The county board of supervisors in the county where the manure is to be applied.

b. The manure management plan shall be filed with the county board of supervisors. The county auditor or other county officer may accept the manure management plan on behalf of the board.

5. A person shall not remove manure from a manure storage structure which is part of a confinement feeding operation for which a manure management plan is required under this section, unless the department approves a manure management plan, including an original manure management plan and an updated manure management plan, as required in this section. The manure management plan shall be submitted by the owner of the confinement feeding operation as provided by the department in accordance with section 459.302. The owner of a confinement feeding operation required to submit a manure management plan for the construction of a manure storage structure may remove manure from another manure storage structure that is constructed, if the department has approved a manure management plan covering that manure storage structure. The department may adopt rules allowing a person to remove manure from a manure storage structure until the manure management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the department.

6. The department shall not approve an original manure management plan unless the plan is accompanied by a manure management plan filing fee required pursuant to section 459.400. The department shall not approve an updated manure management plan unless the updated manure management plan is accompanied by an annual compliance fee required pursuant to section 459.400.

7. *a.* The department shall not approve an application for a permit to construct a confinement feeding operation structure unless the owner of the confinement feeding operation applying for approval submits an original manure management plan together with the application for the construction permit as provided in section 459.303.

b. The department shall not file a construction design statement as provided in section 459.306 unless the owner of the confinement feeding operation structure submits an original manure management plan together with the construction design statement. The construction design statement and manure management plan may be submitted as part of an application for a construction permit as provided in section 459.303.

8. A manure management plan must be authenticated by the person required to submit the manure management plan as required by the department in accordance with section 459.302.

9. The department shall approve or disapprove a manure management plan according to procedures established by the department:

a. For an original manure management plan submitted due to the construction of a confinement feeding operation structure, the department shall approve or disapprove the manure management plan as follows:

(1) If the confinement feeding operation structure is constructed pursuant to a

construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved as part of the construction permit application.

(2) If the confinement feeding operation structure is not constructed pursuant to a construction permit issued pursuant to section 459.303, the manure management plan shall be approved or disapproved within sixty days from the date that the department receives the manure management plan.

b. For an original manure management plan submitted for a reason other than the construction of a confinement feeding operation structure, the manure management plan shall be approved within sixty days from the date that the department receives the manure management plan.

c. For an updated manure management plan, the manure management plan shall be approved within thirty days from the date that the department receives the updated manure management plan.

10. A manure management plan shall include all of the following:

a. Restrictions on the application of manure based on all of the following:

(1) Calculations necessary to determine the land area required for the application of manure from a confinement feeding operation based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the manure management plan, and according to requirements adopted by the department.

(2) A phosphorus index. The department shall establish a phosphorus index by rule in order to determine the manner and timing of the application to a land area of manure originating from a confinement feeding operation. The phosphorus index shall provide for the application of manure on a field basis. The phosphorus index shall be used to determine application rates, based on the number of pounds of phosphorus that may be applied per acre and application practices. The phosphorus index shall be based on the field office technical guide for Iowa as published by the United States department of agriculture, natural resources conservation service, which sets forth nutrient management standards.

b. Manure nutrient levels as determined by either manure testing or accepted standard manure nutrient values.

c. Manure application methods, timing of manure application, and the location of the manure application.

d. If the location of the application is on land other than land owned by the person applying for the construction permit, the plan shall include a copy of each written agreement executed between the person and the landowner where the manure will be applied.

e. An estimate of the annual animal production and manure volume or weight produced by the confinement feeding operation.

f. Methods, structures, or practices to prevent or diminish soil loss and potential surface water pollution.

g. Methods or practices to minimize potential odors caused by the application of manure by the use of spray irrigation equipment.

h. A description of land identified for the application of liquid manure due to an emergency if allowed pursuant to section 459.313A. The owner must identify the land in the original manure management plan or in the next updated manure management plan required to be submitted to the department following the application.

11. A confinement feeding operation classified as a habitual violator as provided in section 459.604 shall submit a manure management plan to the department on an annual basis, which must be approved by the department for the following year of operation. The manure management plan shall be a replacement original manure management plan rather than a manure management plan update. However, the habitual violator required to submit a replacement original manure management plan must submit an annual compliance fee in the same manner as if the habitual violator were submitting an updated manure management plan.

12. A person required to submit a manure management plan to the department shall maintain a current manure management plan and maintain records sufficient to demonstrate compliance with the manure management plan. Chapter 22 shall not apply to the records

which shall be kept confidential by the department and its agents and employees. The contents of the records are not subject to disclosure except as follows:

a. Upon waiver by the person receiving the permit.

b. In an action or administrative proceeding commenced under this chapter. Any hearing related to the action or proceeding shall be closed.

c. When required by subpoena or court order.

13. The department may inspect the confinement feeding operation at any time during normal working hours, and may inspect records required to be maintained as part of the manure management plan. The department shall regularly inspect a confinement feeding operation if the operation or a person holding a controlling interest in the operation is classified as a habitual violator pursuant to section 459.604. The department shall assess and the confinement feeding operation shall pay the actual costs of the inspection.

14. A person required to authenticate a manure management plan submitted to the department who is found in violation of the terms and conditions of the plan shall not be subject to an enforcement action other than the assessment of a civil penalty pursuant to section 459.603.

95 Acts, ch 195, §25

CS95, §455B.203

98 Acts, ch 1209, §30 – 32, 53; 2002 Acts, ch 1137, §38 – 41, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §256, 257, 259, 260, 262

C2003, §459.312

2003 Acts, ch 108, §86; 2009 Acts, ch 41, §137, 138; 2009 Acts, ch 155, §2; 2011 Acts, ch 25, §143

Referred to in §459.102, 459.303, 459.304, 459.306, 459.312A, 459.313A, 459.400, 459.401, 459.403, 459.503, 459.604, 459A.208

459.312A Election to be a small animal feeding operation.

1. A person otherwise required to submit an updated manure management plan as required in section 459.312 and pay an annual compliance fee as required in section 459.400 may make a small animal feeding operation election as provided in this section.

2. Upon the effective date of the election, the confinement feeding operation covered by the updated manure management plan shall be considered a small animal feeding operation only for purposes of submitting the updated manure management plan and paying the annual compliance fee, during the period of the election.

3. A person is eligible to make an election only if all of the following apply:

a. The confinement feeding operation has a capacity of five hundred or fewer animal units which shall be calculated by determining all of the following:

(1) The number of animal units housed at the confinement feeding operation at any one time during the period of election.

(2) The animal unit capacity of each confinement feeding operation building that is used to store manure during the period of the election. However, this subparagraph (2) does not apply if a confinement feeding operation building stores manure pursuant to a temporary approval issued by the department. The department shall not issue a temporary approval unless the manure is stored on an emergency basis for a limited period. The department shall establish terms and conditions for a temporary approval. The department may issue one or more extensions to a temporary approval if necessary.

b. The department is notified of the election in a manner required by the department. The department may require that a person submit a notice of election as part of an updated manure management plan form or as a separate document.

4. The department shall provide for the period of election, including its effective and expiration dates. However, the period of election shall be at least for the same period covered by the updated manure management plan. An election automatically terminates when more than five hundred animal units are housed at the confinement feeding operation at any one time.

5. This section does not affect any of the following:

a. A condition associated with a construction permit as provided in this subchapter, including but not limited to a master matrix as provided in section 459.305.

b. A requirement unrelated to filing an updated manure management plan or paying an annual compliance fee, including but not limited to the filing of a construction design statement as provided in section 459.306, the application of manure as provided in section 459.313A, or the certification of a person as a confinement site manure applicator as provided in section 459.315.

2013 Acts, ch 106, §2
Referred to in §459.301

459.313 Manure application — rules.

1. The department shall adopt rules governing the application of manure originating from an anaerobic lagoon or aerobic structure which is part of a confinement feeding operation. The rules shall establish application rates and practices to minimize groundwater or surface water pollution resulting from application, including pollution caused by runoff or other manure flow resulting from precipitation events. The rules shall establish different application rates and practices based on the water holding capacity of the soil at the time of application.

2. A person shall not apply manure by spray irrigation equipment, except as provided by rules adopted by the department pursuant to chapter 17A. However, a person shall not use restricted spray irrigation equipment to apply manure originating from a confinement feeding operation, unless the manure has been diluted as provided by rules adopted by the department, including diluted by use of an anaerobic lagoon.

98 Acts, ch 1209, §34, 53
C99, §455B.203B
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
C2003, §459.313

459.313A Application of manure on land — snow covered ground and frozen ground.

A person may apply manure originating from an animal feeding operation on snow covered ground or frozen ground, except to the extent otherwise provided by applicable requirements in this section, this chapter, or the national pollutant discharge elimination system pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

1. During the period beginning December 21 and ending April 1, the person may apply liquid manure originating from a manure storage structure, that is part of a confinement feeding operation, on snow covered ground only when there is an emergency. During the period beginning February 1 and ending April 1, the person may apply liquid manure originating from a manure storage structure, that is part of a confinement feeding operation, on frozen ground only when there is an emergency. An emergency occurs only when there is an immediate need to comply with section 459.311, subsection 1, due to unforeseen circumstances affecting the storage of the liquid manure. The unforeseen circumstances must be beyond the control of the owner of the confinement feeding operation, including but not limited to natural disaster, unusual weather conditions, or equipment or structural failure. A person who is authorized to apply liquid manure on snow covered ground or frozen ground when there is an emergency shall comply with all of the following:

a. The person must contact the department by telephone prior to the application.

b. The person must apply the liquid manure on land identified for such application in a manure management plan submitted by the owner of the confinement feeding operation to the department as provided in section 459.312. The owner of the confinement feeding operation must identify the land in the manure management plan prior to the application. The owner must identify the land in the original manure management plan or in the next updated manure management plan required to be submitted to the department following the application.

c. The liquid manure must be applied on a field with a phosphorus index rating of two or less.

d. Any surface water drain tile intake that is on land in the owner's manure management plan and located down gradient of the application must be temporarily blocked beginning

not later than the time that the liquid manure is first applied and ending not earlier than two weeks after the completion of the application.

2. The authorization to apply liquid manure in subsection 1 does not apply to any of the following:

a. An immediate need to comply with section 459.311, subsection 1, caused by the improper design or management of the manure storage structure, including but not limited to a failure to properly account for the volume of the manure to be stored.

b. Liquid manure originating from a manure storage structure constructed or expanded on or after July 1, 2009, if the manure storage structure has a capacity to store manure for less than one hundred eighty days.

3. Subsections 1 and 2 do not apply to any of the following:

a. The application of liquid manure originating from a small animal feeding operation.

b. The application of liquid manure and injection into the soil or incorporation within the soil on the same date.

2009 Acts, ch 155, §3
Referred to in §459.312, 459.312A

459.313B Application of liquid manure on snow covered ground or frozen ground — annual report. Repealed by its own terms; 2009 Acts, ch 155, §4.

459.314 Application of manure near designated areas.

1. The department shall adopt rules relating to the application of manure in close proximity to a designated area.

2. Except as otherwise provided in this subsection, a person shall not apply manure on land located within two hundred feet from a designated area, unless one of the following applies:

a. The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

b. An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for fifty feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

c. The department adopts rules requiring an increased separation distance for the application of manure located in proximity to a high-quality water resource in order to protect the integrity of the high-quality water resource. However, the department shall not provide for an increased separation distance requirement that is more than four times the separation distance requirement otherwise applicable under this section.

95 Acts, ch 195, §3
CS95, §159.27
98 Acts, ch 1209, §50
C99, §455B.204A
2002 Acts, ch 1137, §46, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
C2003, §459.314
2009 Acts, ch 38, §14, 16
Referred to in §459.311, 459A.410

459.314A Licensure — commercial manure service.

A person shall not engage in the business of a commercial manure service unless the department issues the person a commercial manure service license under this section.

1. The department shall not issue a license to a commercial manure service unless each manager of the commercial manure service is certified as a commercial manure service representative pursuant to section 459.315.

2. The department shall not issue a license to a commercial manure service if the license for the commercial manure service has been revoked within the previous three years or a person who holds a controlling interest in the commercial manure service held a controlling interest in another commercial service which has been revoked within the previous three years.

3. The department may impose conditions or limitations upon the license. However, the issuance of a license shall not be conditioned upon providing a bond or maintaining a certain financial condition. A commercial manure service shall be issued a single license regardless of the number of sites where the commercial manure service operates offices.

4. A license application must be submitted to the department on a form furnished by the department according to procedures required by the department. The license shall expire on March 1 of each year.

5. A commercial manure service shall be charged a license fee as provided in section 459.400.

2003 Acts, ch 163, §4, 23

Referred to in §459.400

459.314B Disciplinary action — commercial manure service.

The department may issue an order to suspend or revoke the license of a commercial manure service as provided in chapter 17A, including an order to immediately suspend or revoke the license pursuant to section 17A.18A. The department may suspend or revoke the license of a commercial manure service for an applicable violation of this chapter. In addition, the department may suspend or revoke a commercial manure service's license for any of the following:

1. Committing a fraudulent act, including but not limited to engaging in a deceptive act or practice, deliberately misrepresenting or omitting a material fact in the license application, or submitting a statement verifying that an employee may be substituted for certification without paying a fee as provided in section 459.400.

2. Knowingly assisting a person in evading the provisions of this chapter.

3. Knowingly employing or executing a contract with a person who acts as a commercial manure service representative and who is not certified pursuant to section 459.315.

2003 Acts, ch 163, §5, 23; 2007 Acts, ch 126, §81

459.315 Certification and education requirements.

1. *a.* A person shall not act as a commercial manure service representative unless the person is certified pursuant to an educational program as provided in this section.

b. A person shall not act as a confinement site manure applicator unless the person is certified pursuant to an educational program as provided in this section.

2. *a.* A person required to be certified as a commercial manure service representative must be certified by the department each year. The person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or three hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

b. A person required to be certified as a confinement site manure applicator must be certified by the department every three years. However, if the person is exempt from paying the certification fee because a family member has paid a certification fee as provided in section 459.400, the person's certification shall expire on the same date that the paid family member's certification expires. A person shall be certified after completing an educational program which shall consist of an examination required to be passed by the person or two hours of continuing instructional courses which the person must attend each year in lieu of passing the examination.

3. The department shall adopt, by rule, requirements for the certification, including educational program requirements. The department may establish different educational programs designed for commercial manure service representatives and confinement site manure applicators. The department shall adopt rules necessary to administer this section, including establishing certification standards and continuing instructional courses as provided in this subsection.

a. The department shall adopt rules establishing subjects for continuing instructional courses that emphasize practical and cost-effective methods to prevent manure spills and limit the impact of manure spills, especially from manure storage structures. The subjects may also include methods for transporting, handling, or applying manure; identifying

the potential effects of manure upon surface water and groundwater; and procedures to remediate the potential effects of manure on surface water or groundwater.

b. The department shall adopt by rule criteria for allowing a person required to be certified to complete either a written or oral examination.

c. The department shall administer the continuing instructional courses, by either teaching the courses or selecting persons to teach the courses, according to criteria as provided by rules adopted by the department. The department shall, to the extent possible, select persons to teach the continuing instructional courses. The department is not required to compensate persons to teach the continuing instructional courses. In selecting persons, the department shall consult with organizations interested in transporting, handling, storing, or applying manure, including the Iowa commercial nutrient applicators association and associations representing agricultural producers. The Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology shall cooperate with the department in administering the continuing instructional courses. The Iowa cooperative extension service may teach continuing instructional courses, train persons selected to teach courses, or distribute informational materials to persons teaching the courses.

d. The department shall provide that the continuing instructional courses be made available via the department's internet site, the internet site of a person selected to teach the continuing instructional courses, or the Iowa cooperative extension service in agriculture and home economics of Iowa state university of science and technology.

e. The department, in administering the certification program under this section, and the department of agriculture and land stewardship, in administering the certification program for pesticide applicators, may cooperate together.

4. This section shall not require a person to be certified as a confinement site manure applicator if the person applies manure which originates from a manure storage structure which is part of a small animal feeding operation.

5. *a.* This section shall not require a person to be certified as a commercial manure service representative if any of the following applies:

(1) The person is any of the following:

(a) Actively engaged in farming who trades work with another such person.

(b) Employed by a person actively engaged in farming not solely as a manure applicator who applies manure as an incidental part of the person's general duties.

(c) Engaged in applying manure as an incidental part of a custom farming operation.

(d) Engaged in applying manure as an incidental part of a person's duties as provided by rules adopted by the department providing for an exemption.

(2) The person transports, handles, stores, or applies manure for a period of thirty days from the date of initial employment as a commercial manure service representative and all of the following apply:

(a) The person is actively seeking certification under this section.

(b) The person is transporting, handling, storing, or applying manure under the instructions and control of a certified commercial manure service representative. The commercial manure service representative must be physically present at the site where the manure is located. The commercial manure service representative must also be in sight or immediate communication distance of the supervised person.

b. This section shall not require a person to be certified as a confinement site manure applicator if all of the following apply:

(1) The person is a part-time employee or family member of a confinement site manure applicator.

(2) The person is acting under the instructions and control of a certified confinement site manure applicator who is both of the following:

(a) Physically present at the site where the manure is located.

(b) In sight or hearing distance of the supervised person.

6. The department may charge a fee for certifying a person under this section as provided in section 459.400.

98 Acts, ch 1209, §33, 47, 53

C99, §455B.203A
99 Acts, ch 114, §30; 2000 Acts, ch 1107, §1 – 4; 2002 Acts, ch 1137, §42, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
C2003, §459.315
2003 Acts, ch 163, §6 – 11, 23; 2003 Acts, 1st Ex, ch 2, §27, 209; 2013 Acts, ch 60, §1, 2
Referred to in §459.312A, 459.314A, 459.314B, 459.400

459.315A Disciplinary action — commercial manure service representatives.
The department may issue an order to suspend or revoke the certification of a commercial manure service representative for a violation of this chapter. The department shall issue an order for the suspension or revocation of a certificate as provided in chapter 17A. The department may issue an order to immediately suspend or revoke the certification notwithstanding section 17A.18.
2003 Acts, ch 163, §12, 23

459.316 Reserved.

459.317 Habitual violators — pending actions — restrictions on construction.
1. As used in this section, unless the context otherwise requires:
a. *"Habitual violator"* means a person classified as a habitual violator pursuant to section 459.604.
b. *"Operation of law"* means a transfer by inheritance, devise or bequest, court order, dissolution decree, order in bankruptcy, insolvency, replevin, foreclosure, execution sale, the execution of a judgment, the foreclosure of a real estate mortgage, the forfeiture of a real estate contract, or a transfer resulting from a decree for specific performance.
c. *"Suspect site"* means a confinement feeding operation or land where a confinement feeding operation could be constructed, if the site is subject to a suspect transaction.
d. *"Suspect transaction"* means a transaction in which a habitual violator does any of the following:
(1) Transfers a controlling interest in a suspect site to any of the following:
(a) An employee of the habitual violator or business in which the person holds a controlling interest.
(b) A person who holds an interest in a business, including a confinement feeding operation, in which the habitual violator holds a controlling interest.
(c) A person related to the habitual violator as spouse, parent, grandparent, lineal ascendant of a grandparent or spouse and any other lineal descendant of the grandparent or spouse, or a person acting in a fiduciary capacity for a related person. This paragraph does not apply to a transaction completed by an operation of law.
(2) Provides financing for the construction or operation of a confinement feeding operation to any person, by providing a contribution or loan to the person, or providing cash or other tangible collateral for a contribution or loan made by a third person.
e. *"Transaction"* includes a transfer in any manner or by any means, including any of the following:
(1) Delivery and acceptance between two parties, including by contract or agreement with or without consideration, including by sale, exchange, barter, or gift.
(2) An operation of law.
2. *a.* A person shall not construct or expand a confinement feeding operation structure if the person is any of the following:
(1) A party to a pending action for a violation of this chapter concerning a confinement feeding operation in which the person has a controlling interest and the action is commenced in district court by the attorney general.
(2) A habitual violator.
b. A person shall not construct or expand a confinement feeding operation structure for five years after the date of the last violation, committed by the person or confinement feeding operation in which the person holds a controlling interest, during which the person or operation was classified as a habitual violator.

c. This subsection shall not prohibit a person from completing the construction or expansion of a confinement feeding operation structure, if any of the following apply:

(1) The person has an unexpired permit for the construction or expansion of the confinement feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the confinement feeding operation structure.

d. For purposes of this subsection, *"construct"* or *"expand"* includes financing and contracting to build a confinement feeding operation structure regardless of whether the person subsequently leases, owns, or operates the confinement feeding operation structure.

3. A person who receives a controlling interest in a suspect site pursuant to a suspect transaction must submit a notice of the transaction to the department within thirty days. If, after notice and opportunity to be heard, pursuant to the contested case provisions of chapter 17A, the department finds that one purpose of the transaction was to avoid the conditions and enhanced penalties imposed upon a habitual violator, the person shall be subject to the same conditions and enhanced penalties as applied to the habitual violator at the time of the transaction.

4. The department shall conduct an annual review of each confinement feeding operation which is a habitual violator and each confinement feeding operation in which a habitual violator holds a controlling interest.

97 Acts, ch 150, §1

CS97, §455B.202

98 Acts, ch 1209, §29, 53; 99 Acts, ch 114, §29; 2002 Acts, ch 1137, §67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.317

Referred to in §459.303

459.318 Exception from regulation — research colleges.

1. As used in this section, *"research college"* means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

2. The requirements of this subchapter which regulate animal feeding operations, including rules adopted by the department pursuant to section 459.103, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to animal feeding operations, including but not limited to the confinement of animals and the storage and disposal of manure originating from animal feeding operations.

3. This section shall not apply to requirements provided in any of the following:

a. Section 459.311, including rules adopted by the department under that section.

b. Section 459.310, including rules adopted by the department under that section.

98 Acts, ch 1209, §37

C99, §455B.206

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

C2003, §459.318

Referred to in §459.303

459.319 Exception from regulation — stockpiling.

1. This subchapter shall not apply to a person who stockpiles dry manure if the stockpile's dry manure originates from a confinement feeding operation that was constructed prior to January 1, 2006, unless the confinement feeding operation is expanded after that date.

2. Subsection 1 does not apply to any of the following:

a. A person who stockpiles dry manure in violation of section 459.311.

b. A stockpile where precipitation-induced runoff has drained away.

2009 Acts, ch 38, §15, 16

459.320 Exception from regulation — election for confinement feeding operations confining fish.

A person who exclusively confines fish as part of a confinement feeding operation may elect to comply with the permitting requirements of section 455B.183 in lieu of the permitting requirements of this subchapter.

2012 Acts, ch 1085, §3

Compliance with applicable national pollutant discharge elimination system permit provisions required, see 2012 Acts, ch 1085, §4

459.321 through 459.399 Reserved.

SUBCHAPTER IV

ANIMAL AGRICULTURE COMPLIANCE FUND — FEES

Referred to in §455B.111, 455B.112, 455B.113, 455B.115, 455E.8

459.400 Compliance fees.

1. The department shall establish, assess, and collect all of the following compliance fees:

a. A construction permit application fee that is required to accompany an application submitted to the department for approval to construct a confinement feeding operation structure as provided in section 459.303. The amount of the construction permit application fee shall not exceed two hundred fifty dollars.

b. A manure management plan filing fee that is required to accompany an original manure management plan submitted to the department for approval as provided in section 459.312. However, the manure management plan required to be filed as part of an application for a construction permit shall be paid together with the construction permit application fee. The amount of the manure management plan filing fee shall not exceed two hundred fifty dollars.

c. An annual compliance fee that is required to accompany an updated manure management plan submitted to the department for approval as provided in section 459.312. The amount of the annual compliance fee shall not exceed a rate of fifteen cents per animal unit based on the animal unit capacity of the confinement feeding operation covered by the manure management plan. If the person submitting the manure management plan is a contract producer, as provided in chapter 202, the active contractor shall be assessed the annual compliance fee.

d. Educational program fees paid by persons required by the department to be certified as commercial manure service representatives or confinement site manure applicators pursuant to section 459.315. The amount of the educational program fees together with commercial manure service licensing fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

(1) The fee for certification of a commercial manure service representative shall not be more than seventy-five dollars. A commercial manure service licensed pursuant to section 459.314A may pay for the annual certification of its employees. If a commercial manure service makes payment for an employee to be certified as a commercial manure service representative and that employee leaves employment, the commercial manure service may substitute a new employee to be certified for the former employee. The department shall not charge for the certification of the substituted employee. The department may require that the commercial manure service provide the department with documentation that the substitution is valid. The department shall not charge the fee to a person who is a manager of a commercial manure service licensed pursuant to section 459.314A. The department may require that the commercial manure service provide documentation that a person is a manager.

(2) A person who is certified as a confinement site manure applicator as provided in section 459.315 is exempt from paying the certification fee if all of the following apply:

(a) The person is certified within one year from the date that a family member has been certified as a confinement site manure applicator.

(b) The family member has paid the fee for that family member's own certification.

e. Fees paid by persons required by the department to be licensed as a commercial manure service as provided in section 459.314A. The fee for a commercial manure service license shall not be more than two hundred dollars. The amount of the licensing fees together with educational program fees shall be adjusted annually by the department based on the costs of administering section 459.315 and paying the expenses of the department relating to certification.

2. Compliance fees collected by the department shall be deposited into the animal agriculture compliance fund created in section 459.401.

a. Except as provided in paragraph "*b*", moneys collected from all fees shall be deposited into the compliance fund's general account.

b. Moneys collected from the annual compliance fee shall be deposited into the compliance fund's assessment account. Moneys collected from commercial manure service license fees and educational program fees shall be deposited into the compliance fund's educational program account.

3. At the end of each fiscal year the department shall determine the balance of unencumbered and unobligated moneys in the assessment account and the educational program account of the animal agriculture compliance fund created pursuant to section 459.401.

a. If on June 30, the balance of unencumbered and unobligated moneys in the assessment account is one million dollars or more, the department shall adjust the rate of the annual compliance fee for the following fiscal year. The adjusted rate for the annual compliance fee shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not one million dollars or more.

b. If on June 30, the balance of unencumbered and unobligated moneys in the educational program account is twenty-five thousand dollars or more, the department shall adjust the rate of the commercial manure service license fee and the educational program fee for the following fiscal year. The adjusted rate for the fees shall be based on the department's estimate of the amount required to ensure that at the end of the following fiscal year the balance of unencumbered and unobligated moneys in the assessment account is not twenty-five thousand dollars or more.

2002 Acts, ch 1137, §43, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262
C2003, §459.316
2003 Acts, ch 163, §13 – 16, 22, 23
CS2003, §459.400
Referred to in §459.303, 459.312, 459.312A, 459.314A, 459.314B, 459.315, 459.401

459.401 Animal agriculture compliance fund.

1. An animal agriculture compliance fund is created in the state treasury under the control of the department. The compliance fund is separate from the general fund of the state.

2. The compliance fund is composed of three accounts: the general account, the assessment account, and the educational program account.

a. The general account is composed of moneys appropriated by the general assembly and moneys available to and obtained or accepted by the department from the United States government or private sources for placement in the compliance fund. Unless otherwise specifically provided in statute, moneys required to be deposited in the compliance fund shall be deposited into the general account. The general account shall include moneys deposited into the account from all of the following:

(1) The construction permit application fee required pursuant to section 459.303.

(2) The manure management plan filing fee required pursuant to section 459.312.

(3) Educational program fees required to be paid by commercial manure service representatives or confinement site manure applicators pursuant to section 459.400.

(4) A commercial manure service license fee as provided in section 459.400.

b. The assessment account is composed of moneys collected from the annual compliance fee required pursuant to section 459.400.

c. The educational program account is composed of moneys collected from the commercial manure service license fee and the educational program fee required pursuant to section 459.400.

3. Moneys in the compliance fund are appropriated to the department exclusively to pay the expenses of the department in administering and enforcing the provisions of subchapters II and III as necessary to ensure that animal feeding operations comply with all applicable requirements of those provisions, including rules adopted or orders issued by the department pursuant to those provisions. The moneys shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this subsection. The department shall not transfer moneys from the compliance fund's assessment account to another fund or account, including but not limited to the fund's general account.

4. Moneys in the fund, which may be subject to warrants written by the director of the department of administrative services, shall be drawn upon the written requisition of the director of the department of natural resources or an authorized representative of the director.

5. Notwithstanding section 8.33, any unexpended balance in an account of the compliance fund at the end of the fiscal year shall be retained in that account. Notwithstanding section 12C.7, subsection 2, interest, earnings on investments, or time deposits of the moneys in an account of the compliance fund shall be credited to that account.

2002 Acts, ch 1137, §6, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §247, 259, 260, 262; 2003 Acts, ch 145, §286; 2003 Acts, ch 163, §17 – 20, 23; 2003 Acts, ch 179, §73; 2004 Acts, ch 1086, §78; 2005 Acts, ch 136, §36; 2009 Acts, ch 155, §33, 34; 2011 Acts, ch 128, §35, 45; 2013 Acts, ch 30, §109

Referred to in §459.400

459.402 Animal agriculture compliance fees — delinquencies.

If a fee imposed under this chapter for deposit into the animal agriculture compliance fund is delinquent, the department may charge interest on any amount of the fee that is delinquent. The rate of interest shall not be more than the current rate published in the Iowa administrative bulletin by the department of revenue pursuant to section 421.7. The interest amount shall be computed from the date that the fee is delinquent, unless the department designates a later date. The interest amount shall accrue for each month in which a delinquency is calculated as provided in section 421.7, and counting each fraction of a month as an entire month. The interest amount shall become part of the amount of the fee due.

2002 Acts, ch 1137, §5, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262; 2003 Acts, ch 145, §286

459.403 County assessment of fees prohibited.

A county shall not assess or collect a fee under this chapter for the regulation of animal agriculture, including but not limited to any fee related to the filing, consideration, or evaluation of an application for a construction permit pursuant to section 459.303 or the filing of a manure management plan pursuant to section 459.312.

2002 Acts, ch 1137, §4, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262

459.404 through 459.500 Reserved.

SUBCHAPTER V

LIVESTOCK REMEDIATION FUND — INDEMNITY FEES

Referred to in §7D.10A

459.501 Livestock remediation fund.

1. A livestock remediation fund is created as a separate fund in the state treasury under

the control of the department. The general fund of the state is not liable for claims presented against the fund.

2. The fund consists of moneys from indemnity fees remitted by permittees to the department as provided in section 459.502; moneys from indemnity fees remitted by persons required to submit manure management plans to the department pursuant to section 459.503; sums collected on behalf of the fund by the department through legal action or settlement; moneys required to be repaid to the department by a county pursuant to this subchapter; interest, property, and securities acquired through the use of moneys in the fund; or moneys contributed to the fund from other sources.

3. *a.* The moneys collected under this section shall be deposited in the fund and shall be appropriated to the department for the following exclusive purposes:

(1) To provide moneys for cleanup of abandoned facilities as provided in section 459.505, and to pay the department for costs related to administering the provisions of this subchapter. For each fiscal year, the department shall not use more than one percent of the total amount which is available in the fund or ten thousand dollars, whichever is less, to pay for the costs of administration.

(2) To allocate moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock in immediate need of sustenance pursuant to chapter 717. The department of natural resources shall allocate any amount of unencumbered and unobligated moneys demanded in writing by the department of agriculture and land stewardship as provided in this subparagraph. The department of natural resources shall complete the allocation upon receiving the demand.

b. Moneys in the fund shall not be subject to appropriation or expenditure for any other purpose than provided in this section.

4. The treasurer of state shall act as custodian of the fund and disburse amounts contained in the fund as directed by the department. The treasurer of state is authorized to invest the moneys deposited in the fund. The income from such investment shall be credited to and deposited in the fund. Notwithstanding section 8.33, moneys in the fund are not subject to reversion to the general fund of the state. The fund shall be administered by the department which shall make expenditures from the fund consistent with the purposes set out in this subchapter. The moneys in the fund shall be disbursed upon warrants drawn by the director of the department of administrative services pursuant to the order of the department. The fiscal year of the fund begins July 1. The finances of the fund shall be calculated on an accrual basis in accordance with generally accepted accounting principles. The auditor of state shall regularly perform audits of the fund.

5. The following shall apply to moneys in the fund:

a. (1) The executive council may authorize payment of moneys as an expense paid from the appropriations addressed in section 7D.29 and in the manner provided in section 7D.10A in an amount necessary to support the fund, including the following:

(a) The payment of claims as provided in section 459.505.

(b) The allocation of moneys to the department of agriculture and land stewardship for the payment of expenses incurred by the department of agriculture and land stewardship associated with providing for the sustenance and disposition of livestock pursuant to chapter 717.

(2) Notwithstanding subparagraph (1), the executive council's authorization for payment shall be provided only if the amount of moneys in the fund, which are not obligated or encumbered, and not counting the department's estimate of the cost to the fund for pending or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be credited to the general fund of the state under this subsection, is less than one million dollars.

b. The department of natural resources shall credit an amount to the fund from which the expense authorized by the executive council as provided in paragraph "*a*" was appropriated which is equal to an amount authorized for payment to support the livestock remediation fund by the executive council under paragraph "*a*". However, the department shall only be required to credit the moneys to such fund if the moneys in the livestock remediation

fund which are not obligated or encumbered, and not counting the department's estimate of the cost to the livestock remediation fund for pending or unsettled claims, the amount to be allocated to the department of agriculture and land stewardship, and any amount required to be transferred to the fund from which appropriated as described in this paragraph, are in excess of two million five hundred thousand dollars. The department is not required to credit the total amount to the fund from which appropriated as described in this paragraph during any one fiscal year.

95 Acts, ch 195, §5
CS95, §204.2
98 Acts, ch 1209, §3, 50
C99, §455J.2
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.501
2003 Acts, ch 44, §76; 2003 Acts, ch 52, §2, 3, 6; 2003 Acts, ch 145, §286; 2011 Acts, ch 81, §1; 2011 Acts, ch 131, §35, 158; 2012 Acts, ch 1021, §81
Referred to in §7D.10A, 459.303, 460.206, 717.4A, 717.5

459.502 Indemnity fees required — construction permits.

1. An indemnity fee shall be assessed upon permittees which shall be paid to and collected by the department, prior to issuing a permit for the construction of a confinement feeding operation as provided in section 459.303. The amount of the fees shall be based on the following:

a. If the confinement feeding operation has an animal unit capacity of less than one thousand animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be ten cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be four cents per animal unit of capacity for confinement feeding operations.

b. If the confinement feeding operation has an animal unit capacity of one thousand or more animal units but less than three thousand animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be fifteen cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be six cents per animal unit of capacity for confinement feeding operations.

c. If the confinement feeding operation has an animal unit capacity of three thousand or more animal units, the following shall apply:

(1) For all animals other than poultry, the amount of the fee shall be twenty cents per animal unit of capacity for confinement feeding operations.

(2) For poultry, the amount of the fee shall be eight cents per animal unit of capacity for confinement feeding operations.

2. The department shall deposit moneys collected from the fees into the livestock remediation fund according to procedures adopted by the department.

95 Acts, ch 195, §6
CS95, §204.3
98 Acts, ch 1209, §4, 50
C99, §455J.3
2002 Acts, ch 1137, §54 – 56, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.502
2011 Acts, ch 25, §143; 2012 Acts, ch 1021, §82
Referred to in §459.102, 459.303, 459.501, 459.503A

459.503 Indemnity fee required — manure management plan.

An indemnity fee shall be assessed upon persons required to submit an original manure management plan as provided in section 459.312, but not required to obtain a construction permit pursuant to section 459.303. A person required to submit a replacement original manure management plan shall not be assessed an indemnity fee. The amount of the fee

shall be ten cents per animal unit of capacity for the confinement feeding operation covered by the manure management plan.

98 Acts, ch 1209, §5, 50
C99, §455J.4
2002 Acts, ch 1137, §57, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.503
Referred to in §459.102, 459.501, 459.503A

459.503A Indemnity fee — waiver and reinstatement.

The indemnity fee required under sections 459.502 and 459.503 shall be waived and the fee shall not be assessable or owing if, at the end of any three-month period, unobligated and unencumbered moneys in the livestock remediation fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, exceed three million dollars. The department shall reinstate the indemnity fee under those sections if unobligated and unencumbered moneys in the fund, not counting the department's estimate of the cost to the fund for pending or unsettled claims, are less than two million dollars.

2003 Acts, ch 52, §4, 6; 2011 Acts, ch 81, §11

459.504 Use of fund for emergency cleanup.

If the department provides cleanup of a condition caused by a confinement feeding operation as provided in section 459.506, the department may use moneys in the fund for purposes of supporting the cleanup. The department shall reimburse the fund from moneys recovered by the department as reimbursement for the cleanup as provided in section 459.506.

98 Acts, ch 1209, §7, 50
C99, §455J.6
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.504

459.505 Use of moneys by counties for cleanup.

1. A county that has acquired real estate containing a manure storage structure following nonpayment of taxes pursuant to section 446.19 may make a claim against the fund to pay cleanup costs incurred by the county as provided in section 459.506. Each claim shall include a bid by a qualified person, other than a governmental entity, to remove and dispose of the manure for a fixed amount specified in the bid.

2. If a county provides cleanup under section 459.506 after acquiring real estate following nonpayment of taxes, the department shall determine if a claim is eligible to be satisfied under this subsection, and do one of the following:

a. Pay the amount of the claim required in this section, based on the fixed amount specified in the bid submitted by the county upon completion of the work.

b. Obtain a lower fixed amount bid for the work from another qualified person, other than a governmental entity, and pay the amount of the claim required in this section, based on the fixed amount in this bid upon completion of the work. The department is not required to comply with section 8A.311 in implementing this section.

3. If a county provides cleanup of a condition causing a clear, present, and impending danger to the public health or environment, as provided in section 459.506, the county may make a claim against the fund to pay cleanup costs incurred by the county, according to procedures and requirements established by rules adopted by the department. The department shall determine if a claim is eligible to be satisfied under this subsection, and pay the amount of the claim required in this section.

4. Upon a determination that the claim is eligible for payment, the department shall provide for payment of one hundred percent of the claim, as provided in this section. If at any time the department determines that there are insufficient moneys to make payment of all claims, the department shall pay claims according to the date that the claims are received by the department. To the extent that a claim cannot be fully satisfied, the department shall order that the unpaid portion of the payment be deferred until the claim can be

satisfied. However, the department shall not satisfy claims from moneys dedicated for the administration of the fund.

5. In the event of payment of a claim under this section, the fund is subrogated to the extent of the amount of the payment to all rights, powers, privileges, and remedies of the county regarding the payment amount. The county shall render all necessary assistance to the department in securing the rights granted in this section. A case or proceeding initiated by a county which involves a claim submitted to the department shall not be compromised or settled without the consent of the department. A county shall not be eligible to submit a claim to the department if the county has compromised or settled a case or proceeding, without the consent of the department.

6. If upon disposition of the real estate the county realizes an amount which exceeds the total amount of the delinquent real estate taxes, the county shall forward to the fund any excess amount which is not more than the amount expended by the fund to pay the claim by the county.

95 Acts, ch 195, §7
CS95, §204.4
98 Acts, ch 1209, §6, 50
C99, §455J.5
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.505
2003 Acts, ch 145, §264
Referred to in §459.501

459.506 Cleanup.

1. *a.* A county that has acquired real estate on which there is located a confinement feeding operation following the nonpayment of taxes pursuant to section 446.19, may provide for cleanup, including removing and disposing of manure at any time, remediating contamination which originates from the confinement feeding operation, or demolishing and disposing of structures relating to the confinement feeding operation. The county may seek reimbursement including by bringing an action for the costs of the cleanup from the person abandoning the real estate.

b. If the confinement feeding operation has caused a clear, present, and impending danger to the public health or the environment, the department may clean up the confinement feeding operation and remediate contamination which originates from the confinement feeding operation, pursuant to sections 455B.381 through 455B.399. If the department fails to commence cleanup within twenty-four hours after being notified of a condition requiring cleanup, the county may provide for the cleanup as provided in this paragraph. The department or county may seek reimbursement including by bringing an action for the costs of the cleanup from a person liable for causing the condition.

2. A person cleaning up a confinement feeding operation located on real estate acquired by a county may demolish or dispose of any building or equipment of the confinement feeding operation located on the land according to rules adopted by the department pursuant to chapter 17A, which apply to the disposal of farm buildings or equipment by an individual or business organization.

95 Acts, ch 195, §8
CS95, §204.5
98 Acts, ch 1209, §8, 50
C99, §455J.7
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.506
Referred to in §459.504, 459.505

459.507 No state obligation.

This subchapter does not imply any guarantee or obligation on the part of this state, or any of its agencies, employees, or officials, either elective or appointive, with respect to any agreement or undertaking to which this subchapter relates.

95 Acts, ch 195, §9
CS95, §204.6
98 Acts, ch 1209, §50
C99, §455J.8
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.507

459.508 Departmental rules.

The department shall adopt administrative rules pursuant to chapter 17A necessary to administer this subchapter.

95 Acts, ch 195, §10
CS95, §204.7
98 Acts, ch 1209, §50
C99, §455J.9
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §459.508

459.509 through 459.600 Reserved.

SUBCHAPTER VI

ENFORCEMENT

Referred to in §364.22, 455B.111, 455B.112, 455B.113, 455B.115, 455E.8, 459B.401

459.601 Animal feeding operations — investigations and enforcement actions.

1. A person may file a complaint alleging that an animal feeding operation is in violation of this chapter, including rules adopted by the department, or environmental standards or regulations subject to federal law and enforced by the department.

a. The complaint may be filed with the department according to procedures required by the department or with the county board of supervisors in the county where the violation is alleged to have occurred, according to procedures required by the board. The county auditor may accept the complaint on behalf of the board.

b. If the county board of supervisors receives a complaint, it shall conduct a review to determine if the allegation contained in the complaint constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue.

(1) If the county board of supervisors determines that the allegation does not constitute a violation, it shall notify the complainant, the animal feeding operation which is the subject of the complaint, and the department, according to rules adopted by the department.

(2) If the county board of supervisors determines that the allegation constitutes a violation, it shall forward the complaint to the department which shall investigate the complaint as provided in this section.

c. If the department receives a complaint from a complainant or a county forwarding a complaint, the department shall conduct an investigation of the complaint if the department determines that the complaint is legally sufficient and an investigation is justified. The department shall receive a complaint filed by a complainant, regardless of whether the complainant has filed a complaint with a county board of supervisors.

(1) The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of a threat to the quality of surface or subsurface water.

(2) The department shall notify the county board of supervisors in the county where the violation is alleged to occur prior to investigating the premises of the alleged violation.

However, the department is not required to provide notice if the department determines that a clear, present, and impending danger to the public health or environment requires immediate action.

(3) The county board of supervisors may designate a county employee to accompany a departmental official during the investigation of the premises of a confinement feeding operation. The county designee shall have the same right of access to the real estate of the premises as the departmental official conducting the inspection during the period that the county designee accompanies the departmental official.

(4) Upon the completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending, or completed enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint and the board of supervisors of the county where the violation is alleged to have occurred.

d. A county board of supervisors or the department is not required to divulge information regarding the identity of the complainant.

2. *a.* The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I.

b. The department and the attorney general may enforce the provisions of subchapter III in the same manner as provided in section 455B.175.

3. When entering the premises of an animal feeding operation, a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent shall comply with section 455B.103. The person shall also comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

95 Acts, ch 195, §13

CS95, §455B.110

98 Acts, ch 1209, §11, 53; 99 Acts, ch 96, §39; 2002 Acts, ch 1137, §3, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §459.601

2007 Acts, ch 82, §3

459.602 Air quality violations — civil penalty.

A person who violates subchapter II shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109. Any collected civil penalty and interest on a civil penalty shall be credited to the Iowa nutrient research fund created in section 466B.46.

2002 Acts, ch 1137, §24, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2011 Acts, ch 128, §36, 45; 2016 Acts, ch 1134, §27, 34

Referred to in §455B.109, 459B.402, 466B.46

459.603 Water quality violations — civil penalty.

A person who violates subchapter III shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.109 or 455B.191. Any collected civil penalty and interest on a civil penalty shall be credited to the Iowa nutrient research fund created in section 466B.46.

2002 Acts, ch 1137, §51, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §259, 260, 262; 2007 Acts, ch 82, §4; 2011 Acts, ch 128, §37, 45; 2016 Acts, ch 1134, §28, 34

Referred to in §455B.109, 459.312, 459A.502, 459B.402, 466B.46

459.604 Habitual violators — classification — penalties.

1. *a.* The department may impose a civil penalty upon a habitual violator which shall not exceed twenty-five thousand dollars for each day the violation continues. The increased penalty may be assessed for each violation committed subsequent to the violation which results in classifying the person as a habitual violator. A person shall be classified as a habitual violator if the person has committed three or more violations as described in this subsection. To be considered a violation that is applicable to a habitual violator

determination, a violation must have been committed on or after January 1, 1995. In addition, each violation must have been referred to the attorney general for legal action under this chapter, and each violation must be subject to the assessment of a civil penalty or a court conviction, in the five years prior to the date of the latest violation provided in this subsection, counting any violation committed by a confinement feeding operation in which the person holds a controlling interest. A person shall be removed from the classification of habitual violator on the date on which the person and all confinement feeding operations in which the person holds a controlling interest have committed less than three violations described in this subsection for the prior five years. For purposes of counting violations, a continuing and uninterrupted violation shall be considered as one violation. Different types of violations shall be counted as separate violations regardless of whether the violations were committed during the same period. A violation must relate to one of the following:

(1) The construction or operation of a confinement feeding operation structure, or the installation or use of a related pollution control device or practice, for which the person must obtain a permit, in violation of this chapter, or rules adopted by the department, including the terms or conditions of the permit.

(2) Intentionally making a false statement or misrepresenting information to the department as part of an application for a construction permit for a confinement feeding operation structure, or the installation of a related pollution control device or practice for which the person must obtain a construction permit.

(3) Failing to obtain a permit or approval by the department in violation of this chapter or departmental rule which requires a permit to construct or operate a confinement feeding operation or use a confinement feeding operation structure, anaerobic lagoon, or a pollution control device or practice which is part of a confinement feeding operation.

(4) Operating a confinement feeding operation, including a confinement feeding operation structure, or a related pollution control device or practice, which causes pollution to the waters of the state, if the pollution was caused intentionally, or caused by a failure to take measures required to abate the pollution which resulted from an act of God.

(5) Failing to submit a manure management plan as required pursuant to section 459.312, or operating a confinement feeding operation without having a manure management plan approved by the department.

b. This subsection shall not apply unless the department has previously notified the person of the person's classification as a habitual violator. The department shall notify persons classified as habitual violators of their classification, additional restrictions imposed upon the persons pursuant to their classification, and special civil penalties that may be imposed upon the persons. The notice shall be sent to the persons by certified mail.

2. Moneys assessed and collected in civil penalties, and interest earned on civil penalties, arising out of a violation involving an animal feeding operation shall be credited to the Iowa nutrient research fund created in section 466B.46.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262; 2003 Acts, ch 108, §87; 2011 Acts, ch 25, §143; 2011 Acts, ch 128, §38, 45; 2016 Acts, ch 1134, §29, 34

Referred to in §15E.208, 266.43, 266.44, 266.45, 455B.109, 455B.175, 455K.8, 459.303, 459.312, 459.317, 459.605, 466B.46, 657.11A

For restrictions imposed on the right of a person classified as a "chronic violator" or a "habitual violator" to raise a defense against a nuisance suit brought against a confinement feeding operation, see §657.11 and 657.11A

459.605 Habitual violators — permit restrictions.

For five years after the date of the last violation of this chapter committed by a person or by a confinement feeding operation in which the person holds a controlling interest during which the person or confinement feeding operation was classified as a habitual violator under section 459.604, all of the following shall apply:

1. The department may not issue a new permit under this chapter to the person or confinement feeding operation.

2. The department may revoke or refuse to renew an existing permit issued under this chapter to the person or confinement feeding operation, if the permit relates to a confinement feeding operation and the department determines that the continued operation

of the confinement feeding operation under the existing permit constitutes a clear, present, and impending danger to the public health or environment.

2002 Acts, ch 1137, §26, 67, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

For restrictions imposed on the right of a person classified as a "chronic violator" or a "habitual violator" to raise a defense against a nuisance suit brought against a confinement feeding operation, see §657.11 and 657.11A

CHAPTER 459A

OPEN FEEDLOT OPERATIONS AND ANIMAL TRUCK WASH FACILITIES

Referred to in §455A.4, 455B.103, 455B.103A, 455B.105, 455B.111, 455B.112, 455B.113, 455B.115, 455B.174, 455B.175, 455B.179, 455B.182, 455B.185, 455B.197

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SUBCHAPTER I

GENERAL PROVISIONS

459A.101 Title.

This chapter shall be known and may be cited as the *"Animal Agriculture Compliance Act for Open Feedlot Operations and Animal Truck Wash Facilities"*.

2005 Acts, ch 136, §1; 2015 Acts, ch 92, §1

459A.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Alternative technology system"* or *"alternative system"* means a system for open feedlot effluent control as provided in section 459A.303.

2. *"Animal"* means the same as defined in section 459.102.

3. *"Animal feeding operation"* means the same as defined in section 459.102.

4. *"Animal truck wash effluent"* means a combination of manure, washwater-induced runoff, or other runoff derived from an animal truck wash facility, which may include solids.

5. *"Animal truck wash effluent structure"* means an impoundment which is part of an animal truck wash facility, if the primary function of the impoundment is to collect and store animal truck wash effluent.

6. *"Animal truck wash facility"* means an operation engaged in washing single-unit trucks, truck-tractors, semitrailers, or trailers used to transport animals.

7. *"Animal unit"* means the same as defined in section 459.102.

8. *"Animal unit capacity"* means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation.

9. *"ASTM international"* means the American society for testing and materials international.

10. *"Commission"* means the environmental protection commission created pursuant to section 455A.6.

11. *"Concentrated animal feeding operation"* means the same as defined in 40 C.F.R. §122.23.

12. *"Confinement feeding operation"* means the same as defined in section 459.102.

13. *"Department"* means the department of natural resources.

14. *"Designated area"* means a known sinkhole, a cistern, an abandoned well, an unplugged agricultural drainage well, an agricultural drainage well surface inlet, a drinking water well, a designated wetland, or a water source. However, *"designated area"* does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

15. *"Designated wetland"* means the same as defined in section 459.102.

16. *"Document"* means any form required to be processed by the department under this chapter, including but not limited to applications for permits or related materials as provided in section 459A.205, soils and hydrogeologic reports as provided in section 459A.206, construction certifications as provided in section 459A.207, nutrient management plans as provided in section 459A.208, and notices required under this chapter.

17. *"Effluent"* means open feedlot effluent or animal truck wash effluent.

18. *"Federal Water Pollution Control Act"* means the federal Water Pollution Control Act of 1972, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

19. *"Formed animal truck wash effluent structure"* means a covered or uncovered impoundment used to store effluent from an animal truck wash facility, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials.

20. *"Grassed waterway"* means a natural or constructed channel that is shaped or graded and established with suitable vegetation for the stable conveyance of surface water runoff.

21. *"High-quality water resource"* means the same as defined in section 459.102.

22. *"Karst terrain"* means the same as defined in section 459.102.

23. *"Manure storage structure"* means the same as defined in section 459.102.

24. *"NPDES permit"* means a permit issued by the department under the national pollutant discharge elimination system pursuant to the federal Water Pollution Control Act of 1972, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

25. *"Nutrient management plan"* or *"plan"* means a plan which provides for the management of open feedlot effluent, or animal truck wash effluent, including the application of effluent as provided in section 459A.208.

26. *"Open feedlot"* means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

27. *"Open feedlot effluent"* means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed.

28. *"Open feedlot operation"* or *"operation"* means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue cover is not maintained as

part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

29. *"Open feedlot operation structure"* means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an alternative technology system. *"Open feedlot operation structure"* does not include a manure storage structure as defined in section 459.102.

30. *"Owner"* means a person who holds legal or equitable title to any of the following:

a. The property where an open feedlot operation or animal truck wash facility is located.

b. An open feedlot operation structure which is part of an open feedlot operation or an animal truck wash effluent structure which is part of an animal truck wash facility.

31. *"Professional engineer"* means the same as defined in section 459.102.

32. *"Research college"* means an accredited public or private college or university, including but not limited to a university under the control of the state board of regents as provided in chapter 262, or a community college under the jurisdiction of a board of directors for a merged area as provided in chapter 260C, if the college or university performs research or experimental activities regarding animal agriculture or agronomy.

33. *"Settled open feedlot effluent"* or *"settled effluent"* means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

34. *"Settled open feedlot effluent basin"* or *"basin"* means an impoundment which is part of an open feedlot operation, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

35. *"Small animal feeding operation"* means the same as defined in section 459.102.

36. *"Small animal truck wash facility"* means an animal truck wash facility, if all of the following apply:

a. The animal truck wash facility and all single-unit trucks, truck-tractors, semitrailers, or trailers that are washed at the facility are owned by the same person.

b. The average total per day volume of washwater used by the animal truck wash facility does not exceed two thousand gallons as calculated on a monthly basis.

37. *a.* *"Solids"* means that portion of effluent that meets all of the following requirements:

(1) Does not flow perceptibly under pressure.

(2) Is not capable of being transported through a mechanical pumping device designed to move a liquid.

(3) The constituent molecules do not flow freely among themselves but do show the tendency to separate under stress.

b. *"Solids"* includes settleable solids and scraped solids.

38. *"Solids settling facility"* means a basin, terrace, diversion, or other structure or solids removal method which is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A *"solids settling facility"* does not include a basin, terrace, diversion, or other structure or solids removal method which retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

39. *"Stockpile"* means to store solids from any of the following:

a. An open feedlot operation outside of an open feedlot operation structure, or outside of an area that drains to an open feedlot operation structure.

b. An animal truck wash facility, outside an animal truck wash facility, or outside an area that drains to an animal truck wash facility.

40. *"Structure"* means any of the following:

a. An open feedlot operation structure.

b. An animal truck wash effluent structure.

41. *"Unformed animal truck wash effluent structure"* means a covered or uncovered impoundment used to store animal truck wash effluent, other than a formed animal truck wash effluent structure.

42. *"Water of the state"* means the same as defined in section 455B.171.

43. *"Water source"* means the same as defined in section 459.102.

44. *"Waters of the United States"* means the same as defined in 40 C.F.R. §122.2, as that section exists on July 1, 2005.

2005 Acts, ch 136, §2; 2006 Acts, ch 1010, §120; 2006 Acts, ch 1088, §1, 6; 2010 Acts, ch 1061, §180; 2014 Acts, ch 1092, §180; 2015 Acts, ch 92, §2 – 4

Referred to in §202.1, 459.102, 459B.102, 579B.1

459A.103 Special terms.

For purposes of this chapter, all of the following shall apply:

1. *a.* Two or more open feedlot operations under common ownership or common management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal.

b. For purposes of determining whether two or more open feedlot operations are adjacent, all of the following shall apply:

(1) At least one open feedlot operation structure must be constructed on or after July 17, 2002.

(2) An open feedlot operation structure which is part of one open feedlot operation is separated by less than one thousand two hundred fifty feet from an open feedlot operation structure which is part of the other open feedlot operation.

c. (1) For purposes of determining whether two or more open feedlot operations are under common ownership, a person must hold an interest in each of the open feedlot operations as any of the following:

(a) A sole proprietor.

(b) A joint tenant or tenant in common.

(c) A holder of a majority equity interest in a business association as defined in section 202B.102, including but not limited to as a shareholder, partner, member, or beneficiary.

(2) An interest in the open feedlot operation under subparagraph (1), subparagraph division (b) or (c), which is held directly or indirectly by the person's spouse or dependent child shall be attributed to the person.

d. For purposes of determining whether two or more open feedlot operations are under common management, a person must have significant control of the management of the day-to-day operations of each of the open feedlot operations. Common management does not include control over a contract livestock facility by a contractor, as defined in section 202.1.

2. An open feedlot operation structure is *"constructed"* when any of the following occurs:

a. Excavation commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

b. Forms for concrete are installed for a proposed open feedlot operation structure or the proposed expansion of an existing open feedlot operation structure.

c. Piping for the movement of open feedlot effluent is installed within or between open feedlot operation structures as proposed or proposed to be expanded.

3. *a.* In calculating the animal unit capacity of an open feedlot operation, the animal unit capacity shall not include the animal unit capacity of any confinement feeding operation building as defined in section 459.102, which is part of the open feedlot operation.

b. Notwithstanding paragraph *"a"*, only for purposes of determining whether an open feedlot operation must obtain an NPDES permit, the animal unit capacity of the animal feeding operation includes the animal unit capacities of both the open feedlot operation and the confinement feeding operation if the animals in the open feedlot operation and the confinement feeding operation are all in the same category or type of animals as used in the definitions of large and medium concentrated animal feeding operations in 40 C.F.R. pt. 122. In all other respects, the confinement feeding operation shall be governed by chapter 459 and the open feedlot operation shall be governed by this chapter.

4. An animal truck wash facility is considered to be part of an animal feeding operation if the animal truck wash facility and animal feeding operation are under common ownership or management and the animal truck wash facility is located within one thousand two hundred fifty feet of the animal feeding operation.

5. *a.* If an open feedlot operation structure or animal truck wash effluent structure

contains effluent from both an open feedlot operation and an animal truck wash facility, the animal truck wash effluent shall be deemed to be open feedlot effluent.

b. If a manure storage structure or animal truck wash effluent structure contains both manure from a confinement feeding operation and animal truck wash effluent from an animal truck wash facility, the effluent shall be deemed to be manure.

6. An open feedlot operation structure is abandoned if the open feedlot operation structure has been razed, removed from the site of an open feedlot operation, filled in with earth, or converted to uses other than an open feedlot operation structure so that it cannot be used as an open feedlot operation structure without significant reconstruction.

7. All distances between locations or objects provided in this chapter shall be measured in feet from their closest points.

8. The regulation of effluent under this chapter shall be construed as also regulating effluent and solids.

9. *"Seasonal high-water table"* means the seasonal high-water table as determined by a professional engineer pursuant to the following requirements:

a. The seasonal high-water table shall be determined by evaluating soil profile characteristics such as color and mottling from soil corings, soil test pits, or other soil profile evaluation methods, water level data from soil corings or other sources, and other pertinent information.

b. If a drainage tile line to artificially lower the seasonal high-water table is installed as provided in section 459A.302, the level to which the seasonal high-water table will be lowered will be the seasonal high-water table.

10. An animal truck wash facility may be part of either a confinement feeding operation or an open feedlot operation. An animal truck wash effluent structure may also be the same as any of the following:

a. A manure storage structure that is part of the confinement feeding operation, so long as the primary function of such impoundment is to collect and store effluent from both the animal truck wash facility and manure from the confinement feeding operation.

b. A settled open feedlot effluent basin that is part of the open feedlot operation, so long as the primary function of such impoundment is to collect and store effluent from both the animal truck wash facility and open feedlot operation.

2005 Acts, ch 136, §3; 2006 Acts, ch 1030, §45; 2008 Acts, ch 1191, §144, 147, 148; 2011 Acts, ch 25, §116; 2015 Acts, ch 92, §5 – 8

459A.104 General authority — commission and department — purpose — compliance.

1. The commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of all of the following:

a. Open feedlot operations, including any related open feedlot operation structures.

b. Animal truck wash facilities, including any related animal truck wash effluent structures.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to open feedlot operations or animal truck wash facilities also includes compliance with requirements in rules adopted by the commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to licenses, certifications, permits, or nutrient management plans required under this chapter.

3. *a.* The purpose of this chapter is to provide requirements relating to the construction, including the expansion, and operation of all of the following:

(1) Open feedlot operations, and the control of open feedlot effluent.

(2) Animal truck wash facilities, and the control of animal truck wash effluent.

b. The provisions of this chapter shall be construed to supplement applicable provisions of chapter 459. If there is a conflict between the provisions of this chapter and chapter 459, the provisions of this chapter shall prevail.

2005 Acts, ch 136, §4; 2015 Acts, ch 92, §9

Referred to in §459A.105, 459A.404

459A.105 Exceptions to regulation.

1. *a.* Except as provided in paragraph *"b"*, the requirements of this chapter which regulate open feedlot operations, including rules adopted by the commission pursuant to section 459A.104, shall not apply to research activities and experiments performed under the authority and regulations of a research college, if the research activities and experiments relate to an open feedlot operation structure or the disposal or treatment of effluent originating from an open feedlot operation.

b. The requirements of section 459A.410, including rules adopted by the commission under that section, apply to research activities and experiments performed under the authority and regulations of a research college.

2. *a.* Except as provided in paragraph *"b"*, the requirements of this chapter, including rules adopted by the commission pursuant to section 459A.104, shall not apply to a small animal truck wash facility.

b. (1) The requirements of section 459A.205, including rules adopted by the commission pursuant to that section, shall apply to a small animal truck wash facility only to the extent required by section 459A.205, subsection 5.

(2) The requirements of section 459A.404, including rules adopted by the commission pursuant to that section, shall apply to a small animal truck wash facility. However, section 459A.404, subsection 1, shall only apply to a small animal truck wash facility as provided in that subsection.

(3) The requirements of section 459A.410, including rules adopted by the commission under that section, shall apply to a small animal truck wash facility.

2005 Acts, ch 136, §5; 2015 Acts, ch 92, §10; 2015 Acts, ch 138, §59, 161, 162
Referred to in §459A.205

SUBCHAPTER II

DOCUMENTATION

459A.201 Document processing requirements.

1. The department shall adopt and promulgate forms required to be completed in order to comply with this chapter, including forms for documents that the department shall make available on the internet in the same manner as provided in section 459.302.

2. *a.* The department shall provide for procedures for the receipt, filing, processing, and return of documents in an electronic format in the same manner as provided in section 459.302. The department shall provide for authentication of the documents that may include electronic signatures as provided in chapter 554D.

b. The department shall to every extent feasible provide for the processing of documents required under this subchapter using electronic systems in the same manner as required in section 459.302.

3. *a.* The department shall approve or disapprove an application for a construction permit as provided in section 459A.205 within sixty days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days after the department's receipt of the notice. The applicant may submit more than one notice. However, the department may provide that an application is terminated if no action is required by the department for one year following delivery of the application to the department. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than thirty days. However, the department shall not provide for more than one continuance.

b. (1) A nutrient management plan as provided in section 459A.208 shall be approved or disapproved as part of a construction permit application pursuant to section 459A.205.

(2) For an open feedlot operation, if the nutrient management plan is not part of an application for a construction permit, the nutrient management plan shall be approved or disapproved within sixty days from the date that the department receives the nutrient management plan.

2005 Acts, ch 136, §6; 2015 Acts, ch 92, §11
Referred to in §459A.208

459A.202 Operating permit requirements. Repealed by its own terms; 2006 Acts, ch 1088, §2.

459A.203 and 459A.204 Reserved.

459A.205 Permit requirements — settled open feedlot effluent basins and alternative technology systems, and animal truck wash effluent structures.

1. *a.* The department shall approve or disapprove applications for permits for the construction, including the expansion, of the following structures:

(1) Settled open feedlot effluent basins and alternative technology systems, which are part of open feedlot operations as provided in this chapter.

(2) Animal truck wash effluent structures which are part of animal truck wash facilities as provided in this chapter.

b. The department's decision to approve or disapprove a permit for the construction of a structure described in paragraph "*a*" shall be based on whether the application is submitted according to procedures and standards required by this chapter. A person shall not begin construction of such a structure under this section, unless the department first approves the person's application and issues to the person a construction permit.

2. The department shall issue a construction permit upon approval of an application. The department shall approve the application regardless of whether the applicant is required to be issued a construction permit.

3. An application for a construction permit shall include all of the following:

a. A nutrient management plan as provided in section 459A.208.

b. An engineering report, construction plans, and specifications prepared by a professional engineer or the natural resources conservation service of the United States department of agriculture.

(1) For an open feedlot operation, the professional engineer must certify that the construction of the settled open feedlot effluent basin or alternative technology system complies with the construction design standards required in this chapter.

(2) For an animal truck wash facility, the professional engineer must certify that the construction of the animal truck wash effluent structure complies with the construction design standards required in this chapter. However, an animal truck wash facility electing to use a formed animal truck wash effluent structure, in lieu of an engineering report, may submit a construction design statement that meets the requirements of sections 459.306 and 459.307.

4. For an open feedlot operation, a construction permit must be issued prior to any of the following:

a. The construction, including expansion, of a settled open feedlot effluent basin or alternative technology system if the open feedlot operation is required to be issued an NPDES permit.

b. When the department has previously issued the open feedlot operation a construction permit and any of the following applies:

(1) The animal unit capacity of the open feedlot operation will be increased to more than the animal unit capacity approved by the department in the previous construction permit.

(2) The volume of open feedlot effluent stored at the open feedlot operation would be more than the volume approved by the department in the previous construction permit.

(3) The open feedlot operation was discontinued for twenty-four months or more and the animal unit capacity would be one thousand animal units or more.

5. For an animal truck wash facility, a construction permit must be issued prior to any of the following:

a. The construction, including expansion, of an animal truck wash effluent structure.

b. When the department has previously issued the animal truck wash facility a construction permit and the volume of the animal truck wash effluent would be more than the volume approved by the department in the previous construction permit.

c. When the animal truck wash facility is part of a confinement feeding operation, and all of the following apply:

(1) The department has issued a construction permit under section 459.303 or a letter approving a construction design statement in lieu of a construction permit as provided by rules adopted by the commission under section 459.103.

(2) The animal truck wash effluent will be added to an existing manure storage structure resulting in a total stored volume greater than that approved in the construction permit or the construction design statement approval letter.

d. When the animal truck wash facility is part of an open feedlot operation, and all of the following apply:

(1) The department has issued a construction permit under this section or an NPDES permit under section 459A.401.

(2) The animal truck wash effluent will be added to an existing settled open feedlot effluent basin resulting in a total stored volume greater than that approved in the construction permit or NPDES permit.

e. When the animal truck wash facility is constructed or expanded as part of a small animal feeding operation that includes a manure storage structure, and the animal truck wash effluent will be added to the manure storage structure. However, a construction permit is not required under this section for a small animal truck wash facility or for a small animal truck wash facility that is part of a small animal feeding operation.

6. Prior to submitting an application for a construction permit the applicant may submit a conceptual design and site investigation report to the department for review and comment.

7. For an open feedlot operation, the application for a construction permit shall include all of the following:

a. The name of the owner of the open feedlot operation and the name of the open feedlot operation, including a mailing address and telephone number for the owner and the operation.

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or alternative technology system for an existing open feedlot operation which is not expanding.

(2) The construction or expansion of a settled open feedlot effluent basin or alternative technology system for an existing open feedlot operation which is expanding.

(3) The construction of a settled open feedlot effluent basin or alternative technology system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans, and specifications prepared by a professional engineer or by the United States natural resources conservation service, for the settled open feedlot operation effluent basin or alternative technology system.

g. A soils and hydrogeologic report of the site, as required in section 459A.206.

h. Information, including but not limited to maps, drawings, and aerial photos that clearly show the location of all of the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or alternative technology systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within one thousand two hundred fifty feet of the open feedlot operation.

(3) A public water supply system as defined in section 455B.171 or a drinking water well which is located within a distance from the open feedlot operation as prescribed by rules adopted by the commission.

i. For an open feedlot operation implementing an alternative technology system as provided in section 459A.303, the applicant shall submit all of the following:

(1) Information showing that the proposed open feedlot operation meets criteria for siting as established by rules adopted by the commission. However, if the site does not meet the criteria, the information shall show substantially equivalent alternatives to meeting such criteria.

(2) The results of predictive computer modeling for the proposed alternative technology system to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a settled open feedlot effluent basin.

(3) A conceptual design of the proposed alternative technology system, as developed by a professional engineer.

8. For an animal truck wash facility, the application for the construction permit shall include all of the following:

a. The name of the owner of the animal truck wash facility and the name of the animal truck wash facility, including a mailing address and telephone number for the owner and the animal truck wash facility.

b. The name of the contact person for the animal truck wash facility, including the person's mailing address and telephone number.

c. The location of the animal truck wash facility.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility which is not expanding.

(2) The construction or expansion of an animal truck wash effluent structure for an existing animal truck wash facility which is expanding.

(3) The construction of an animal truck wash effluent structure for a proposed new animal truck wash facility.

e. An engineering report, construction plans, and specifications prepared by a professional engineer or by the United States natural resources conservation service, for the animal truck effluent structure.

(1) The engineering report must demonstrate that the storage capacity of its animal truck wash effluent structure is equal to or greater than the amount of effluent to be stored for any six-month period, in addition to two feet of freeboard.

(2) If an animal truck wash effluent structure is to be constructed on karst terrain, the engineering report must establish that the construction complies with the requirements of section 459A.404.

f. A soils and hydrogeologic report of the site, as required in section 459A.206.

g. Information, including but not limited to maps, drawings, and aerial photos that clearly show the location of the animal truck wash facility and all animal truck wash effluent structures.

9. *a.* Except as provided in paragraph "*b*", a construction permit for an open feedlot operation or animal truck wash facility expires as follows:

(1) If construction does not begin within one year after the date the construction permit is issued.

(2) If construction is not completed within three years after the date the construction permit is issued.

b. If requested, the department may grant an extension of time to begin or complete construction upon a showing of just cause by the construction permit applicant.

10. The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or disapprove a request to extend the time to begin or complete construction as provided in this section, if it determines that the operation of the open feedlot operation or animal truck wash facility constitutes a clear, present, and impending danger to public health or the environment.

11. This section does not require a person to be issued a permit to construct a settled open feedlot effluent basin or alternative technology system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in section 459A.105.

2005 Acts, ch 136, §7; 2006 Acts, ch 1088, §3, 6; 2015 Acts, ch 92, §12 – 24
Referred to in §459A.102, 459A.105, 459A.201, 459A.206, 459A.207, 459A.208, 459A.301, 459A.302, 459A.404

459A.206 Settled open feedlot effluent basins and unformed animal truck wash effluent structures — soils and hydrogeologic report.

1. A settled open feedlot effluent basin or an unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to section 459A.205 shall meet design standards as required by a soils and hydrogeologic report.

2. The report shall be submitted with the construction permit application as provided in section 459A.205. The report shall include all of the following:

a. A description of the steps to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D-2487-92 or D-2488-90.

c. The results of at least three soil corings reflecting the continuous soil profile taken for each settled open feed lot effluent basin or unformed animal truck wash effluent structure. The soil corings shall be taken and used in determining subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for construction. The soil corings shall be taken as follows:

(1) By a qualified person ordinarily engaged in the practice of taking soil cores and in performing soil testing.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin or unformed structure, including conditions found near the corners and the deepest point of the proposed basin or unformed structure. The soil corings shall be taken to a minimum depth of ten feet below the bottom elevation of the basin or unformed structure.

(3) By a method such as hollow stem auger or other method that identifies the continuous soil profile and does not result in the mixing of soil layers.

2005 Acts, ch 136, §8; 2011 Acts, ch 25, §143; 2015 Acts, ch 92, §25; 2015 Acts, ch 138, §60, 61, 161, 162; 2016 Acts, ch 1073, §128
Referred to in §459A.102, 459A.205

459A.207 Construction certification.

1. The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or the owner of an animal truck wash facility who is issued a construction permit for an animal truck wash effluent structure as provided in section 459A.205 shall submit to the department a construction certification from a professional engineer certifying all of the following:

a. The basin or structure was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to section 459A.205. If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of this section.

b. The basin or structure was inspected by the professional engineer after completion of construction and before commencement of operation.

2. A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with subchapter III, shall be submitted as part of the construction certification.

2005 Acts, ch 136, §9; 2015 Acts, ch 92, §26, 27; 2015 Acts, ch 138, §62, 161, 162
Referred to in §459A.102, 459A.302

459A.208 Nutrient management plan — requirements.

1. The following persons shall develop and implement a nutrient management plan meeting the requirements of this section:

a. The owner of an open feedlot operation which has an animal unit capacity of one thousand animal units or more or which is required to be issued an NPDES permit.

b. The owner of an animal truck wash facility, other than a small animal truck wash facility, which has an animal truck wash effluent structure. However, for an animal truck wash facility which is part of a confinement feeding operation, in lieu of submitting a nutrient management plan, the owner of the animal truck wash facility may submit an original manure management plan and an updated manure management plan to the department as required by section 459.312, including rules adopted by the commission pursuant to that section.

2. Not more than one open feedlot operation shall be covered by a single nutrient management plan.

3. *a.* A person shall not remove open feedlot effluent from an open feedlot operation structure or animal truck wash effluent from an animal truck wash effluent structure for which a nutrient management plan is required under this section, unless the department approves a nutrient management plan as required in this section.

b. Notwithstanding paragraph "*a*", the commission may adopt rules allowing a person to remove effluent from an open feedlot operation structure or animal truck wash effluent structure until the nutrient management plan is approved or disapproved by the department according to terms and conditions required by rules adopted by the commission.

4. The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or animal truck wash effluent structure, unless the owner of the open feedlot operation or animal truck wash facility, applying for approval submits a nutrient management plan together with the application for the construction permit as provided in section 459A.205. The owner of the open feedlot operation shall also submit proof that the owner has published a notice for public comment as provided in this section. The department shall approve or disapprove the nutrient management plan as provided in section 459A.201.

5. For an animal feeding operation, prior to approving or disapproving a nutrient management plan as required in this section, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this chapter.

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where open feedlot effluent, which originates from the open feedlot operation, may be applied under the terms and conditions of the nutrient management plan.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subsection. If such a request is received, the public hearing must be conducted within thirty days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments

under this subsection by accessing the department's internet site. The notice for public comment shall include the address of the department's internet site as required by the department.

c. The department shall maintain an internet site where persons may access information relevant to making comments under this subsection. The department may include an electronic version of the nutrient management plan as provided in section 459A.201. The department shall include information regarding the time when, the place where, and the manner in which persons may participate in a public hearing as provided in this subsection.

6. A nutrient management plan must be authenticated by the owner of the open feedlot operation or the owner of the animal truck wash facility as required by the department in accordance with section 459A.201.

7. A nutrient management plan shall include all of the following:

a. Restrictions on the application of open feedlot effluent or animal truck wash effluent based on all of the following:

(1) Calculations necessary to determine the land area required for the application of the effluent based on nitrogen use levels in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements adopted by the department.

(2) A phosphorus index established pursuant to section 459.312.

b. Information relating to the application of the effluent, including all of the following:

(1) Nutrient concentrations of the effluent.

(2) Application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner, the plan shall include a copy of each written agreement executed by the owner and the landowner or the person renting the land for crop production where the effluent may be applied.

d. An estimate of the effluent volume or weight produced by the open feedlot operation or animal truck wash facility.

e. Information which shows all of the following:

(1) There is adequate storage for open feedlot effluent or animal truck wash effluent, including procedures to ensure proper operation and maintenance of an open feedlot operation structure or animal truck wash effluent structure.

(2) For an animal feeding operation, all of the following:

(a) The proper management of animal mortalities to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(b) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(3) (a) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(b) Surface drainage prior to contact with an animal truck wash facility is diverted, as appropriate, from the animal truck wash facility.

(4) Chemicals or other contaminants handled on-site are not disposed of in an open feedlot operation structure, an animal truck wash facility, or a treatment system that is not specifically designed to treat such chemicals or contaminants.

8. If an open feedlot operation uses an alternative technology system as provided in section 459A.303, the nutrient management plan is not required to provide for settled effluent that enters the alternative technology system.

9. The owner of an open feedlot operation or animal truck wash facility who is required to develop and implement a nutrient management plan shall maintain a current nutrient management plan and maintain records sufficient to demonstrate compliance with the nutrient management plan.

2005 Acts, ch 136, §10; 2006 Acts, ch 1030, §46, 47; 2006 Acts, ch 1088, §4, 6; 2013 Acts, ch 90, §257; 2015 Acts, ch 92, §28 – 30

Referred to in §459A.102, 459A.201, 459A.205

SUBCHAPTER III

DESIGN STANDARDS AND CONSTRUCTION REQUIREMENTS

Referred to in §459A.207

459A.301 Settled open feedlot effluent basins and animal truck wash effluent structures — construction design standards — rules.

If the department requires that a settled open feedlot effluent basin or animal truck wash effluent structure be constructed according to construction design standards, regardless of whether the department requires the owner to be issued a construction permit under section 459A.205, any construction design standards for the basin or structure shall be established by rules as provided in chapter 17A that exclusively account for special design characteristics of open feedlot operations and related basins or animal truck wash facilities and related structures, including but not limited to the dilute composition of settled effluent as collected and stored in the basins or structures.

2005 Acts, ch 136, §11; 2015 Acts, ch 92, §31

459A.302 Settled open feedlot effluent basins or unformed animal truck wash effluent structures — construction requirements.

A settled open feedlot effluent basin or an unformed animal truck wash effluent structure required to be constructed pursuant to a construction permit issued pursuant to section 459A.205 shall meet all of the following requirements:

1. *a.* Prior to constructing a settled open feedlot effluent basin or an unformed animal truck wash effluent structure, the site for the basin or structure shall be investigated for a drainage tile line by the owner of the open feedlot operation or animal truck wash facility. The investigation shall be made by digging a core trench to a depth of at least six feet deep from ground level at the projected center of the berm of the basin or unformed structure. If a drainage tile line is discovered, one of the following solutions shall be implemented:

(1) The drainage tile line shall be rerouted around the perimeter of the basin or unformed animal truck wash effluent structure at a distance of at least twenty-five feet horizontally separated from the outside edge of the berm of the basin or unformed structure. For an area of the basin or unformed structure where there is not a berm, the drainage tile line shall be rerouted at least fifty feet horizontally separated from the edge of the basin or unformed structure.

(2) The drainage tile line shall be replaced with a nonperforated tile line under the floor of the basin or unformed animal truck wash effluent structure. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet between the nonperforated tile line and the floor of the basin or unformed structure.

b. A written record of the investigation shall be submitted as part of the construction certification required under section 459A.207.

2. *a.* The settled open feedlot effluent basin or unformed animal truck wash effluent structure shall be constructed with a minimum separation of two feet between the top of the liner of the basin or unformed structure and the seasonal high-water table.

b. If a drainage tile line around the perimeter of the settled open feedlot effluent basin or unformed animal truck wash effluent structure is installed a minimum of two feet below the top of the basin's or unformed structure's liner to artificially lower the seasonal high-water table, the top of the liner may be a maximum of four feet below the seasonal high-water table. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph (2), an open feedlot operation or animal truck wash facility shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment or it may construct a new nongravity mechanical system that uses pumping equipment. However,

an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

3. Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin or an unformed animal truck wash effluent structure, if all of the following conditions are satisfied:

a. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the basin or unformed structure is located.

b. Drainage tile lines are installed horizontally at least twenty-five feet away from the basin or unformed structure. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table.

4. A settled open feedlot effluent basin or an unformed animal truck wash effluent structure shall be constructed with at least four feet between the bottom of the basin or unformed structure and a bedrock formation.

5. A settled open feedlot effluent basin or an unformed animal truck wash effluent structure constructed on a floodplain or within a floodway of a river or stream shall comply with rules adopted by the commission.

6. The liner of a settled open feedlot effluent basin or unformed animal truck wash effluent structure shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of twelve inches or the minimum thickness necessary to comply with the percolation rate in this section, whichever is greater.

(2) The liner shall be constructed at optimum moisture content not less than ninety-five percent of the maximum density as determined by a standard five-point proctor test performed at the site of the open feedlot operation by a professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of twelve inches.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in this section.

7. The owner of an open feedlot operation using a settled open feedlot effluent basin or animal truck wash facility using an unformed animal truck wash effluent structure shall inspect the berms of the basin or unformed structure at least semiannually for evidence of erosion. If the inspection reveals erosion which may impact the basin's or unformed structure's structural stability or the integrity of the basin's or unformed structure's liner, the owner shall repair the berms.

2005 Acts, ch 136, §12; 2015 Acts, ch 92, §32 – 36; 2015 Acts, ch 138, §42, 43, 63 – 68, 161, 162

Referred to in §459A.103, 459A.303

459A.303 Alternative technology systems.

In lieu of using a settled open feedlot effluent basin as provided in section 459A.302 to meet the open feedlot effluent control requirements of section 459A.401, an open feedlot operation may use an alternative technology system for open feedlot effluent control.

1. The alternative technology system must provide an equivalent level of open feedlot effluent control as would be achieved by using a settled open feedlot effluent basin.

2. The commission shall adopt rules establishing requirements for the construction and operation of alternative technology systems.

2005 Acts, ch 136, §13; 2015 Acts, ch 92, §37

Referred to in §459A.102, 459A.205, 459A.208

SUBCHAPTER IV

EFFLUENT CONTROL

459A.401 Open feedlot effluent control methods.

An open feedlot operation shall provide for the management of open feedlot effluent by using an open feedlot effluent control method as follows:

1. All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than point five feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settled solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

2. Notwithstanding subsection 1, an open feedlot operation that is a concentrated animal feeding operation shall comply with applicable NPDES permit requirements as provided in the federal Water Pollution Control Act, pursuant to rules that shall be adopted by the commission. Any rules adopted pursuant to this subsection shall be no more stringent than requirements under the federal Act.

3. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of an open feedlot effluent control system as provided in rules adopted by the commission, the operation shall be deemed to be in compliance with this section, unless a discharge from the operation causes a violation of state water quality standards as provided in chapter 455B, division III.

4. The following shall apply to an open feedlot operation which has an animal unit capacity of one thousand animal units or more:

a. (1) The open feedlot operation shall not discharge open feedlot effluent from an open feedlot operation structure into any waters of the United States, unless the discharge is pursuant to an NPDES permit.

(2) The open feedlot operation shall not be required to be issued an NPDES permit if the operation does not discharge open feedlot effluent into any waters of the United States.

b. The control of open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling facility, settled open feedlot effluent basin, alternative technology system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or alternative technology system.

2005 Acts, ch 136, §14; 2007 Acts, ch 126, §82; 2008 Acts, ch 1191, §145, 148; 2015 Acts, ch 92, §38 – 40

Referred to in §459A.205, 459A.303, 459A.402

459A.402 Open feedlot effluent control — alternative control practices.

If because of topography or other factors related to the site of an open feedlot operation it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in section 459A.401, the department shall allow the use of other open feedlot effluent control practices if those practices will

provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot effluent control method pursuant to section 459A.401.

2005 Acts, ch 136, §15

459A.403 Solids stockpiling.

A person may stockpile solids, subject to all of the following:

1. *a.* The person shall not stockpile the solids within the following distances:

(1) Four hundred feet from a designated area other than a high-quality water resource.

(2) Eight hundred feet from a high-quality water resource.

b. The person shall not stockpile solids within two hundred feet from a terrace tile inlet or surface tile inlet unless the solids are maintained in a manner that will not allow precipitation-induced runoff to drain from the solids to the terrace tile inlet or surface tile inlet.

c. The person shall not stockpile solids in a grassed waterway or where water pools on the soil surface.

d. The person shall not stockpile solids on land having a slope of more than three percent unless methods, structures, or practices are implemented to contain the stockpiled solids, including but not limited to using hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled solids.

2. The person must remove the stockpiled solids and apply them in accordance with the provisions of this chapter, including but not limited to section 459A.410, within six months after the solids are stockpiled.

2006 Acts, ch 1088, §5, 6

459A.404 Animal truck wash facility — construction regulations.

1. *a.* An animal truck wash effluent structure shall not be constructed or expanded within one thousand two hundred fifty feet from a residence not owned by the titleholder of the animal truck wash facility, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area, as those terms are defined in section 459.102, and as provided in rules adopted by the commission pursuant to sections 459.103 and 459A.104.

b. An animal truck wash effluent structure shall not be constructed or expanded within one hundred feet from a public thoroughfare as defined in section 459.102.

c. Paragraph *"a"* does not apply if a residence, educational institution, commercial enterprise, or bona fide religious institution was constructed or expanded, or if the boundaries of the public use area were expanded, after the date that the animal truck wash facility was established. The date the animal truck wash facility was established is the date on which the animal truck wash facility commenced operating. A change in ownership or expansion of the animal truck wash facility shall not change the established date of operation.

d. Paragraph *"a"* or *"b"* does not apply if the titleholder of the land benefiting from the separation distance requirement, including a person so authorized by the titleholder, executes a written waiver with the titleholder of the land where the animal truck wash effluent structure is located. The structure shall be constructed or expanded under such terms and conditions that the parties negotiate. The state or a political subdivision constructing or maintaining the public thoroughfare benefiting from the separation distance requirement may execute a written waiver with the titleholder of the land where the structure is located. The animal truck wash effluent structure shall be constructed or expanded under such terms and conditions that the parties negotiate.

e. Paragraph *"a"* or *"b"* does not apply to a small animal truck wash facility.

f. An unformed animal truck wash effluent structure shall not be constructed or expanded within the following minimum separation distances from any of the following:

(1) One thousand feet from a public shallow well.

(2) Four hundred feet from a public deep well.

(3) Four hundred feet from a private well.

2. *a.* Any separation distance required for a confinement feeding operation structure and a location or object specified in section 459.310, subsection 1, shall also apply to an animal truck wash effluent structure and that same location or object.

b. Any requirement, qualification, or exception that applies to a separation distance required for a confinement feeding operation structure and a location or object specified in section 459.310, subsections 1 and 3, shall also apply to the separation distance required for an animal truck wash effluent structure and that same location or object. A separation distance requirement shall not apply to any of the following:

(1) An animal truck wash effluent structure and a farm pond or privately owned lake, as defined in section 462A.2.

(2) An animal truck wash effluent structure constructed with a secondary containment barrier in accordance with rules adopted by the commission. The rules shall correspond to rules adopted pursuant to section 459.310, subsection 3.

3. *a.* An animal truck wash effluent structure shall not be constructed or expanded on land that is part of a one hundred year floodplain as designated by rules adopted by the commission pursuant to section 459A.104. The rules shall correspond to rules adopted pursuant to section 459.310, subsections 2 and 4.

b. For purposes of section 459.310, subsection 4, the provisions relating to an unformed manure storage structure shall apply to an unformed animal truck wash effluent structure and the provisions relating to a formed manure storage structure shall apply to a formed animal truck wash effluent structure. However, the requirement in section 459.310, subsection 4, paragraph *"a"*, relating to animal weight capacity or animal unit capacity shall not apply to the replacement of an unformed animal truck wash effluent structure with a formed animal truck wash effluent structure. In addition, the capacity of a replacement animal truck wash effluent structure shall not exceed the amount required to store animal truck wash effluent for any eighteen-month period.

4. A person shall not construct or expand an unformed animal truck wash effluent structure within an agricultural drainage well area as provided in section 460.205.

5. A person shall not construct an unformed animal truck wash effluent structure on karst terrain or on an area that drains into a known sinkhole. However, a person may construct an animal truck wash effluent structure if there is a twenty-five foot vertical separation distance between the bottom of the structure and underlying limestone, dolomite, or other soluble rock as documented in the engineering report submitted to the department pursuant to section 459A.205.

2015 Acts, ch 92, §41; 2015 Acts, ch 138, §44, 69, 161, 162; 2016 Acts, ch 1073, §129, 130
Referred to in §459A.105, 459A.205

459A.405 through 459A.409 Reserved.

459A.410 Effluent application requirements.

1. Open feedlot effluent or animal truck wash effluent shall be applied in a manner which does not cause surface water or groundwater pollution. Application in accordance with the provisions of state law, including this chapter, rules adopted pursuant to the provisions of state law, including this chapter, and guidelines adopted pursuant to this chapter, shall be deemed as compliance with this section.

2. A separation distance in section 459.314 that applies to the land application of liquid manure from a confinement feeding operation shall also apply to animal truck wash effluent from an animal truck wash effluent structure in accordance with rules adopted by the commission.

3. A person shall not apply animal truck wash effluent on land located within seven hundred fifty feet from a residence not owned by the titleholder of the land in accordance with rules adopted by the commission. This separation distance does not apply to the following:

a. The animal truck wash effluent is injected into the soil or incorporated within the soil not later than twenty-four hours from the original application, as provided by rules adopted by the commission.

b. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the animal truck wash effluent is applied.

c. The animal truck wash effluent is from a small animal truck wash facility or an animal truck wash facility that is part of a small animal feeding operation.

2005 Acts, ch 136, §16; 2015 Acts, ch 92, §42
Referred to in §459A.105, 459A.403

459A.411 Discontinuance of operations.

The owner of an open feedlot operation or animal truck wash facility who discontinues its operation shall remove all effluent from related open feedlot operation structures or animal truck wash effluent structures used to store effluent, as soon as practical but not later than six months following the date the operations of the open feedlot operation or animal truck wash facility are discontinued.

2005 Acts, ch 136, §17; 2015 Acts, ch 92, §43; 2015 Acts, ch 138, §45, 161, 162

SUBCHAPTER V

ENFORCEMENT

459A.501 General.

The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I and section 455B.175, unless otherwise provided in this chapter.

2005 Acts, ch 136, §18; 2007 Acts, ch 82, §5

459A.502 Violations — civil penalty.

A person who violates this chapter shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in section 455B.191. Any collected civil penalty and interest on a civil penalty shall be credited to the Iowa nutrient research fund created in section 466B.46. A person shall not be subject to a penalty under this section and a penalty under section 459.603 for the same violation.

2005 Acts, ch 136, §19; 2011 Acts, ch 128, §39, 45; 2016 Acts, ch 1134, §30, 34
Referred to in §455B.109, 466B.46

CHAPTER 459B

DRY BEDDED CONFINEMENT FEEDING OPERATIONS

Referred to in §455A.4, 455B.103, 455B.103A, 455B.105, 455B.111, 455B.112, 455B.174, 455B.175, 455B.182, 455B.185

SUBCHAPTER I

GENERAL PROVISIONS

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SUBCHAPTER IV

ENFORCEMENT

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SUBCHAPTER I

GENERAL PROVISIONS

459B.101 Title.

This chapter shall be known and may be cited as the *"Animal Agriculture Compliance Act for Dry Bedded Confinement Feeding Operations"*.

2009 Acts, ch 155, §5, 18

459B.102 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Alluvial aquifer area"* means an area underlaid by sand or gravel aquifers situated beneath floodplains along stream valleys and includes alluvial deposits associated with stream terraces and benches, contiguous wind-blown sand deposits, and glacial outwash deposits.
2. *"Animal"* means cattle or swine.
3. *"Animal unit"* means the same as defined in section 459.102.
4. *"Animal unit capacity"* means the maximum number of animal units which the owner or operator confines in a dry bedded confinement feeding operation at any one time.
5. *"Bedding"* means crop, vegetation, or forage residue or similar materials placed in a dry bedded confinement building for the care of animals.
6. *"Commercial enterprise"* means the same as defined in section 459.102.
7. *"Confinement feeding operation"* means the same as defined in section 459.102.
8. *"Department"* means the department of natural resources.
9. *"Designated area"* means the same as defined in section 459A.102.
10. *"Designated wetland"* means the same as defined in section 459.102.
11. *"Dry bedded confinement feeding operation"* means a confinement feeding operation in which animals are confined to areas which are totally roofed and in which all manure is stored as dry bedded manure.
12. *"Dry bedded confinement feeding operation structure"* means a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.
13. *"Dry bedded manure"* means manure from animals that meets all of the following requirements:

a. The manure does not flow perceptibly under pressure.

b. The manure is not capable of being transported through a mechanical pumping device designed to move a liquid.

c. The manure contains bedding.

14. *"Dry bedded manure confinement feeding operation building"* or *"building"* means a building used in conjunction with a confinement feeding operation to house animals and in which any manure from the animals is stored as dry bedded manure.

15. *"Dry bedded manure storage structure"* means a covered or uncovered structure, other than a building, used to store dry bedded manure originating from a confinement feeding operation.

16. *"Educational institution"* means the same as defined in section 459.102.

17. *"Grassed waterway"* means the same as defined in section 459A.102.

18. *"High-quality water resource"* means the same as defined in section 459.102.

19. *"Karst terrain"* means the same as defined in section 459.102.

20. *"Major water source"* means the same as defined in section 459.102.

21. *"Manure"* means the same as defined in section 459.102.

22. *"One hundred year floodplain"* means the same as defined in section 459.102.

23. *"Public use area"* means the same as defined in section 459.102.

24. *"Stockpile"* means to store dry bedded manure outside of a dry bedded manure confinement feeding operation building or a dry bedded manure storage structure.

25. *"Water source"* means the same as defined in section 459.102.

2009 Acts, ch 155, §6, 18; 2010 Acts, ch 1069, §59

Referred to in §459.102

459B.103 Special terms.

For purposes of this chapter, all of the following shall apply:

1. Two or more dry bedded confinement feeding operations under common ownership or common management are deemed to be a single dry bedded confinement feeding operation if they are adjacent or utilize a common area or system for dry bedded manure disposal.

2. For purposes of determining whether two or more dry bedded confinement feeding operations are adjacent, all of the following shall apply:

a. At least one dry bedded confinement feeding operation structure must be constructed on or after March 21, 1996.

b. A dry bedded confinement feeding operation structure which is part of one dry bedded confinement feeding operation is separated by less than one thousand two hundred fifty feet from a dry bedded confinement feeding operation structure which is part of the other dry bedded confinement feeding operation.

3. *a.* For purposes of determining whether two or more dry bedded confinement feeding operations are under common ownership, a person must hold an interest in each of the dry bedded confinement feeding operations as any of the following:

(1) A sole proprietor.

(2) A joint tenant or tenant in common.

(3) A holder of a majority equity interest in a business association as defined in section 202B.102, including but not limited to as a shareholder, partner, member, or beneficiary.

b. An interest in the dry bedded confinement feeding operation under paragraph *"a"*, subparagraph (2) or (3) which is held directly or indirectly by the person's spouse or dependent child shall be attributed to the person.

4. For purposes of determining whether two or more dry bedded confinement feeding operations are under common management, a person must have significant control of the management of the day-to-day operations of each of the dry bedded confinement feeding operations. Common management does not include control over a contract livestock facility by a contractor, as defined in section 202.1.

5. In calculating the animal unit capacity of a dry bedded confinement feeding operation, the animal unit capacity shall include the animal unit capacity of all dry bedded manure

confinement feeding operation buildings that are used to house animals in the dry bedded confinement feeding operation.

2009 Acts, ch 155, §7, 18; 2010 Acts, ch 1069, §60

459B.104 General authority — commission and department — purpose — compliance.

1. The environmental protection commission shall establish by rule adopted pursuant to chapter 17A, requirements relating to the construction, including expansion, or operation of dry bedded confinement feeding operations, including related dry bedded manure confinement feeding operation buildings and stockpiles.

2. Any provision referring generally to compliance with the requirements of this chapter as applied to dry bedded confinement feeding operations also includes compliance with requirements in rules adopted by the environmental protection commission pursuant to this section, orders issued by the department as authorized under this chapter, and the terms and conditions applicable to manure management plans required under this chapter.

3. The purpose of this chapter is to provide requirements relating to the construction, including the expansion, and operation of dry bedded confinement feeding operations, and the control of dry bedded manure which shall be construed to supplement applicable provisions of chapter 459. If there is a conflict between the provisions of this chapter and chapter 459, the provisions of this chapter shall prevail.

2009 Acts, ch 155, §8, 18

SUBCHAPTER II

DRY BEDDED MANURE STRUCTURES — CONSTRUCTION REQUIREMENTS

459B.201 Construction design standards.

A person constructing a dry bedded confinement feeding operation structure on karst terrain or in an alluvial aquifer area shall comply with all of the following:

1. The person must construct the dry bedded confinement feeding operation structure at a location where there is a vertical separation distance of at least five feet between the bottom of the floor of the dry bedded confinement feeding operation structure and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

2. The person must construct the dry bedded confinement feeding operation structure with a floor consisting of reinforced concrete at least five inches thick.

2009 Acts, ch 155, §9, 18

459B.202 Distance requirements.

1. Except as provided in subsection 3, the following shall apply:

a. A dry bedded confinement feeding operation structure shall not be constructed closer than five hundred feet away from the surface intake of an agricultural drainage well. A dry bedded confinement feeding operation structure shall not be constructed closer than one thousand feet from a wellhead, cistern of an agricultural drainage well, or known sinkhole.

b. A dry bedded confinement feeding operation structure shall not be constructed if the dry bedded confinement feeding operation structure as constructed is closer than any of the following:

(1) Two hundred feet away from a water source other than a major water source.

(2) One thousand feet away from a major water source.

(3) Two thousand five hundred feet away from a designated wetland.

c. (1) A water source, other than a major water source, shall not be constructed, expanded, or diverted if the water source as constructed, expanded, or diverted is closer than two hundred feet away from a dry bedded confinement feeding operation structure.

(2) A major water source shall not be constructed, expanded, or diverted if the major

water source as constructed, expanded, or diverted is closer than one thousand feet from a dry bedded confinement feeding operation structure.

(3) A designated wetland shall not be established if the designated wetland is closer than two thousand five hundred feet away from a dry bedded confinement feeding operation structure.

2. A dry bedded confinement feeding operation structure shall not be constructed on land that is part of a one hundred year floodplain.

3. A separation distance required in subsection 1 shall not apply to any of the following:

a. A location or object and a farm pond or privately owned lake, as defined in section 462A.2.

b. A dry bedded confinement feeding operation structure constructed with a secondary containment barrier. The department shall adopt rules providing for the construction and use of a secondary containment barrier.

2009 Acts, ch 155, §10, 18

SUBCHAPTER III

DRY BEDDED MANURE CONTROL

459B.301 Stockpiling — air quality.

A person may stockpile dry bedded manure, subject to this section.

1. Except as provided in subsection 2, a person shall not stockpile dry bedded manure within one thousand two hundred fifty feet from a residence not owned by the titleholder of the land, a commercial enterprise, a bona fide religious institution, an educational institution, or a public use area.

2. A person may stockpile dry bedded manure within a separation distance required between the stockpiled dry bedded manure and an object or location for which separation is required under subsection 1, if any of the following apply:

a. The titleholder of the land benefiting from the separation distance requirement executes a written waiver with the titleholder of the land where the dry bedded manure is stockpiled.

b. The stockpiled dry bedded manure originates from a small animal feeding operation.

2009 Acts, ch 155, §11, 18

Referred to in §459B.402

459B.302 through 459B.304 Reserved.

459B.305 Dry bedded manure control — water quality.

A dry bedded confinement feeding operation shall retain all dry bedded manure produced by the operation between periods of dry bedded manure application. For purposes of this section, dry bedded manure may be retained by stockpiling as provided in this chapter. A dry bedded confinement feeding operation shall not discharge dry bedded manure directly into water of the state or into a tile line that discharges directly into water of the state.

2009 Acts, ch 155, §12, 18

459B.306 Stockpiling — NPDES requirements — water quality.

A person stockpiling dry bedded manure shall comply with applicable requirements of the national pollutant discharge elimination system pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch. 26, as amended, and 40 C.F.R. pts. 122 and 412.

2009 Acts, ch 155, §13, 18

459B.307 Stockpiling — state requirements — water quality.

A person may stockpile dry bedded manure, subject to all of the following:

1. *a.* The person shall not stockpile the dry bedded manure within the following distances to a designated area unless the dry manure is maintained in a manner that will not allow precipitation-induced runoff to drain from the dry bedded manure to the designated area:

(1) Four hundred feet from a designated area other than a high-quality water resource.

(2) Eight hundred feet from a high-quality water resource.

b. The person shall not stockpile dry bedded manure within two hundred feet from a terrace tile inlet or surface tile inlet unless the dry bedded manure is maintained in a manner that will not allow precipitation-induced runoff to drain from the dry bedded manure to the terrace tile inlet or surface tile inlet.

c. The person shall not stockpile dry bedded manure in a grassed waterway, where water pools on the soil surface, or in any location where surface water will enter the stockpiled dry bedded manure.

d. The person shall not stockpile dry bedded manure on land having a slope of more than three percent unless methods, structures, or practices are implemented to contain the stockpiled dry bedded manure, including but not limited to using hay bales, silt fences, temporary earthen berms, or other effective measures, and to prevent or diminish precipitation-induced runoff from the stockpiled dry bedded manure.

e. The person shall not stockpile dry bedded manure on karst terrain or in an alluvial aquifer area unless the person complies with all of the following:

(1) The person must stockpile the dry bedded manure at a location where there is a vertical separation distance of at least five feet between the bottom of the stockpiled dry manure and the underlying limestone, dolomite, or other soluble rock in karst terrain or the underlying sand and gravel aquifer in an alluvial aquifer area.

(2) The dry bedded manure must be stockpiled on reinforced concrete at least five inches thick.

2. The person shall remove the stockpiled dry bedded manure and apply it in accordance with the provisions of chapter 459, including but not limited to section 459.311, within six months after the dry bedded manure is stockpiled.

2009 Acts, ch 155, §14, 18

459B.308 Manure management plan for a dry bedded confinement feeding operation.

For purposes of a manure management plan for a dry bedded confinement feeding operation, if the application of dry bedded manure is on land other than land owned or rented for crop production by the owner of the dry bedded confinement feeding operation, the plan shall include a copy of each written agreement executed by the owner of the dry bedded confinement feeding operation and the landowner or the person renting the land for crop production where the dry bedded manure may be applied.

2009 Acts, ch 155, §15, 18; 2010 Acts, ch 1069, §61

SUBCHAPTER IV

ENFORCEMENT

459B.401 General.

The department and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 459, subchapter VI.

2009 Acts, ch 155, §16, 18

459B.402 Violations — civil penalty.

A person who violates section 459B.301 shall be subject to the same penalty as provided in section 459.602, and a person who violates any other provision of this chapter shall be subject to the same penalty as provided in section 459.603. Any collected civil penalty and interest on a civil penalty shall be credited to the Iowa nutrient research fund created in section 466B.46.

2009 Acts, ch 155, §17, 18; 2011 Acts, ch 128, §40, 45; 2016 Acts, ch 1134, §31, 34

Referred to in §455B.109, 466B.46

CHAPTER 460

AGRICULTURAL DRAINAGE WELLS AND SINKHOLES

Chapter transferred from §159.28 – 159.29B and chapter 455I in
Code 2003 pursuant to Code editor directive;
2002 Acts, ch 1137, §68, 71;
2002 Acts, 2nd Ex, ch 1003, §260, 262

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SUBCHAPTER I

GENERAL PROVISIONS

460.101 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Agricultural drainage well"* means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring, and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

2. *"Agricultural drainage well area"* means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

3. *"Alternative drainage system"* means a drainage system constructed as part of a drainage district in order to drain surface or subsurface water from land due to the closing of an agricultural drainage well.

4. *"Book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

5. *"Designated agricultural drainage well area"* means an agricultural drainage well area in which there is located an anaerobic lagoon or earthen manure storage basin required to obtain a construction permit by the department of natural resources.

6. *"Division"* means the division of soil conservation and water quality created within the department of agriculture and land stewardship pursuant to section 159.5.

7. *"Drainage district"* means a drainage district established pursuant to chapter 468.

8. *"Drainage system"* means tile lines, laterals, surface inlets, or other improvements which are constructed to facilitate the drainage of land.

9. *"Earthen storage structure"* means an earthen cavity, either covered or uncovered, including but not limited to an anaerobic lagoon or earthen manure storage basin which is used to store manure, sewage, wastewater, industrial waste, or other waste as regulated by the department of natural resources, if stored in a liquid or semiliquid state.

10. *"Land"* means land which is used or which is suitable for use for any purpose, if the land is located within an agricultural drainage well area which includes land used or suitable for use in farming.

11. *"Surface water"* means water occurring on the surface of the ground.

12. *"Surface water intake"* means an artificial opening to a drain tile line which drains into an agricultural drainage well, if the artificial opening allows surface water to enter the drain tile line without filtration through the soil profile.

97 Acts, ch 193, §4

CS97, §455I.1

2000 Acts, ch 1148, §1; 2002 Acts, ch 1119, §200, 201; 2002 Acts, ch 1137, §52, 68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.101

2015 Acts, ch 103, §45, 46

460.102 through 460.200 Reserved.

SUBCHAPTER II

AGRICULTURAL DRAINAGE WELLS — REGULATION

460.201 Definition.

As used in this subchapter, unless the context otherwise requires, *"department"* means the department of natural resources.

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.202 Preventing surface water drainage into agricultural drainage wells.

Not later than December 31, 2001, all of the following shall apply:

1. *a.* An owner of land on which an agricultural drainage well is located shall prevent surface water from draining into the agricultural drainage well. The landowner shall comply with rules, which shall be adopted by the department, in consultation with the division, required to carry out this section. The landowner shall do all of the following:

(1) If the land has a surface water intake emptying into an agricultural drainage well, including a surface water intake located in a road ditch, the landowner shall remove the surface water intake.

(2) If the land has a cistern connecting to an agricultural drainage well, the landowner shall construct and maintain sidewalls surrounding the cistern in order to prevent surface water runoff directly emptying into the agricultural drainage well.

(3) If the land has an agricultural drainage well, the landowner shall ensure that the agricultural drainage well and related drainage system are adequately ventilated in a manner that does not allow surface water to directly drain into the agricultural drainage well.

(4) The landowner shall install a locked cover over the agricultural drainage well or its cistern in order to prevent unauthorized access to the agricultural drainage well or its cistern.

b. This subsection does not require a person to remove a tile line that drains into an agricultural drainage well if the tile line does not have a surface water intake. This subsection also does not prohibit a person from installing a tile line, if the installed tile line does not increase an agricultural drainage well area.

2. An agricultural drainage well shall be inspected to ensure compliance with this section, as required by the county board of supervisors in the county in which the agricultural drainage well is located.

3. The department shall adopt guidelines as necessary to assist counties in performing inspections as provided in this section. The guidelines shall not affect the authority of a county to designate a person to perform inspections.

97 Acts, ch 193, §5

CS97, §455I.2

98 Acts, ch 1173, §1; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.202
2011 Acts, ch 25, §143
Referred to in §460.206

460.203 Closing of agricultural drainage wells and construction of alternative drainage systems.

1. Not later than December 31, 2001, the owner of land which is within a designated agricultural drainage well area shall close each agricultural drainage well located on the land. The owner shall close the agricultural drainage well in a manner using materials and according to specifications required by rules which shall be adopted by the department in consultation with the division. The department may provide different closing requirements based on classifications established by the department. However, the department's requirements shall ensure that an agricultural drainage well is closed by using sealing materials such as bentonite to permanently seal the agricultural drainage well from contamination by surface or subsurface water drainage.

2. A person owning land affected by the closing of an agricultural drainage well as required pursuant to subsection 1 may construct an alternative drainage system as part of an established or new drainage district as provided in chapter 468. The alternative drainage system shall ensure that surface or subsurface water does not drain into an agricultural drainage well.

97 Acts, ch 193, §6
CS97, §455I.3
99 Acts, ch 72, §1; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.203
Referred to in §460.206

460.204 Notice.

1. The department shall provide information regarding landowners registering agricultural drainage wells pursuant to section 460.302 to each county board of supervisors in which an agricultural drainage well is registered.

2. The department shall notify landowners of land on which an agricultural drainage well is located of the deadline for complying with this subchapter. The notice shall be provided by print, electronic media, or other notification process. The department shall provide the notice in cooperation with the county board of supervisors in the county where the agricultural drainage well is located.

3. The department shall mail a special notice to owners of land registering agricultural drainage wells pursuant to section 460.302.

97 Acts, ch 193, §7
CS97, §455I.4
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.204

460.205 Prohibition against constructing earthen storage structures.

A person shall not construct or expand an earthen storage structure within an agricultural drainage well area. Each day that a person operates an earthen storage structure which is constructed in violation of this section constitutes a separate violation.

97 Acts, ch 193, §8
CS97, §455I.5
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.205
Referred to in §459.310, 459A.404, 460.206

460.206 Penalties.

1. *a.* A person who violates section 460.202 or 460.203 is subject to a civil penalty of not more than one thousand dollars. However, if a person is found to have violated a section and again violates the section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the previous violation, the

person is subject to a civil penalty not to exceed five thousand dollars. If a person is convicted of violating a section two or more times and again violates that section by not taking action necessary to correct a previous violation within sixty days after the person was found to have committed the last previous violation, the person is subject to a civil penalty not to exceed fifteen thousand dollars.

b. A person who violates section 460.205 is subject to a civil penalty not to exceed five thousand dollars.

2. Moneys collected from the assessment of civil penalties and interest on civil penalties as provided for in this section shall be deposited in the livestock remediation fund as created in section 459.501.

97 Acts, ch 193, §9
CS97, §455I.6
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.206
2011 Acts, ch 81, §11

460.207 Reimbursement of expenses.

The expenses incurred by a county in carrying out this subchapter shall be prorated among the landowners in the county who own land on which an agricultural drainage well is located. The amount shall be placed upon the tax books, and collected with interest and penalties after due, in the same manner as other unpaid property taxes. If expenses are incurred by a drainage district, the board shall levy an assessment on the lands in the district where an agricultural drainage well is located as provided in section 468.50.

97 Acts, ch 193, §10
CS97, §455I.7
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.207

460.208 through 460.300 Reserved.

SUBCHAPTER III

AGRICULTURAL DRAINAGE WELLS — REGISTRATION — ALTERNATIVE DRAINAGE SYSTEMS — SINKHOLES

Referred to in §159.6A

460.301 Definition.

As used in this subchapter, unless the context otherwise requires, *"department"* means the department of agriculture and land stewardship.

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

460.302 Agricultural drainage wells.

1. An owner of an agricultural drainage well shall register the well with the department of natural resources by September 30, 1988. The department of agriculture and land stewardship, in cooperation with the department of natural resources, shall adopt rules, pursuant to chapter 17A, which provide for an appeals process for violations of this subsection.

2. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall develop, in consultation with the department of agriculture and land stewardship and the department of natural resources, a plan which proposes alternatives to the use of agricultural drainage wells by July 1, 1998.

a. Financial incentive moneys may be allocated from the financial incentive portion of the agriculture management account of the groundwater protection fund to implement alternatives to agricultural drainage wells.

b. An owner of an agricultural drainage well and a landholder whose land is drained by the well or wells of another person shall not be eligible for financial incentive moneys pursuant to paragraph *"a"* if the owner fails to register the well with the department of natural resources by September 30, 1988, or if the owner fails to develop a plan for alternatives in cooperation with the department of agriculture and land stewardship and the department of natural resources.

3. The department shall:

a. (1) On July 1, 1987 initiate a pilot demonstration and research project concerning elimination of groundwater contamination attributed to the use of agricultural chemicals and agricultural drainage wells. The project shall be established in a location in north central Iowa determined by the department to be the most appropriate. A demonstration project shall also be established in northeast Iowa to study techniques for the cleanup of sinkholes.

(2) The agricultural drainage well pilot project shall be designed to identify the environmental, economic, and social problems presented by continued use or closure of agricultural drainage wells and to monitor possible contamination caused by agriculture land management practices and agricultural chemical use relative to agricultural drainage wells.

b. Develop alternative management practices based upon the findings from the demonstration projects to reduce the infiltration of synthetic organic compounds into the groundwater through agricultural drainage wells and sinkholes.

c. Examine alternatives and the costs of implementation of alternatives to the use of agricultural drainage wells, and examine the legal, technical, and hydrological constraints for integrating alternative drainage systems into existing drainage districts.

4. Financial incentive moneys expended through the use of the financial incentive portion of the agriculture management account may be provided by the department to landowners in the project areas for employing reduced chemical farming practices and land management techniques.

5. The secretary may appoint interagency committees and groups as needed to coordinate the involvement of agencies participating in department sponsored projects. The interagency committees and groups may accept grants and funds from public and private organizations.

6. The department shall publish a report on the status and findings of the pilot demonstration projects on or before July 1, 1989, and each subsequent year of the projects. The department of agriculture and land stewardship shall develop a priority system for the elimination of chemical contamination from agricultural drainage wells and sinkholes. The priority system shall incorporate available information regarding the significance of contamination, the number of registered wells in the area, and the information derived from the report prepared pursuant to this subsection. The highest priority shall be given to agricultural drainage wells for which the above criteria are best met, and the costs of necessary action are at the minimum level.

7. Beginning July 1, 1993, the department shall initiate an ongoing program to meet the goal of eliminating chemical contamination caused by the use of agricultural drainage wells by January 1, 1995, based upon the findings of the report published pursuant to subsection 6.

8. Notwithstanding the prohibitions of section 455B.267, subsection 4, an owner of an agricultural drainage well may make emergency repairs necessitated by damage to the drainage well to minimize surface runoff into the agricultural drainage well, upon the approval of the county board of supervisors or the board's designee of the county in which the agricultural drainage well is located. The approval shall be based upon the following conditions:

a. The well has been registered in accordance with both state and federal law.

b. The applicant will institute management practices including alternative crops, reduced application of chemicals, or other actions which will reduce the level of chemical contamination of the water which drains into the well.

c. The owner submits a written statement that approved emergency repairs are necessary and do not constitute a basis to avoid the eventual closure of the well if closure is later determined to be required. If a county board of supervisors or the board's designee approves the emergency repair of an agricultural drainage well, the county board of supervisors or

the board's designee shall notify the department of natural resources of the approval within thirty days of the approval.

87 Acts, ch 225, §303

CS87, §159.29

88 Acts, ch 1188, §1; 90 Acts, ch 1027, §1 – 4; 94 Acts, ch 1198, §32; 96 Acts, ch 1219, §65; 2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.302

2011 Acts, ch 25, §143

Referred to in §456B.11, 460.204, 460.304, 558.69

460.303 Agricultural drainage well water quality assistance fund.

1. An agricultural drainage well water quality assistance fund is created in the state treasury under the control of the division. The fund is composed of moneys appropriated by the general assembly, and moneys available to and obtained or accepted by the division or the state soil conservation and water quality committee established in section 161A.4, 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.

3. Moneys in the fund are appropriated to support an agricultural drainage well water quality assistance program as provided in section 460.304. Moneys shall be used to provide financial incentives under the program, and to defray expenses by the division in administering the program. However, not more than one percent of the money in the fund is available to defray administrative expenses. The division may adopt rules pursuant to chapter 17A to administer this section.

4. The division shall not in any manner directly or indirectly pledge the credit of the state.

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.

97 Acts, ch 193, §2

CS97, §159.29A

2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262

C2003, §460.303

2003 Acts, ch 145, §286; 2006 Acts, ch 1057, §1; 2013 Acts, ch 132, §53; 2015 Acts, ch 103, §47; 2017 Acts, ch 159, §55

Referred to in §460.304

460.304 Agricultural drainage well water quality assistance program.

1. The division shall establish an agricultural drainage well water quality assistance program as provided by rules which shall be adopted by the division pursuant to chapter 17A. The program shall be supported from moneys deposited in the agricultural drainage well water quality assistance fund created pursuant to section 460.303.

2. To the extent that moneys are available to support the program, the division shall expend moneys from the fund to do the following:

a. (1) Provide cost-share moneys to persons closing agricultural drainage wells in accordance with the priority system established pursuant to section 460.302. In conjunction with closing agricultural drainage wells, the division shall award cost-share moneys to carry out the following projects:

(a) Construct alternative drainage systems.

(b) Establish water quality practices other than constructing alternative drainage systems, including but not limited to converting land to wetlands.

(2) The amount of moneys allocated in cost-share payments to a person qualifying under the program shall not exceed seventy-five percent of the estimated cost of carrying out the project or seventy-five percent of the actual cost of carrying out the project, whichever is less.

b. Contract with persons to obtain technical assessments in agricultural drainage well areas, including but not limited to areas having a predominance of shallow bedrock or karst terrain as the division determines is necessary to carry out a project.

3. *a.* A person who owns an interest in land within a designated agricultural drainage well area shall not be eligible to participate in the program, if the person is any of the following:

(1) A party to a pending legal or administrative action, including a contested case proceeding under chapter 17A, relating to an alleged violation involving an animal feeding operation as regulated by the department of natural resources, regardless of whether the pending action is brought by the department or the attorney general.

(2) Is classified as a habitual violator for a violation of state law involving an animal feeding operation as regulated by the department of natural resources.

b. Noncrop acres located within a designated agricultural drainage well area shall not be eligible to benefit from the program.

c. The department of natural resources shall cooperate with the division by providing information necessary to administer this subsection.

4. A person is not eligible to participate in the program for a project described in this section that involves an agricultural drainage well that has not been registered with the department of natural resources pursuant to section 460.302 by January 1, 2019.

97 Acts, ch 193, §3
CS97, §159.29B
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.304
2006 Acts, ch 1057, §2; 2007 Acts, ch 22, §83; 2011 Acts, ch 25, §117, 143; 2015 Acts, ch 103, §48; 2019 Acts, ch 131, §38
Referred to in §460.303
NEW subsection 4

460.305 Sinkholes — conservation easement program.

1. The department shall develop and implement a program for the prevention of groundwater contamination through sinkholes. The program shall provide for education of landowners and encourage responsible chemical and land management practices in areas of the state prone to the formation of sinkholes.

2. The program may provide financial incentives for land management practices and the acquisition of conservation easements around sinkholes. The program may also provide financial assistance for the cleanup of wastes dumped into sinkholes.

3. The program shall be coordinated with the groundwater protection programs of the department of natural resources and other local, state, or federal government agencies which could compensate landowners for resource protection measures. The department shall use moneys appropriated for this purpose from the agriculture management account of the groundwater protection fund created in section 455E.11.

87 Acts, ch 225, §302
CS87, §159.28
2002 Acts, ch 1137, §68, 71; 2002 Acts, 2nd Ex, ch 1003, §260, 262
C2003, §460.305
2016 Acts, ch 1011, §80

CHAPTER 460A

GEOLOGICAL SURVEY

Transferred to chapter 456; 2002 Acts, 2nd Ex, ch 1003, §260, 262

SUBTITLE 2

LANDS AND WATERS

CHAPTER 461

NATURAL RESOURCES AND OUTDOOR RECREATION

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SUBCHAPTER I

GENERAL PROVISIONS

461.1 Title.

This chapter shall be known and may be cited as the *"Natural Resources and Outdoor Recreation Act"*.

2010 Acts, ch 1158, §1, 17; 2014 Acts, ch 1092, §98

461.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Department"* means the department of agriculture and land stewardship, the department of natural resources, or the department of transportation.

2. *"Fiscal year"* means the state fiscal year effective as provided in section 3.12.

3. *"Initiative"* includes a program, project, practice, strategy, or plan established or administered by an agency that furthers a constitutional purpose as provided in section 461.3.

4. *"Recreational purpose"* includes hunting, trapping, angling, horseback riding, swimming, boating, camping, picnicking, hiking, bird watching, nature study, water skiing, snowmobiling, other summer and winter sports, and viewing or enjoying historical, archaeological, scenic, or scientific sites.

5. *"Trust fund"* means the natural resources and outdoor recreation trust fund created in section 461.31.

6. *"Trust fund moneys"* means moneys originating from the natural resources and outdoor recreation trust fund.

2010 Acts, ch 1158, §2, 17

461.3 Constitutional purpose and implementation.

1. This chapter is created for the constitutional purposes of protecting and enhancing water quality and natural areas in this state, including parks, trails, and fish and wildlife habitat, and conserving agricultural soils in this state.

2. This chapter is intended to implement Article VII, section 10, of the Constitution of the State of Iowa by establishing the natural resources and outdoor recreation trust fund, accounts in the trust fund, and appropriating or allocating trust fund moneys to support initiatives specified in subchapter IV.

2010 Acts, ch 1158, §3, 16

Referred to in §461.2, 461.31

461.4 through 461.10 Reserved.

SUBCHAPTER II

PARTICIPATION

461.11 Departmental consultation.

1. When making decisions regarding the expenditure of trust fund moneys affecting soil and water conservation, the secretary of agriculture shall regularly consult with the soil conservation committee established in section 161A.4. When making decisions regarding the expenditure of trust fund moneys affecting natural resources and outdoor recreation, the director of the department of natural resources shall regularly consult with the natural resource commission established pursuant to section 455A.5. When making decisions regarding the expenditure of trust fund moneys affecting trails, the department of transportation shall consult with the state transportation commission as provided in chapter 307A.

2. The heads of each department receiving trust fund moneys shall regularly meet and whenever practicable collaborate in decision making including by adopting rules, establishing funding priorities, and determining when it is beneficial to provide joint funding of initiatives.

2010 Acts, ch 1158, §4, 17

461.12 through 461.20 Reserved.

SUBCHAPTER III

ADMINISTRATION

461.21 Audit.

1. The auditor of state or a certified public accounting firm appointed by the auditor of state shall conduct an annual audit of the trust fund and all accounts and transactions of the trust fund and accounts.

2. The auditor of state or the certified public accounting firm appointed by the auditor as provided in subsection 1 shall be paid from trust fund moneys without reducing the percentage of trust fund moneys distributed to the Iowa resources enhancement and protection fund or any one account established pursuant to this chapter.

2010 Acts, ch 1158, §5, 17

461.22 Report.

The three departments shall jointly prepare and submit to the governor and the general assembly not later than January 15 of each year a complete report in an electronic format detailing all of the following:

1. The receipts and expenditures of the trust fund and its accounts, a summary of initiatives supported by trust fund moneys, the results of those expenditures, any

performance goals or measurements, and plans for future short-term or long-term expenditures.

2. Recommendations to the general assembly, including legislation proposed by one or more of the departments.

2010 Acts, ch 1158, §6, 17

461.23 Rules.

The department of revenue, the department of agriculture and land stewardship, the department of natural resources, and department of transportation shall adopt rules separately or jointly as necessary in order to implement and administer this chapter.

2010 Acts, ch 1158, §7, 17

461.24 Public listing.

The department of natural resources, the department of agriculture and land stewardship, and the department of transportation shall cooperate to publish and maintain a public listing of how moneys contained in the natural resources and outdoor recreation trust fund as created in section 461.31 are distributed and spent during the course of each fiscal year. The departments shall designate one of the departments to be responsible for publishing and maintaining the public listing on the internet site operated by that department.

2010 Acts, ch 1158, §8, 17

461.25 through 461.30 Reserved.

SUBCHAPTER IV

NATURAL RESOURCES AND OUTDOOR RECREATION TRUST FUND AND DISTRIBUTIONS TO SUPPORT DEDICATED PURPOSES

Referred to in §461.3

461.31 Natural resources and outdoor recreation trust fund — creation.

1. A natural resources and outdoor recreation trust fund is created within the state treasury.

2. *a.* The trust fund shall be composed of moneys required to be credited to the trust fund by law and moneys accepted by a department for placement in an account established in this subchapter and from any source.

b. Trust fund moneys are exclusively appropriated by law to carry out the constitutional purposes provided in section 461.3.

c. Trust fund moneys shall supplement and not replace moneys appropriated by the general assembly to support the constitutional purposes provided in section 461.3.

d. Trust fund moneys shall only be used to support voluntary initiatives and shall not be used for regulatory efforts, enforcement actions, or litigation.

3. In administering a trust fund account, a department may contract, sue and be sued, and authorize payment for costs, fees, commissions, and other reasonable expenses from the account. However, a department shall not in any manner directly or indirectly pledge the credit of this state.

4. Notwithstanding section 8.33, any unexpended balance in the trust fund or in an account created within the trust fund at the end of each fiscal year shall be retained in the trust fund or the respective account. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys in the trust fund and its respective accounts shall be credited to the trust fund and its respective accounts. The recapture of awards originating from an account and other repayments to an account shall be retained in that account.

2010 Acts, ch 1158, §9, 17

Referred to in §423.2A, 461.2, 461.24

461.32 Natural resources account — allocations.

1. A natural resources account is created in the trust fund. Twenty-three percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used by the department of natural resources to support all of the following initiatives:

a. The establishment, restoration, or enhancement of state parks, state preserves, state forests, wildlife areas, wildlife habitats, native prairies, and wetlands.

b. Wildlife diversity.

c. Recreational purposes.

d. Technical assistance and financial incentives to private landowners to promote the management of forests, fisheries, wetlands, and wildlife.

e. The improvement of water trails, rivers, and streams.

f. Education and outreach that provide instruction regarding natural history and the outdoors. The subjects of such instruction may relate to opportunities involving recreational purposes, outdoor safety, and ethics.

3. The department of natural resources shall to every extent possible consider its comprehensive plan provided in section 456A.31 when making funding decisions.

2010 Acts, ch 1158, §10, 17

461.33 Soil conservation and water protection account — allocations.

1. A soil conservation and water protection account is created in the trust fund. Twenty percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used by the department of agriculture and land stewardship to support all of the following initiatives:

a. Soil conservation and watershed protection, including by supporting the division of soil conservation and water quality within the department of agriculture and land stewardship and soil and water conservation district commissioners. The department may provide for the installation of conservation practices and watershed protection improvements as provided in chapters 161A, 161C, 461A, and 466.

b. The conservation of highly erodible land. The department of agriculture and land stewardship may execute contracts with private landowners who agree to reserve such land only for uses that prevent erosion in excess of the applicable soil loss limits as established in section 161A.44.

c. Soil conservation or crop management practices used on land producing biomass for biorefineries, including cellulosic ethanol production.

3. The department of agriculture and land stewardship may use the account to provide financial incentives or technical assistance to landowners.

2010 Acts, ch 1158, §11, 17; 2015 Acts, ch 103, §49; 2017 Acts, ch 168, §23, 25

461.34 Watershed protection account — allocations.

1. A watershed protection account is created in the trust fund. Fourteen percent of the moneys credited to the trust fund shall be allocated to the account.

2. The account shall be used cooperatively by the department of natural resources and the department of agriculture and land stewardship to support all of the following initiatives:

a. Water resource projects administered by the department of natural resources to preserve watersheds, including but not limited to all of the following:

(1) Projects to protect, restore, or enhance water quality in the state through the provision of financial assistance to communities for impairment-based, locally directed watershed projects. The department may use the account to support the water resource restoration sponsor program as provided in section 455B.199.

(2) Regional and community watershed assessment, planning, and prioritization efforts, including as provided in chapter 466B.

b. Surface water protection projects and practices administered by the department of agriculture and land stewardship or the department of natural resources, including but not limited to the installation of permanent vegetation cover, filter strips, grass waterways, and riparian forest buffers; dredging; and bank stabilization. The departments of agriculture and

land stewardship and natural resources may use the account to support the conservation buffer strip program provided in section 466.4 and the conservation reserve enhancement program as provided in section 466.5.

3. The departments' decision to prioritize initiatives may be based on the priority list of watersheds provided in section 456A.33A.

2010 Acts, ch 1158, §12, 17

461.35 Iowa resources enhancement and protection fund — allocation.

Thirteen percent of the moneys credited to the trust fund shall be allocated to the Iowa resources enhancement and protection fund created in section 455A.18 for further allocation as provided in section 455A.19.

2010 Acts, ch 1158, §13, 17

461.36 Local conservation partnership account — allocations.

1. A local conservation partnership account is created in the trust fund. Thirteen percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of natural resources shall distribute trust fund moneys from the account to local communities for the following initiatives:

a. The maintenance and improvement of parks, preserves, wildlife areas, wildlife habitats, native prairies, and wetlands.

b. Wildlife diversity.

c. Recreational purposes.

d. The improvement of water trails, rivers, and streams.

e. Education and outreach programs and projects that provide instruction regarding natural history and the outdoors. The subjects of such instruction may relate to opportunities involving recreational purposes, outdoor safety, and ethics.

f. Any other purpose described in section 350.1.

3. A local community may cooperate with the state or the federal government to carry out the initiative. Two or more local communities may form an entity if allowed under chapter 28E in order to carry out the initiative.

4. As used in this section, "*local community*" means a county conservation board, a city, or a nongovernmental organization operating on a nonprofit basis.

2010 Acts, ch 1158, §14, 17; 2013 Acts, ch 90, §137

461.37 Trails account — allocations.

1. A trails account is created in the trust fund. Ten percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of transportation and the department of natural resources shall use moneys in the account to support initiatives related to the design, establishment, maintenance, improvement, and expansion of land trails.

3. The department of natural resources may use the account to support the design, establishment, maintenance, improvement, and expansion of water trails.

2010 Acts, ch 1158, §15, 17; 2013 Acts, ch 90, §138

461.38 Lake restoration account — allocations.

1. A lake restoration account is created in the trust fund. Seven percent of the moneys credited to the trust fund shall be allocated to the account.

2. The department of natural resources shall use moneys in the account to support public lake restoration initiatives as follows:

a. An initiative shall account for a lake's recreational, environmental, aesthetic, ecological, and social value. It must improve water quality.

b. The department's decision to prioritize an initiative may be based on the department's lake restoration plan and report as provided in section 456A.33B.

2010 Acts, ch 1158, §16, 17; 2013 Acts, ch 90, §139

CHAPTER 461A

PUBLIC LANDS AND WATERS

Referred to in §232.8, 350.5, 455A.4, 455A.5, 456A.14, 456A.17, 456A.24, 456A.38, 459.102, 461.33, 481A.1, 481A.130, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 111 in Code 1993

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SUBCHAPTER I

GENERAL PROVISIONS

461A.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.
4. *"Honey creek resort state park"* or *"resort"* means the state's premier destination state park located on Rathbun lake.

[C24, 27, 31, 35, 39, §**1797;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.1]
86 Acts, ch 1238, §57, 58; 86 Acts, ch 1245, §1861, 1992
C93, §461A.1
2019 Acts, ch 46, §4
NEW subsection 4

461A.2 Duties in general.

The commission shall investigate places in Iowa rich in natural history, forest reserves, archaeological specimens, and geological deposits; and the means of promoting forestry and maintaining and preserving animal and bird life and the conservation of the natural resources of the state.

[C24, 27, 31, 35, 39, §**1798;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.2]
C93, §461A.2

461A.3 Duties as to parks.

1. It shall be the duty of the commission to establish, maintain, improve, and beautify public parks and preserves upon the shores of lakes, streams, or other waters, or at other places within the state which have become historical or which are of scientific interest, or which by reason of their natural scenic beauty or location are adapted therefor. The commission shall have the power to maintain, improve or beautify state-owned bodies of water, and to provide proper public access thereto. The commission shall have the power to provide and operate facilities for the proper public use of the areas above described.
2. The commission shall open all roads which pass through the Ledges State Park from September 15 to November 1 of each year.

[C24, 27, 31, 35, 39, §**1799;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.3]
86 Acts, ch 1245, §1877
C93, §461A.3

461A.3A Honey creek resort state park — findings — competitive bidding.

1. Honey creek resort state park is established to provide important recreational and economic benefits to the state.
2. Competitive bid laws, including hearings in connection with contracts, shall not apply to either the department's or its agents' contracts involving or benefitting the resort if the contract is carrying out a public or essential governmental function. However, the exemption from competitive bid laws in this section shall not be construed to apply to contracts for the

development or construction of facilities at the resort, including but not limited to lodges, campgrounds, cabins, and golf courses.

2019 Acts, ch 46, §5
NEW section

461A.4 Construction of structures and operation of commercial concessions.

1. *a.* A person shall not construct a structure including but not limited to a pier, wharf, sluice, piling, wall, fence, obstruction, erection, or building upon or over any state-owned or state-managed land or water under the jurisdiction of the commission without first obtaining from the commission a written permit. 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 construct or maintain a structure beyond the line of private ownership along or upon the shores of state-owned or state-managed 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.

b. The commission shall adopt and enforce rules governing and regulating the construction of a structure as provided in this subsection. The commission may prohibit or restrict its construction, or order the owner to remove the structure, when the commission determines that it is in the best interest of the public. The commission shall comply with the provisions of chapter 17A when issuing an order under this section.

2. A person shall not operate a commercial concession in a park, forest, fish and wildlife area, or recreation area under the jurisdiction of the department without first entering into a written contract with the department. The contract shall state the consideration and other terms under which the concession may be operated. The department may cancel or, in an emergency, suspend a concession contract for the protection of the public health, safety, morals, or welfare.

[C27, 31, 35, §1799-b2; C39, §**1703.19, 1799.1;** C46, 50, 54, 58, §106.19, 111.4; C62, 66, 71, 73, 75, 77, 79, 81, §111.4; 82 Acts, ch 1199, §55, 96]

86 Acts, ch 1245, §1862, 1877; 88 Acts, ch 1192, §1; 90 Acts, ch 1108, §1
C93, §461A.4
2008 Acts, ch 1161, §6
Referred to in §461A.5A, 461A.5B, 461A.6

461A.5 Obstruction removed. Repealed by 2008 Acts, ch 1161, §10.

461A.5A Injunctive relief.

If it appears to the department that a person is violating or about to violate a provision of section 461A.4 or refuses to comply with an order issued by the commission pursuant to section 461A.4, the department may refer the matter to the attorney general, who may bring an action in the district court in any county of the state for an injunction to restrain the person from committing the violation. Upon a proper showing, the court may order a permanent or temporary injunction. The state shall not be required to post a bond.

2008 Acts, ch 1161, §7

461A.5B Penalties.

1. Except as provided in subsection 2, a person who violates a provision of section 461A.4 or of a departmental rule or refuses to comply with an order issued by the commission pursuant to section 461A.4 is guilty of a simple misdemeanor.

2. The state may proceed against a person who violates a provision of section 461A.4 or refuses to comply with an order issued by the commission pursuant to section 461A.4 by initiating an alternative civil enforcement action in lieu of a criminal prosecution. The amount of the civil penalty shall not exceed five thousand dollars. Each day of a violation shall be considered a separate offense. The alternative civil enforcement action may be brought against the person as a contested case proceeding by the department under chapter 17A if the amount of the civil penalty is not more than ten thousand dollars or as a civil judicial

proceeding by the attorney general upon referral by the department. In a contested case proceeding, the department may impose, assess, and collect the civil penalty.

2008 Acts, ch 1161, §8

461A.6 Costs — lien.

The cost of removing a structure as provided in section 461A.4 shall be paid by its owner, and the state shall have a lien upon the property for the cost of removal. The costs shall be payable at the time of removal and such lien may be enforced and foreclosed, as provided for the foreclosure of security interests in uniform commercial code, chapter 554, article 9, part 6.

[C31, 35, §1799-d1; C39, §**1799.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.6]

C93, §461A.6

2000 Acts, ch 1149, §170, 187; 2008 Acts, ch 1161, §9

461A.7 Eminent domain.

The commission may purchase or condemn lands for public parks. No contract for the purchase of such public parks shall be made to an amount in excess of funds appropriated therefor by the general assembly.

[C24, 27, 31, 35, 39, §**1800;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.7]

86 Acts, ch 1245, §1980

C93, §461A.7

461A.8 Highways.

The commission may purchase or condemn highways connecting parks with the public highways. When the highways have been purchased or condemned the same shall be public highways of this state and shall be maintained as other public highways of the county.

[C24, 27, 31, 35, 39, §**1801;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.8]

86 Acts, ch 1245, §1981

C93, §461A.8

461A.9 Condemnation statutes.

All the provisions of the law relating to the condemnation of lands for public state purposes shall apply to the provisions of this chapter in and so far as applicable.

[C24, 27, 31, 35, 39, §**1802;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.9]

C93, §461A.9

2019 Acts, ch 59, §144

Eminent domain, chapters 6A and 6B

Section amended

461A.10 Title to lands.

The title to all lands purchased, condemned, or donated, under this chapter, for park or highway purposes, shall be taken in the name of the state and if thereafter it shall be deemed advisable to sell any portion of the land so purchased or condemned, the proceeds of the sale shall be placed to the credit of the public state parks fund to be used for such park purposes.

[C24, 27, 31, 35, 39, §**1803;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.10]

C93, §461A.10

2019 Acts, ch 59, §145

Section amended

461A.11 Gifts — jurisdiction over dedicated lands — plan.

1. The commission may accept gifts of land or other property, or the use of lands or other property for a term of years, and improve and use the land as public state parks.

2. Any land adjacent to a meandered lake or a meandered stream which has been conveyed by gift, dedication or other means to the public, but has not been conveyed to the jurisdiction of a specific state agency or political subdivision, shall be subject to the jurisdiction of the commission and to the rules promulgated pursuant to this chapter. The commission shall prepare a plan for the appropriate public use of such land in accordance

with this chapter within two years of its coming under the jurisdiction of the commission. The plan may be amended by the commission.

[C24, 27, 31, 35, 39, §**1804;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.11]
86 Acts, ch 1237, §5; 86 Acts, ch 1245, §1982
C93, §461A.11

461A.12 Conditions — lands.

The conditions attached to a gift shall be entered in writing as part of the record of the title by which the state takes the lands, and shall be inscribed upon any chart, map, or description of said park if the conditions are made by the grantor in lieu of money as a consideration paid by the state.

[C24, 27, 31, 35, 39, §**1805;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.12]
C93, §461A.12

461A.13 Conditions — personalty.

If the donation be other than real estate and a particular specification for its use be made by the donor, no part of such donation shall be used or expended for any other purpose.

[C24, 27, 31, 35, 39, §**1806;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.13]
C93, §461A.13

461A.14 Reversion of gift.

If the lands transferred to the state as a gift, or if lands purchased in whole or in part by the state from moneys given for that purpose, shall be abandoned or sold and not used for state park purposes, the donor shall reclaim the land or funds donated by filing the donor's request in writing with the executive council within six months of the time of the abandonment or sale by the state of such lands, but no interest or other charge shall be demanded of or paid by the state. Any unclaimed funds shall be used for park purposes.

[C24, 27, 31, 35, 39, §**1807;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.14]
C93, §461A.14

461A.15 Use of private funds.

The commission may permit the improvement of parks, when established, or the improvement of bodies of water, upon the border of which such parks may be established, by the expenditure of private funds, such improvement to be done, however, under the direction of the commission, by and with the consent of the executive council.

[C24, 27, 31, 35, 39, §**1808;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.15]
C93, §461A.15

461A.16 Landscape architect.

The commission may call upon the Iowa state university of science and technology for the services of at least one competent landscape architect, engineer, or gardener, who shall, under the direction of the commission, proceed to work with the commission in the improvement of the state property under the control of the commission. The president of the Iowa state university of science and technology shall, when called upon, designate the landscape architect, engineer, or gardener, as the case may be, who shall work with the commission.

[C24, 27, 31, 35, 39, §**1809;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.16]
C93, §461A.16
2019 Acts, ch 59, §146
Referred to in §461A.17
Section amended

461A.17 Expense and compensation.

All necessary expenses incurred by such landscape architect, engineer, or gardener, under the provisions of section 461A.16, shall be paid in the same manner as are other expenditures by the commission, but no compensation shall be paid for such services.

[C24, 27, 31, 35, 39, §**1811;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.17]
C93, §461A.17

461A.18 Jurisdiction.

Jurisdiction over all meandered streams and lakes of this state and of state lands bordering thereon, not now used by some other state body for state purposes, is conferred upon the commission. The exercise of this jurisdiction is subject to the approval of the department in matters relating to or in any manner affecting flood control. The commission, with the approval of the executive council, may establish parts of the property into state parks, and when so established all of the provisions of this chapter relative to public parks apply to the property.

[C24, 27, 31, 35, 39, §**1812;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.18; 82 Acts, ch 1199, §56, 96]
C93, §461A.18

461A.19 Boundaries.

The commission shall at once proceed to establish the boundary lines between the state-owned property under its jurisdiction and privately owned property when said commission deems it feasible and necessary, and shall where deemed advisable mark the same so that the boundaries of such state-owned property may be easily ascertainable to the public.

[C24, 27, 31, 35, 39, §**1813;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.19]
C93, §461A.19

461A.20 State department of transportation — duties.

The commission may call upon the state department of transportation for the services of at least one competent engineer, who shall, under the direction of the commission, proceed to work in conjunction with the commission in carrying out the true spirit and purpose of this chapter.

[C24, 27, 31, 35, 39, §**1814;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.20]
86 Acts, ch 1245, §1877
C93, §461A.20
2019 Acts, ch 59, §147
Section amended

461A.21 County engineer — duties.

The commission may call upon the county engineer of any county to advise relative to the true boundary between the state-owned property and private property in the county, and to furnish plats and surveys showing such true boundary lines, and when directed by the commission, shall mark such boundary lines as herein provided.

[C24, 27, 31, 35, 39, §**1815;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.21]
C93, §461A.21

461A.22 Surveys and plats.

All surveys and plats shall be filed with the secretary of the executive council, and shall become public records of this state.

[C24, 27, 31, 35, 39, §**1816;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.22]
86 Acts, ch 1245, §1863
C93, §461A.22
Referred to in §463B.2

461A.23 Compensation.

The compensation and expenses of the highway engineer shall be paid as a part of the maintenance of the state department of transportation, and of the county engineer by the county, as the case may be.

[C24, 27, 31, 35, 39, §**1817;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.23]
C93, §461A.23

461A.24 Boundaries — adjustment.

Whenever a controversy shall arise as to the true boundary line between state-owned property and private property, the commission may adjust the boundary line or take such other action in the premises as in its judgment may seem right. When the disputed boundary line is fixed it shall be surveyed and marked.

[C24, 27, 31, 35, 39, §**1818;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.24]
86 Acts, ch 1245, §1983
C93, §461A.24

461A.25 Leases and easements.

1. The commission may recommend that the executive council lease property under the commission's jurisdiction. All leases shall reserve to the public of the state the right to enter upon the property leased for any lawful purpose. The council may, if it approves the recommendation and the lease to be entered into is for five years or less, execute the lease in behalf of the state and commission. If the recommendation is for a lease in excess of five years, with the exception of agricultural lands specifically dealt with in Article I, section 24 of the Constitution of the State of Iowa, the council shall advertise for bids. If a bid is accepted, the lease shall be let or executed by the council in accordance with the most desirable bid. The lease shall not be executed for a term longer than fifty years. Any such leasehold interest, including any improvements placed on it, shall be listed on the tax rolls as provided in chapters 428 and 443 and assessed and valued as provided in chapter 441; taxes shall be levied on it as provided in chapter 444 and collected as provided in chapter 445; and the leasehold interest is subject to tax sale, redemption, and apportionment of taxes as provided in chapters 446, 447 and 448. The lessee shall discharge and pay all taxes.

2. The commission shall adopt rules providing for granting easements to political subdivisions and utility companies on state land under the jurisdiction of the department. An applicant for an easement shall provide the director with information setting forth the need for the easement, availability of alternatives, and measures proposed to prevent or minimize adverse impacts on the affected property. An easement shall be executed by the director, approved as to form by the attorney general, and if granted for a term longer than five years, approved by the commission.

3. For the purposes of this section, property under the commission's jurisdiction does not include an area of the bed of a lake or river occupied by a dock or other appurtenance or means of access to a dock, including but not limited to boat hoists and boat slips, or occupied by a boat ramp, constructed or installed and maintained under littoral or riparian rights.

[C24, 27, 31, 35, 39, §**1819;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.25]
83 Acts, ch 101, §12
C93, §461A.25
97 Acts, ch 10, §1; 2006 Acts, ch 1102, §1; 2017 Acts, ch 54, §59

461A.26 Special police.

The commission in carrying out its duties may appoint the director and such other supervisory personnel of the department as necessary to act as special police to carry out the law enforcement program of the department. The officers are vested with the powers and charged with the duties of peace officers while in the performance of their official duties.

[C35, §1821-e1; C39, §**1821.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.26]
86 Acts, ch 1245, §1864
C93, §461A.26

461A.27 Management by municipalities.

The commission may enter into an agreement or arrangement with the board of supervisors of a county or the council of a city whereby the county or city shall undertake the care and maintenance of any lands under the jurisdiction of the commission. Counties and cities may maintain the lands and pay the expense of maintenance. A city may pay the expense from the general fund.

[C24, 27, 31, 35, 39, §**1822;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.27]
83 Acts, ch 123, §57, 209
C93, §461A.27

461A.28 Expenditure by cities.

Any one or more cities may through action of its city council expend money to aid in the purchase of land within the county for state parks which, when purchased, shall be the property of the state of Iowa, to be cared for as state parks.

[C27, 31, 35, §1822-a1; C39, §**1822.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.28]
C93, §461A.28
Referred to in §461A.30

461A.29 Limitation on expenditures.

The amount to be paid by such city or cities shall in no event exceed one-half of the total purchase price of the land involved in any single purchase, and in no event shall the total amount paid by such city or cities in any single purchase exceed the sum of fifty thousand dollars.

[C27, 31, 35, §1822-a2; C39, §**1822.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.29]
C93, §461A.29
Referred to in §461A.30

461A.30 City funds available.

Any such city or cities aiding in the purchase of land for state parks, as provided for in sections 461A.28 and 461A.29 may pay for the same out of the general fund, or may issue bonds for the payment of the same and levy a tax for the payment of such bonds and the interest thereon, in accordance with the provisions of law relating to general corporate purpose bonds of a city.

[C27, 31, 35, §1822-a3; C39, §**1822.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.30]
C93, §461A.30

461A.31 Sale of islands.

No islands in any of the meandered streams and lakes of this state or in any of the waters bordering upon this state shall hereafter be sold, except with the majority vote of the executive council upon the majority recommendation of the commission, and in the event any of such islands are sold as herein provided the proceeds thereof shall become a part of the funds to be expended under the terms and provisions of this chapter.

[C24, 27, 31, 35, 39, §**1823;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.31]
C93, §461A.31

461A.31A Sale of timber.

If the estimated quantity of timber grown in a state park or a preserve to be sold by the department in a sixty-day period is ten thousand board feet or more or if the estimated value of the timber grown in a state park or a preserve to be sold by the department during the same period of time is five thousand dollars or more, the department shall conduct a public hearing on the proposed sale. Notice of the hearing shall be published as provided in section 331.305. After the public hearing, the department may proceed with the sale of the timber.

99 Acts, ch 206, §27

461A.32 Sale of park lands — conveyances to cities or counties.

1. The commission may sell or exchange such parts of public lands under the jurisdiction of the commission as in its judgment may be undesirable for conservation purposes, excepting

state-owned meandered lands already surveyed and platted at state expense as a conservation plan and project tentatively adopted and now in the process of rehabilitation and development authorized by a special legislative Act. The sale or exchange shall be made upon the terms, conditions or considerations as the commission may approve, whereupon the secretary of state shall issue a patent therefor in the manner provided by law in other cases. The proceeds of any such sale or exchange shall become a part of the funds to be expended under the provisions of this chapter.

2. Upon request by resolution of any city, county, or any legal agency of any city or county, the executive council may, upon majority recommendation of the commission, convey without consideration to such city, county, or legal agency of the city or county, such public lands under the jurisdiction of the commission as in its judgment may be desirable for city or county parks. Conveyance shall be in the name of the state, with the great seal of the state attached and shall contain a provision that when such lands cease to be used as public park by said city or county such lands revert to the state, and such park shall, within one year after such land has reverted to the state, be restored, as nearly as possible, to the condition it was in when acquired by such city, county, or legal agency of the city or county at the expense of such city, county, or legal agency.

3. The state may require that the city, county, or legal agency of the city or county file a notice of intention every three years.

[C24, 27, 31, 35, 39, §**1824;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.32]
86 Acts, ch 1244, §25; 86 Acts, ch 1245, §1877
C93, §461A.32
2017 Acts, ch 29, §129

461A.33 Form of conveyance.

Conveyances shall be in the name of the state, signed by the governor and secretary of state, with the great seal of the state attached.

[C24, 27, 31, 35, 39, §**1825;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.33]
C93, §461A.33

461A.34 Powers in municipalities.

Municipalities, or individuals, or corporations organized for that purpose only, acting separately or in conjunction with each other, may establish like parks outside the limits of cities, and when established without the support of the public state parks fund, the municipalities, corporations, or persons establishing the same, as the case may be, shall have control thereof independently of the executive council; but none of the said municipalities, individuals, or corporations, acting under the provisions of this section shall establish, maintain or operate any such park as herein contemplated for pecuniary profit.

[C24, 27, 31, 35, 39, §**1827;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.34]
C93, §461A.34
Referred to in §331.382

461A.35 Prohibited destructive acts.

1. It shall be unlawful for any person to use, enjoy the privileges of, destroy, injure, or deface plant life, trees, buildings, or other natural or material property, or to construct or operate for private or commercial purposes any structure, or to remove any plant life, trees, buildings, sand, gravel, ice, earth, stone, wood, or other natural material, or to operate vehicles, within the boundaries of any state park, preserve, or stream or any other lands or waters under the jurisdiction of the commission for any purpose whatsoever, except upon the terms, conditions, limitations, and restrictions as set forth by the commission.

2. A person who violates this section commits a simple misdemeanor, punishable as a scheduled violation pursuant to section 805.8B, subsection 6, paragraph "*c*".

[C39, §**1828.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.35]
86 Acts, ch 1245, §1877
C93, §461A.35
2012 Acts, ch 1118, §1
Referred to in §350.10, 805.8B(6)(c)

461A.35A Entrance fee.

The department shall not impose a fee upon a person for entering into a state park or preserve.

99 Acts, ch 206, §28, 29

Referred to in §350.10, 455A.14A, 455A.14B

Camping, rental facilities, and special privileges fees permitted, see §455A.14

Entrance fees allowed at certain state parks during pilot programs; see §455A.14A and 455A.14B

461A.36 Speed limit.

The maximum speed limit of all vehicles on state park and preserve drives, roads, and highways shall be thirty-five miles per hour. All driving shall be confined to designated roadways. Whenever the commission determines that a thirty-five mile-per-hour speed limit is greater than is reasonable or safe under the conditions found to exist at any place of congestion or upon any part of the park roads, drives, or highways, the commission shall determine and declare a reasonable and safe speed limit, which shall be effective when appropriate signs giving notice of the changed speed limit are erected at the places of congestion or other parts of the park roads, drives, or highways.

[C39, §**1828.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.36]

86 Acts, ch 1245, §1877

C93, §461A.36

2016 Acts, ch 1073, §131

Referred to in §321.285, 350.10, 461A.57, 805.8A(5)(a)

For applicable scheduled fines, see §805.8A, subsections 5 and 14

461A.37 Excessive loads.

Excessively loaded vehicles shall not operate over state park or preserve drives, roads or highways. The determination as to whether the load is excessive will be made by the director or the director's representative and will depend upon the load and the road conditions.

[C39, §**1828.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.37]

86 Acts, ch 1245, §1878

C93, §461A.37

Referred to in §350.10, 461A.57

461A.38 Parking.

All vehicles shall be parked in designated parking areas, and no vehicle shall be left unattended on any state park or preserve drive, road or highway, except in the case of an emergency.

[C39, §**1828.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.38]

C93, §461A.38

Referred to in §350.10, 461A.57, 805.8A(1)(a)

For applicable scheduled fine, see §805.8A, subsection 1, paragraph a

461A.39 Hitching to trees.

No horse or other animal shall be hitched or tied to any tree or shrub, or in such a manner as to result in injury to state property.

[C39, §**1828.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.39]

C93, §461A.39

Referred to in §350.10, 461A.57, 805.8B(6)(a)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.40 Fires.

No fires shall be built, except in a place provided therefor, and such fire shall be extinguished when site is vacated unless it is immediately used by some other party.

[C39, §**1828.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.40]

C93, §461A.40

Referred to in §350.10, 461A.57, 805.8B(6)(b)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.41 Removing plants, flowers, or fruit.

1. No person shall, in any manner, remove, destroy, injure, or deface any tree, shrub,

plant, or flower, or the fruit thereof, or disturb or injure any structure or natural attraction, except that upon written permission of the commission certain specimens may be removed for scientific purposes.

2. This section shall not apply to activities of the commission or its officers, or employees when caring for and managing state-owned land and waters under the jurisdiction of the commission. This section shall not apply to the gathering or removal of any tree, shrub, plant, flower, fruits, structures, or natural attractions under terms, conditions, limitations, and restrictions adopted by the commission as rules under chapter 17A.

[C39, §**1828.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.41]
86 Acts, ch 1245, §1877
C93, §461A.41
Referred to in §350.10, 461A.57

461A.42 Use of firearms, explosives, weapons, and fireworks prohibited — exceptions.

1. The use of firearms, explosives, and weapons of all kinds by a person is prohibited in all state parks and preserves except under the following conditions:

a. A firearm or other weapon authorized for hunting may be used in preserves or parts of preserves designated by the state advisory board on preserves at the request of the commission.

b. A person may use a bow and arrow with an attached bow fishing reel and ninety-pound minimum line attached to the arrow to take rough fish as provided by rule of the commission.

c. The commission may establish, by rule, the state parks or parts of state parks where firearms may be discharged during special events, festivals and education programs, or a special hunt to control animal populations. The rules governing special hunts to control animal populations shall be applied separately to each designated state park.

2. The use of consumer fireworks or display fireworks, as defined in section 727.2, in state parks and preserves is prohibited except as authorized by a permit issued by the department. The commission shall establish, by rule adopted pursuant to chapter 17A, a fireworks permit system which authorizes the issuance of a limited number of permits to qualified persons to use or display fireworks in selected state parks and preserves.

3. A person violating this section is guilty of a simple misdemeanor punishable as a scheduled violation pursuant to section 805.8B, subsection 6, paragraph "*c*".

[C39, §**1828.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.42]
86 Acts, ch 1245, §1877; 91 Acts, ch 101, §1
C93, §461A.42
97 Acts, ch 180, §1; 99 Acts, ch 153, §10; 2012 Acts, ch 1118, §2; 2017 Acts, ch 115, §9, 12
Referred to in §350.10, 724.4A, 805.8B(6)(c)

461A.43 Littering grounds.

No person shall place any waste, refuse, litter or foreign substance in any area or receptacle except those provided for that purpose.

[C39, §**1828.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.43]
C93, §461A.43
Referred to in §350.10, 461A.57, 602.8108, 805.8B(6)(e)
For applicable scheduled fine, see §805.8B, subsection 6, paragraph e

461A.44 Prohibited areas.

No person shall enter upon portions of any state park or preserve in disregard of official signs forbidding same, except by permission of the director or the director's representative.

[C39, §**1828.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.44]
86 Acts, ch 1245, §1878
C93, §461A.44
Referred to in §350.10, 805.8B(6)(c)
For applicable scheduled fine, see §805.8B, subsection 6, paragraph c

461A.45 Animals on leash.

No privately owned animal shall be allowed to run at large in any state park or preserve or upon lands or in waters owned by or under the jurisdiction of the commission except by

permission of the commission. Every such animal shall be deemed as running at large unless the owner carries such animal or leads it by a leash or chain not exceeding six feet in length, or keeps it confined in or attached to a vehicle.

[C39, §**1828.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.45]

C93, §461A.45

Referred to in §350.10, 461A.57, 805.8B(6)(a)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.46 Closing time.

Except by arrangement or permission granted by the director or the director's authorized representative, all persons shall vacate state parks and preserves before 10:30 p.m. Areas may be closed at an earlier or later hour, of which notice shall be given by proper signs or instructions. The provisions of this section shall not apply to authorized camping in areas provided for that purpose.

[C39, §**1828.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.46]

C93, §461A.46

Referred to in §350.10, 461A.57, 805.8B(6)(b)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.47 Camping. Repealed by 2018 Acts, ch 1129, §2. See §455A.14.

461A.48 Camping areas.

No person shall camp in any portion of a state park or preserve except in portions prescribed or designated by the commission.

[C39, §**1828.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.48]

C93, §461A.48

Referred to in §350.10, 461A.57, 805.8B(6)(d)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph d

461A.49 Time limit.

No camping unit shall be permitted to camp for a period longer than that designated by the commission for the specific state park or preserve, and in no event longer than for a period of two weeks.

[C39, §**1828.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.49]

C93, §461A.49

Referred to in §350.10, 461A.57, 805.8B(6)(b)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph b

461A.50 Registering — vacating.

Any person who camps in any state park or preserve shall register the person's name and address with the park custodian and advise the custodian when the camp is vacated.

[C39, §**1828.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.50]

C93, §461A.50

Referred to in §350.10, 461A.57, 805.8B(6)(a)

For applicable scheduled fine, see §805.8B, subsection 6, paragraph a

461A.51 Camping refused.

Custodians are given authority to refuse camping privileges and to rescind any and all camping permits for cause.

[C39, §**1828.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.51]

C93, §461A.51

Referred to in §350.10, 461A.57

SUBCHAPTER II

ICE, SAND, AND GRAVEL REMOVAL

461A.52 Agreement with commission.

No person shall remove any ice, sand, gravel, stone, wood, or other natural material from any lands or waters under the jurisdiction of the commission without first entering into an agreement with the commission.

[C39, §**1828.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.52]
C93, §461A.52
Referred to in §350.10, 461A.57

461A.53 Permits.

1. The commission may enter into agreements for the removal of ice, sand, gravel, stone, wood, or other natural material from lands or waters under the jurisdiction of the commission if, after investigation, it is determined that such removal will not be detrimental to the state's interest.

2. The commission may specify the terms and consideration under which such removal is permitted and issue written permits for such removal.

[C39, §**1828.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.53]
C93, §461A.53
2010 Acts, ch 1160, §1, 2
Referred to in §350.10, 461A.57

461A.54 Barriers on ice field.

Any person removing ice under a permit shall erect barriers on any part of an ice field where ice is cut, where said field crosses or traverses any part of a stream or lake that is used as a way of passage.

[C39, §**1828.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.54]
C93, §461A.54
Referred to in §350.10, 461A.57

461A.55 Dredging.

In removing sand, gravel, or other material from state-owned waters by dredging, the operator shall so arrange the operator's equipment that other users of the lake or stream shall not be endangered by cables, anchors, or any concealed equipment. No waste material shall be left in the water in such manner as to endanger other craft or to change the course of any stream.

[C39, §**1828.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.55]
C93, §461A.55
Referred to in §350.10, 461A.57

461A.56 Disturbing natural bank.

Where operations are entirely on private property adjacent to a public lake or stream the natural bank between the state and privately owned areas shall not be removed except by permission of the commission.

[C39, §**1828.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.56]
C93, §461A.56
Referred to in §350.10, 461A.57

461A.57 Penalties.

Unless another punishment is provided, any person violating any of the provisions of sections 461A.36 through 461A.41, 461A.43, and 461A.45 through 461A.56 is guilty of a simple misdemeanor.

[C39, §**1828.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §111.57]
85 Acts, ch 206, §2

C93, §461A.57
2012 Acts, ch 1118, §3; 2015 Acts, ch 30, §142
Referred to in §350.10

SUBCHAPTER III

MAINTENANCE EQUIPMENT

461A.58 Use by cities and state department of transportation.

The city council within the limits of the municipal corporation and the state department of transportation may permit use of maintenance equipment under their control in state parks and other lands of the commission.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, S81, §111.58; 81 Acts, ch 117, §1011]
86 Acts, ch 1245, §1877
C93, §461A.58

SUBCHAPTER IV

WATER RECREATIONAL AREAS

461A.59 Powers in municipalities.

Municipalities or corporations organized for that purpose only, acting separately or in conjunction with each other in counties not having a county conservation board, may establish water recreational areas and when established without the support of public funds of the state of Iowa, the municipalities or corporations establishing the same, as the case may be, shall have control thereof independently of the executive council.

[C66, 71, 73, 75, 77, 79, 81, §111.59]
C93, §461A.59
Referred to in §331.382

461A.60 Application for permit.

Any municipality or corporation seeking to establish a water recreational area without public funds of the state of Iowa shall file with the commission a verified petition asking for a permit to establish a water recreational area.

[C66, 71, 73, 75, 77, 79, 81, §111.60]
86 Acts, ch 1245, §1877
C93, §461A.60
Referred to in §331.382

461A.61 Petition.

Said petition shall state:

1. The name of the municipality or corporation.
2. The applicant's principal office and place of business.
3. A legal description of the lands to be included within said water recreational area, a showing that seventy-five percent of the area is either owned or under option for purchase by the applicant, together with a map thereof.
4. A general description of the public and private highways, grounds and real estate, streams and private lands of any kind within said area.
5. The tentative locations, types of dams to be constructed for any artificial lakes to be established, the proposed area to be inundated by the waters to be impounded by said dams, and a map showing the location of said dams and areas to be inundated.
6. A map showing the location of proposed roads, fixtures, utilities and other facilities necessary in the operation of said water recreational area.

7. The proposed plan of operation and regulations for the use of said facilities by the public.

[C66, 71, 73, 75, 77, 79, 81, §111.61]
C93, §461A.61
Referred to in §331.382

461A.62 Copy to environmental protection commission.

A copy of the petition and the applications, plans, and specifications required under chapter 455B shall be filed with the environmental protection commission and any approval or permit required under chapter 455B shall be obtained prior to the establishment of the water recreational area or the granting of a permit for the area by the commission.

[C66, 71, 73, 75, 77, 79, 81, §111.62; 82 Acts, ch 1199, §57, 96]
83 Acts, ch 101, §13; 86 Acts, ch 1245, §1865
C93, §461A.62
Referred to in §331.382

461A.63 Hearing — notice.

On the filing of said petition the commission shall fix a date for hearing thereon and shall cause notice thereof to be published in some newspaper of general circulation in each county in which said proposed water recreational area will be established, said notice to be published for two consecutive weeks.

[C66, 71, 73, 75, 77, 79, 81, §111.63]
86 Acts, ch 1245, §1877
C93, §461A.63
Referred to in §331.382, 461A.76

461A.64 Time and place.

Said hearing shall not be less than ten days nor more than thirty days from the date of the last publication and shall be held in the office of the commission or such place as the commission shall decide.

[C66, 71, 73, 75, 77, 79, 81, §111.64]
86 Acts, ch 1245, §1877
C93, §461A.64
Referred to in §331.382

461A.65 Objections.

Any person, corporation, company, levee or drainage district or city whose rights or interests may be affected by said proposed water recreational area may file written objections to said proposed water recreational area or to the granting of said permit.

[C66, 71, 73, 75, 77, 79, 81, §111.65]
C93, §461A.65
Referred to in §331.382

461A.66 Filing.

All such objections shall be on file in the office of said commission not less than five days before the date of hearing on said application but said commission may permit the filing of said objections later than five days before said hearing in which event the applicant must be granted a reasonable time to meet said objections.

[C66, 71, 73, 75, 77, 79, 81, §111.66]
86 Acts, ch 1245, §1877
C93, §461A.66
Referred to in §331.382

461A.67 Examination — testimony.

The commission may examine the proposed water recreational area or may cause such examination to be made by an engineer or such other persons as it desires to be selected by it, who shall report the results of said examination to the commission. At said hearing the commission shall consider the petition and any objections filed thereto and may at its

discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C66, 71, 73, 75, 77, 79, 81, §111.67]
86 Acts, ch 1245, §1877
C93, §461A.67
Referred to in §331.382

461A.68 Final order — condition.

The commission may grant such permit in whole or in part upon such terms, conditions, and restrictions as may be determined by the commission to be just and proper and in the public interest. However, before any permit shall be granted to any such municipality or corporation, the commission shall, after public hearing as provided in this subchapter, determine whether the water recreational area will be in the interests of the public health and welfare and an affirmative finding to such effect shall be a condition precedent to the granting of such permit.

[C66, 71, 73, 75, 77, 79, 81, §111.68]
C93, §461A.68
2017 Acts, ch 29, §130
Referred to in §331.382

461A.69 Costs and fees.

Applicant shall pay all costs and expenses of the hearing and necessary preliminary investigation in connection therewith, including the cost of publishing notice of hearing.

[C66, 71, 73, 75, 77, 79, 81, §111.69]
C93, §461A.69
Referred to in §331.382

461A.70 Permit.

The commission shall cause to be prepared a uniform blank form of permit which shall provide a space for a general description of the area authorized to be included in any water recreational area to be established hereunder, the name and address of the municipality or corporation to whom said permit is granted and the terms and conditions upon which it is granted. Said permit shall be signed by the chairperson and all other members of the commission and the official seal of said commission shall be attached thereto.

[C66, 71, 73, 75, 77, 79, 81, §111.70]
86 Acts, ch 1245, §1877
C93, §461A.70
Referred to in §331.382, 461A.71, 461A.75

461A.71 Public access and use.

Any lake in the water recreational area, together with at least twenty-five percent of the water frontage of the water recreational area and all land which adjoins and lies within one hundred yards from any point of such twenty-five percent of the water frontage, shall be permanently subject to and available for free public access and use. The municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, and such easement shall not be impaired or destroyed in whole or in part by nonuse. Before a permit is granted as provided in section 461A.70, the commission and the municipality or corporation shall agree on the location and description of such water frontage and land to be permanently subject to and available for free public access and use, and such location and description shall be stated in the permit. However, in lieu of the foregoing procedure, the commission and the municipality or corporation may agree that the commission may select such water frontage and land after the permit is granted, and the permit shall so state. At any time the commission, with the written consent of the municipality or corporation, may designate any additional land within the water recreational area to be permanently subject to and available for free public access and use; and the municipality or corporation shall grant to the state of Iowa a perpetual easement for such public access and use, which easement shall not be impaired or destroyed in whole or in part by nonuse. However, the commission may enter into agreements from time to time with one

or more municipalities or corporations for the management, development, improvement, care and maintenance of such lake, water frontage and land.

[C66, 71, 73, 75, 77, 79, 81, §111.71]
86 Acts, ch 1245, §1877
C93, §461A.71
Referred to in §331.382, 461A.75

461A.72 Sale of permit.

No permit shall be sold until the sale is approved by the commission.

[C66, 71, 73, 75, 77, 79, 81, §111.72]
C93, §461A.72
Referred to in §331.382

461A.73 Records.

The commission shall keep a record of all permits granted and issued by it showing when and to whom issued and the location of the area of the proposed water recreational area covered thereby.

[C66, 71, 73, 75, 77, 79, 81, §111.73]
86 Acts, ch 1245, §1877
C93, §461A.73
Referred to in §331.382

461A.74 Extension of permit.

Any municipality or corporation owning a permit granted under this subchapter, which desires to acquire an extension of the permit, may petition the commission in the same manner provided for the granting of the permit and the same proceeding shall be had on the extension petition as on an original application.

[C66, 71, 73, 75, 77, 79, 81, §111.74]
C93, §461A.74
2017 Acts, ch 29, §131
Referred to in §331.382

461A.75 Condemnation of land.

Whenever a permit has been granted as provided in section 461A.70 and the commission finds that the municipality or corporation owning such permit cannot acquire at a reasonable cost any necessary land or interest therein, the commission, with the approval of the executive council, may condemn such land or interest therein as provided in chapter 6B. However, such condemnation shall be limited to land and interests therein which will be permanently subject to and available for free public access and use, as provided in section 461A.71, or which will be required for a dam or other facilities necessary for the water recreational area. All costs of such condemnation, including all costs occasioned by appeal as set out in section 6B.33, and including the award and compensation for such land or interest therein, shall be paid by such municipality or corporation. The commission may permit such municipality or corporation to use such land or interest therein for the purposes of this subchapter, upon such terms, conditions and restrictions as the commission shall determine to be just and proper and for free public access and use. Title to such land or interest therein shall remain in the state of Iowa.

[C66, 71, 73, 75, 77, 79, 81, §111.75]
86 Acts, ch 1245, §1877
C93, §461A.75
2014 Acts, ch 1026, §143
Referred to in §331.382

461A.76 Contracts with local authorities.

1. Notwithstanding anything in chapter 468, subchapter I, parts 1 through 5, to the contrary, county boards of supervisors and trustees having control of any levee or drainage district established thereunder, including joint levee or drainage districts, may enter into contracts and agreements with municipalities or corporations authorized to establish water

recreational areas under the provisions of this subchapter. Such contracts or agreements shall be in writing and may be made prior to or after the establishment of a water recreational area. If made prior to the establishment of a water recreational area they may be made conditional upon the final establishment of such area and if conditional upon such final establishment may be entered into prior to the hearing provided for in section 461A.63.

2. Such contracts or agreements may embrace any of the following subjects:

a. For the impoundment of drainage waters to create artificial lakes or ponds.

b. For compensation to drainage districts for drainage improvements destroyed or rendered useless by the establishment of water recreational areas and the structures, waters or works thereof.

c. For the diversion of waters from established drainage ditches or tile drains to other channels.

d. For sanitary measures and precautions.

e. For the control of water levels in lakes, ponds or impoundments of water to avoid damage to or malfunction of drainage facilities.

f. For the construction of additional drainage facilities promoting the interests of either or both of the contracting parties.

g. For the granting of easements or licenses by one party to the other.

h. For the payment of money by one contracting party to the other in consideration of acts or performance of the other party required by such contract or agreement.

3. When any expenditure of levee or drainage district funds is proposed by the authority contained in this section and where the estimated expenditure will exceed fifty percent of the original total cost of the district and subsequent improvements therein as defined by section 468.126, the same procedure respecting notice and hearing shall be followed as is provided in said section 468.126, for repair proposals where the estimated cost of the repair exceeds fifty percent of the original total cost of the district and subsequent improvements therein.

[C66, 71, 73, 75, 77, 79, 81, §111.76]
C93, §461A.76
2011 Acts, ch 34, §106; 2014 Acts, ch 1026, §143
Referred to in §331.382

461A.77 Prohibited near borders of state.

In order to reduce the possibility of affecting conservation measures to flood control projects which may be in progress in other states, water recreational areas shall not be established hereunder within seventy miles of the border of any other state.

[C66, 71, 73, 75, 77, 79, 81, §111.77]
C93, §461A.77
Referred to in §331.382

461A.78 Method not exclusive.

This subchapter shall not be the exclusive method for establishing a water recreational area and shall not be construed to prohibit the establishment of public recreational areas by the Missouri river preservation and land use authority under chapter 463B.

[C66, 71, 73, 75, 77, 79, 81, §111.78]
91 Acts, ch 246, §4
C93, §461A.78
2014 Acts, ch 1026, §143
Referred to in §331.382

SUBCHAPTER V

PUBLIC OUTDOOR RECREATION AND RESOURCES

461A.79 Public outdoor recreation and resources.

1. Fifty percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on land acquisition and capital improvements

in carrying out this chapter. Acquisition projects, both fee-simple and less-than-fee, from willing sellers, may be for purposes of establishment or expansion of state parks, public hunting areas, natural areas, public fishing areas, water access sites, trail corridors, and other acquisition projects that are in accord with this chapter. Notwithstanding the exemption provided by section 427.1, land acquired under this subsection is subject to the full consolidated levy of property taxes which shall be paid from revenues available to be expended under this subsection. Capital improvements may be either new developments or rehabilitative in nature. Lake and watershed restoration projects are eligible for funding under this subsection. Not more than fifty percent of the revenues available to be expended under this subsection may be used by the commission to enter into agreements with county conservation boards and county boards of supervisors in those counties without conservation boards to carry out the purposes of this subsection. The agreement shall not provide for the payment by the commission of more than seventy-five percent of the cost of the project and the agreement shall specify that the county conservation board or county board of supervisors, whichever is applicable, shall provide funds for the remaining cost of the project covered by the agreement. Moneys available to be expended under this subsection may be used for the matching of federal funds.

2. Forty-five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on the state recreation tourism grant program. This program shall provide matching grants to cities and unincorporated communities for purposes of developing or improving recreational projects or tourist attractions. A city or unincorporated community may submit an application to the commission for a matching grant, except that an unincorporated community shall submit the application through the county board of supervisors. Applications shall be reviewed by the advisory council for public outdoor recreation and resources. The advisory council shall submit recommendations to the commission regarding possible recipients and grant amounts. Grants made to an unincorporated community shall be paid to the county board of supervisors to be used for the project of the unincorporated community. The amount of the grant shall not exceed fifty percent of the cost of the development or improvement to be made and the application must demonstrate that the city or unincorporated community will provide the required matching funds.

3. Five percent of the funds appropriated for purposes of this section for public outdoor recreation and resources shall be expended on advertising which shall promote the use of recreational facilities and tourist attractions in the state. The commission shall enter into an agreement with the economic development authority for the expenditure of these funds for this purpose.

4. Moneys available to be expended for purposes of this section for public outdoor recreation and resources shall be credited to or deposited to the general fund of the state and appropriations made for purposes of this section shall be allocated as provided in this section. Moneys credited to or deposited to the general fund of the state pursuant to this subsection are subject to the requirements of section 8.60.

84 Acts, ch 1262, §1
C85, §111.79
86 Acts, ch 1245, §1877; 91 Acts, ch 260, §1212; 92 Acts, ch 1163, §28
C93, §461A.79
93 Acts, ch 131, §18; 94 Acts, ch 1107, §74; 2011 Acts, ch 118, §85, 89
Referred to in §461A.80

461A.80 Public outdoor recreation and resources advisory council.

1. An advisory council for public outdoor recreation and resources appropriations made for the purposes of section 461A.79 is created. The council shall consist of a public member appointed by the governor from each congressional district, the chairperson of the commission, the director, and a designee of the economic development authority.

2. Each county conservation board of those counties which are located in a congressional district shall nominate one person from the congressional district for appointment to the advisory council. The commission shall compile a list of the nominations of the county

conservation boards for each congressional district and shall provide this list to the governor. The governor shall appoint one member from each congressional district from the nominations as provided. Appointments shall be made for three-year terms beginning July 1 in the year of appointment. A person shall not serve more than two terms. A vacancy shall be filled for the unexpired term in the same manner as the original appointment was made.

3. No more than three public members shall belong to the same political party. The council shall elect a chairperson annually from among the council's members, and the director shall serve as council secretary. Persons already serving in an elected or appointed governmental capacity are not eligible to serve as council members.

4. The advisory council shall meet annually, in July, and upon the call of the chairperson of the advisory council. The advisory council shall make policy recommendations to the commission regarding the projects and programs to be funded from funds available for public outdoor recreation and resources from appropriations made for the purposes of section 461A.79.

5. The public members of the advisory council shall be reimbursed for actual and necessary expenses for each day employed in the official discharge of their duties. The expenses shall be paid from the administration fund of the commission. Each member of the council may also be eligible to receive compensation as provided in section 7E.6.

84 Acts, ch 1262, §2
C85, §111.80
86 Acts, ch 1245, §1866, 1877
C93, §461A.80
94 Acts, ch 1107, §75; 2011 Acts, ch 118, §85, 89; 2012 Acts, ch 1021, §83

SUBCHAPTER VI

STATE LANDS VOLUNTEER PROGRAM

461A.81 State lands volunteer program — liability.

The department shall establish a state lands volunteer program to authorize nonprofit organizations, and individuals providing services on behalf of the nonprofit organizations, to provide, at no compensation, volunteer services for the benefit of state parks and recreation areas, state game and forest areas, or other lands under the jurisdiction of the department of natural resources. The department shall adopt rules governing the administration of the program to include eligibility requirements for nonprofit organizations participating in the program and provisions governing approved volunteer duties or services. Nonprofit organizations, and individuals providing services on behalf of nonprofit organizations, authorized to provide volunteer services for no compensation by the department pursuant to this section shall be considered state volunteers and afforded the same protections as provided in section 669.24 while performing approved volunteer duties or services on state lands, as described in this section, as a volunteer.

2014 Acts, ch 1046, §1

CHAPTER 461B

USE OF STATE WATERS BY NONRESIDENTS

Referred to in §232.8, 456A.14, 456A.24, 481A.1, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 106A in Code 1993
See §321.498 et seq. for similar provisions for motor vehicles

461B.1 Legal effect of use and operation.
461B.2 "Person" defined.
461B.3 Original notice — form.
461B.4 Manner of service.
461B.5 Notification to nonresident — form.
461B.6 Optional notification.
461B.7 Proof of service.
461B.8 Actual service within this state.
461B.9 Venue of actions.
461B.10 Continuances.
461B.11 Duty of secretary of state.
461B.12 Expenses and attorney fees.
461B.13 Dismissal — effect.
461B.14 Action against insurance.

461B.1 Legal effect of use and operation.

The use, operation or maintenance by any nonresident of watercraft in the waters of this state, shall be deemed an appointment by such nonresident of the secretary of state as the nonresident's true and lawful attorney upon whom may be served all original notices of suit growing out of such use, operation or maintenance or resulting in damage or loss to person or property and said use, operation or maintenance shall be deemed an agreement by such nonresident that any original notice of suit so served shall be of the same legal force and validity as if personally served on the nonresident in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.1]
C93, §461B.1

461B.2 "Person" defined.

The term "*person*" as used in this chapter means:

1. The owner of watercraft whether it is being used and operated personally by said owner or by the owner's agent.
2. An agent using and operating the watercraft for the agent's principal.
3. Any person who is in charge of the watercraft and of the use and operation thereof with the express or implied consent of the owner.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.2]
C93, §461B.2

461B.3 Original notice — form.

The original notice of suit filed with the secretary of state shall be in form and substance the same as now provided in suits against residents of this state, except that the part of said notice pertaining to the return day shall be in substantially the following form, to wit:

> "and unless you appear thereto and defend in the district court of Iowa in and for ..... county at the courthouse in ....., Iowa before noon of the sixtieth day following the filing of this notice with the secretary of state, default will be entered and judgment rendered against you."

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.3]
C93, §461B.3

461B.4 Manner of service.

Plaintiff in any such action shall cause the original notice of suit to be served as follows:

1. By filing a copy of said original notice of suit with said secretary of state, together with a fee of four dollars, and
2. By mailing to the defendant, and to each of the defendants if more than one, within ten days after said filing with the secretary of state, by restricted certified mail addressed to the

defendant at the defendant's last known residence or place of abode, a notification of the said filing with the secretary of state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.4; 81 Acts, ch 21, §4]
C93, §461B.4

461B.5 Notification to nonresident — form.

The notification, provided for by this chapter, shall be substantially in the following form, to wit:

> To ..... (Here insert the name of each defendant and the defendant's residence or last known place of abode.)
>
> You will take notice that an original notice of suit against you, a copy of which is hereto attached, was duly served upon you at Des Moines, Iowa, by filing a copy of said notice on the ..... day of ..... (month), ... (year), with the secretary of state.
>
> Dated at ....., Iowa, this ..... day of ..... (month), ... (year)
>
> .....
>
> Plaintiff
>
> By .....
>
> Attorney for Plaintiff

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.5]
C93, §461B.5
2000 Acts, ch 1058, §56

461B.6 Optional notification.

In lieu of mailing said notification to the defendant in a foreign state, plaintiff may cause said notification to be personally served in the foreign state on the defendant by any adult person not a party to the suit, by delivering said notification to the defendant or by offering to make such delivery in case defendant refuses to accept delivery.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.6]
C93, §461B.6

461B.7 Proof of service.

Proof of the filing of a copy of said original notice of suit with the secretary of state, and proof of the mailing or personal delivery of said notification to said nonresident shall be made by affidavit of the party doing said acts. All affidavits of service shall be endorsed upon or attached to the originals of the papers to which they relate. All proofs of service, including the restricted certified mail return receipt, shall be forthwith filed with the clerk of the district court.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.7]
C93, §461B.7

461B.8 Actual service within this state.

The provisions of this chapter relative to service of original notice of suit on nonresidents shall not be deemed to prevent actual personal service in this state upon the nonresident in the time, manner, form, and under the conditions provided for service on residents.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.8]
C93, §461B.8
2009 Acts, ch 133, §157

461B.9 Venue of actions.

Actions against nonresidents as contemplated by this chapter may be brought in the county of which plaintiff is a resident, or in the county in which the injury was received or damage done.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.9]
C93, §461B.9

461B.10 Continuances.

The court in which such action is pending shall grant such continuances to a nonresident defendant as may be necessary to afford the nonresident defendant reasonable opportunity to defend said action.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.10]
C93, §461B.10

461B.11 Duty of secretary of state.

The secretary of state shall keep a record of all notices of suit filed with the secretary, shall not permit said filed notices to be taken from the secretary's office except on an order of court and shall, on request, and without fee, furnish any defendant with a certified copy of the notice in which the person is defendant.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.11]
C93, §461B.11

461B.12 Expenses and attorney fees.

If judgment is rendered against the plaintiff upon the trial of said action, said judgment shall include the reasonable expenses incurred by the defendant and the defendant's attorney in appearing to and defending against said action, provided that in the judgment of the trial court said action was commenced maliciously or without probable cause.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.12]
C93, §461B.12

461B.13 Dismissal — effect.

The dismissal of an action after the nonresident has entered a general appearance under the substituted service herein authorized shall bar the recommencement of the same action against the same defendant unless said recommenced action is accompanied by actual personal service of the original notice of suit on said defendant in this state.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.13]
C93, §461B.13

461B.14 Action against insurance.

Any contract insuring the liability of a nonresident operator of a motorboat in Iowa shall, in case of the death of said nonresident, be considered an asset of the nonresident's estate having a situs in Iowa in any civil action arising out of an accident in which said nonresident may be liable.

[C62, 66, 71, 73, 75, 77, 79, 81, §106A.14]
C93, §461B.14

CHAPTER 461C

PUBLIC USE OF PRIVATE LANDS AND WATERS

Referred to in §456A.24, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 111C in Code 1993

461C.1 Purpose.
461C.2 Definitions.
461C.3 Liability of holder limited.
461C.4 Users not invitees or licensees.
461C.5 Duties and liabilities of holder of leased land.
461C.6 When liability lies against holder.
461C.7 Construction of law.
461C.8 Urban deer control — municipal ordinance.

461C.1 Purpose.

The purpose of this chapter is to encourage private holders of land to make land and water areas available to the public for a recreational purpose and for urban deer control by limiting a holder's liability toward persons entering onto the holder's property for such purposes. The provisions of this chapter shall be construed liberally and broadly in favor of private holders of land to accomplish the purposes of this chapter.

[C71, 73, 75, 77, 79, 81, §111C.1]

C93, §461C.1

2006 Acts, ch 1121, §1; 2007 Acts, ch 22, §84; 2013 Acts, ch 128, §1; 2013 Acts, ch 140, §29, 39

461C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Charge"* means any consideration, the admission price or fee asked in return for invitation or permission to enter or go upon the land.

2. *"Holder"* means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises; provided, however, holder shall not mean the state of Iowa, its political subdivisions, or any public body or any agencies, departments, boards, or commissions thereof.

3. *"Land"* means private land that is one or any combination of the following: abandoned or inactive surface mines; caves; land used for agricultural purposes; marshlands; timber; grasslands; or the privately owned roads, paths, trails, waters, water courses, exteriors and interiors of buildings, structures, machinery, or equipment appurtenant thereto. *"Land"* includes land that is not open to the general public. *"Land"* also includes private land located in a municipality in connection with and while being used for urban deer control.

4. *"Municipality"* means any city or county in the state.

5. *"Recreational purpose"* means the following or any combination thereof: hunting, trapping, horseback riding, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycling, all-terrain vehicle riding, nature study, water skiing, snowmobiling, other summer and winter sports, educational activities, and viewing or enjoying historical, archaeological, scenic, or scientific sites while going to and from or actually engaged therein. *"Recreational purpose"* includes the activity of accompanying another person who is engaging in such activities. *"Recreational purpose"* is not limited to active engagement in such activities, but includes entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activities.

6. *"Urban deer control"* means deer hunting with a bow and arrow on private land in a municipality, without charge, as authorized by a municipal ordinance, for the purpose of reducing or stabilizing an urban deer population in the municipality. *"Urban deer control"* is not limited to active engagement in the activity of urban deer control but includes entry onto, use of, passage over, and presence on any part of the land in connection with or during the course of such activity.

[C71, 73, 75, 77, 79, 81, §111C.2]

88 Acts, ch 1216, §46

C93, §461C.2
2006 Acts, ch 1121, §2, 3; 2012 Acts, ch 1100, §58; 2013 Acts, ch 128, §2; 2013 Acts, ch 140, §29, 39

461C.3 Liability of holder limited.

1. Except as specifically recognized by or provided in section 461C.6, a holder of land does not owe a duty of care to keep the premises safe for entry or use by others for a recreational purpose or urban deer control, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes.
2. Except as specifically recognized by or provided in section 461C.6, a holder of land does not owe a duty of care to others solely because the holder is guiding, directing, supervising, or participating in any recreational purpose or urban deer control undertaken by others on the holder's land.

[C71, 73, 75, 77, 79, 81, §111C.3]
C93, §461C.3
2006 Acts, ch 1121, §4; 2013 Acts, ch 128, §3; 2013 Acts, ch 140, §29, 39
Referred to in §461C.5

461C.4 Users not invitees or licensees.

Except as specifically recognized by or provided in section 461C.6, a holder of land who either directly or indirectly invites or permits without charge any person to use such property for a recreational purpose or urban deer control does not thereby:

1. Extend any assurance that the premises are safe for any purpose.
2. Confer upon such person the legal status of an invitee or licensee to whom the duty of care is owed.
3. Assume a duty of care to such person solely because the holder is guiding, directing, supervising, or participating in any recreational purpose or urban deer control undertaken by the person on the holder's land.
4. Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

[C71, 73, 75, 77, 79, 81, §111C.4]
C93, §461C.4
2006 Acts, ch 1121, §5; 2013 Acts, ch 128, §4, 5; 2013 Acts, ch 140, §29, 39
Referred to in §461C.5

461C.5 Duties and liabilities of holder of leased land.

Unless otherwise agreed in writing, the provisions of sections 461C.3 and 461C.4 shall be deemed applicable to the duties and liability of a holder of land leased, or any interest or right therein transferred to, or the subject of any agreement with, the United States or any agency thereof, or the state or any agency or subdivision thereof, for a recreational purpose or urban deer control.

[C71, 73, 75, 77, 79, 81, §111C.5]
C93, §461C.5
2006 Acts, ch 1121, §6; 2013 Acts, ch 128, §6; 2013 Acts, ch 140, §29, 39

461C.6 When liability lies against holder.

Nothing in this chapter limits in any way any liability which otherwise exists:

1. For willful or malicious failure to guard or warn against a dangerous condition, use, structure, or activity.
2. For injury suffered in any case where the holder of land charges the person or persons who enter or go on the land for the recreational use thereof or for deer hunting, except that in the case of land or any interest or right therein, leased or transferred to, or the subject of any agreement with, the United States or any agency thereof or the state or any agency thereof or subdivision thereof, any consideration received by the holder for such lease, interest, right, or agreement shall not be deemed a charge within the meaning of this section.

[C71, 73, 75, 77, 79, 81, §111C.6]

C93, §461C.6
2006 Acts, ch 1121, §7; 2013 Acts, ch 128, §7; 2013 Acts, ch 140, §29, 39
Referred to in §461C.3, 461C.4

461C.7 Construction of law.

Nothing in this chapter shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.

2. Relieve any person using the land of another for a recreational purpose or urban deer control from any obligation which the person may have in the absence of this chapter to exercise care in the use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care.

3. Amend, repeal or modify the common law doctrine of attractive nuisance.

[C71, 73, 75, 77, 79, 81, §111C.7]
C93, §461C.7
2006 Acts, ch 1121, §8; 2013 Acts, ch 128, §8; 2013 Acts, ch 140, §29, 39

461C.8 Urban deer control — municipal ordinance.

1. A municipality may adopt an ordinance authorizing trained, volunteer hunters to hunt deer with a bow and arrow on private land within the municipality, without charge, for the purpose of urban deer control.

2. The ordinance shall specify all of the following:

a. How a person qualifies to participate in urban deer control.

b. Where urban deer control can occur.

c. Conditions under which urban deer control can be conducted, which are intended to minimize the risk of injury to persons and property.

3. A hunter who participates in urban deer control pursuant to this section shall be otherwise qualified to hunt deer in this state, purchase a hunting license that includes the wildlife habitat fee, and obtain a special deer hunting license valid only for the dates, locations, and type of deer specified on the license. Special deer hunting licenses issued pursuant to this section shall be available only to residents and shall cost the same as deer hunting licenses issued during general deer seasons. The commission may establish procedures for issuing more than one license per person as necessary to achieve the purposes of urban deer control, and the cost of each additional license shall be ten dollars.

4. An urban deer control ordinance is not effective until it has been approved by the department of natural resources.

5. The department of natural resources shall adopt rules in accordance with chapter 17A necessary for the administration of this section.

2006 Acts, ch 1121, §9; 2012 Acts, ch 1096, §1, 23

CHAPTER 462

LANDOWNER LIABILITY TO TRESPASSERS

462.1 Liability of possessors and occupants of land to trespassers.

462.1 Liability of possessors and occupants of land to trespassers.

1. A possessor of any fee, reversionary, or easement interest in real property, including but not limited to an owner, lessee, or other lawful occupant, owes no duty of care to a trespasser except to refrain from willfully or wantonly injuring the trespasser and to use reasonable care to avoid injuring the trespasser after that trespasser's presence becomes known.

2. This section shall not be construed to affect the common law doctrine of attractive nuisance.

3. This section does not create or increase the civil liability of any possessor or occupant of

real property and does not affect any immunities from or defenses to civil liability established by another section of the Code or available at common law to which a possessor or occupant of real property may be entitled.

2017 Acts, ch 129, §1, 2

Section applies to all causes of action accrued on or after July 1, 2017; 2017 Acts, ch 129, §2

CHAPTER 462A

WATER NAVIGATION REGULATIONS

Referred to in §88A.11, 99F.7, 232.8, 350.5, 455A.4, 455A.5, 456A.14, 456A.24, 481A.1, 554.13104, 578A.7, 692A.101, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 106 in Code 1993

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SUBCHAPTER I

GENERAL PROVISIONS

462A.1 Declaration of policy.

It is the policy of this state to promote safety for persons and property in and connected with the use, operation and equipment of vessels and to promote uniformity of laws relating thereto.

[C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §**1703.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §106.1]

C93, §462A.1

462A.2 Definitions.

As used in this chapter, unless the context clearly requires a different meaning:

1. *"Alcohol concentration"* means the number of grams of alcohol per any of the following:

a. One hundred milliliters of blood.

b. Two hundred ten liters of breath.

c. Sixty-seven milliliters of urine.

2. *"Alcoholic beverage"* includes alcohol, wine, spirits, beer, or any other beverage which contains ethyl alcohol and is fit for human consumption.

3. *"Authorized emergency vessel"* means any vessel which is designated or authorized by the commission for use in law enforcement, search and rescue, and disaster work.

4. *"Boat livery"* means a person who holds a vessel for hire, renting, leasing, or chartering including hotels, motels, or resorts which furnish a vessel to guests as part of the services of the business.

5. *"Certificate"* means a certificate of title.

6. *"Chemical test"* means an analysis of a person's blood, breath, urine, or other bodily substance for the determination of the presence of alcohol, a controlled substance, or a drug.

7. *"Commission"* means the natural resource commission.

8. *"Controlled substance"* means any drug, substance, or compound that is regulated under chapter 124, including any counterfeit substance or simulated controlled substance, as well as any metabolite or derivative of the drug, substance, or compound.

9. *"Cut-off switch"* means an operable factory-installed or dealer-installed emergency cut-off engine stop switch that is installed on a personal watercraft.

10. *"Cut-off switch lanyard"* means the cord used to attach the person of the operator of a personal watercraft to the cut-off switch.

11. *"Dealer"* means a person who engages in whole or in part in the business of buying,

selling, or exchanging vessels either outright or on conditional sale, bailment, lease, security interest, or otherwise, and who has an established place of business for sale, trade, and display of vessels. A yacht broker is a dealer.

12. *"Department"* means the department of natural resources.

13. *"Director"* means the director of the department or the director's designee.

14. *"Established place of business"* means the place actually occupied either continuously or at regular periods by a dealer or manufacturer where the dealer's or manufacturer's books and records are kept and a large share of the dealer's or manufacturer's business is transacted.

15. *"Farm pond"* means a body of water wholly on the lands of a single owner, or a group of joint owners, which does not have any connection with any public waters and which is less than ten surface acres.

16. *"Inboard"* means a vessel in which the engine is located internally, the propulsion system is rigidly attached to the engine, and the propulsion mechanism is within the confines of the vessel's extreme length and beam.

17. *"Inboard-outdrive"* means a vessel in which the power plant or engine is located inside of the vessel and the propulsion mechanism is located outside of the transom.

18. *"Inflatable vessel"* means a vessel which achieves and maintains its intended shape and buoyancy by inflation.

19. *"Lienholder"* means a person holding a security interest.

20. *"Manufacturer"* means a person engaged in the business of manufacturing or importing new and unused vessels, or new and unused outboard motors, for the purpose of sale or trade.

21. *"Motorboat"* means any vessel propelled by an inboard, inboard-outdrive, or outboard engine, whether or not such engine is the principal source of propulsion.

22. *"Navigable waters"* means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months in one out of every ten years.

23. *"Nonresident"* means every person who is not a resident of this state.

24. *"Operate"* means to navigate or otherwise use a vessel or motorboat. For the purposes of section 462A.12, subsection 2, sections 462A.14, 462A.14A, 462A.14B, 462A.14C, 462A.14D, and 462A.14E, and section 462A.23, subsection 2, paragraph *"b"*, *"operate"*, when used in reference to a motorboat, means the motorboat is powered by a motor which is running, and when used in reference to a sailboat, means the sailboat is either powered by a motor which is running, or the sailboat is under way and has sails hoisted and is not propelled by a motor.

25. *"Operator"* means a person who operates or is in actual physical control of a vessel.

26. *"Owner"* means a person, other than a lienholder, having the property right in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a vessel or motorboat subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

27. *"Passenger"* means a person carried on board a vessel, including the operator, and anyone towed by a vessel on water skis, surfboards, inner tubes, or similar devices.

28. *"Peace officer"* means:

a. A member of the state patrol.

b. A police officer under civil service as provided in chapter 400.

c. A sheriff.

d. A regular deputy sheriff who has had formal police training.

e. Any other certified law enforcement officer as defined in section 80B.3, who has satisfactorily completed an approved course relating to operating while intoxicated, either at the Iowa law enforcement academy or in a law enforcement training program approved by the department of public safety.

29. *"Person"* means an individual, partnership, firm, corporation, or association.

30. *"Personal watercraft"* means a vessel, less than sixteen feet in length, which is propelled by a water jet pump or similar machinery as its primary source of motor propulsion

and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than being operated by a person sitting, standing, or kneeling inside the vessel.

31. *"Privately owned lake"* means any lake, located within the boundaries of this state and not subject to federal control covering navigation owned by an individual, group of individuals, or a nonprofit corporation and which is not open to the use of the general public but is used exclusively by the owners and their personal guests.

32. *"Proceeds"* includes whatever is received when collateral or proceeds are sold, exchanged, collected, or otherwise disposed of. The term also includes the account arising when the right to payment is earned under a contract right. Money, checks, and the like are *"cash proceeds"*. All other proceeds are *"noncash proceeds"*.

33. *"Sailboard"* means a windsurfing vessel with a mount for a sail, a daggerboard, and a small skeg.

34. *"Sailboat"* means any watercraft operated with a sail.

35. *"Security interest"* means an interest which is reserved or created by an agreement which secures payment or performance of an obligation and is valid against third parties generally.

36. *"Serious injury"* means the same as defined in section 702.18.

37. *"State of principal use"* means the state on whose waters a vessel is used or to be used most during a calendar year.

38. *"Undocumented vessel"* means any vessel which is not required to have, and does not have, a valid marine document issued by the bureau of customs or a foreign government.

39. *"Use"* means to operate, navigate, or employ a vessel. A vessel is in use whenever it is upon the water.

40. *"Vessel"* means every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water or ice. Ice boats are watercraft.

41. *"Vessel for hire or commercial vessel"* means a vessel for the use of which a fee of any nature is imposed, including vessels furnished as a part of lodge, hotel, or resort services.

42. *"Wake"* means any movement of water created by a vessel which adversely affects the activities of another person who is involved in activities approved for that area or which may adversely affect the natural features of the shoreline.

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

44. *"Watercraft education certificate"* means a certificate, approved by the commission, which is issued to a qualified applicant who is twelve years of age or older who has successfully completed a watercraft education course approved by the department.

45. *"Waters of this state under the jurisdiction of the commission"* means any navigable waters within the territorial limits of this state, and the marginal river areas adjacent to this state, exempting only farm ponds and privately owned lakes.

46. *"Writing fee"* means the amount paid by the boat owner to the county recorder for handling the transaction.

[C97, §2511; C24, 27, 31, §1691; C35, §1703-e1; C39, §**1703.01, 1703.09, 1703.10;** C46, 50, 54, 58, §106.1, 106.9, 106.10; C62, 66, 71, 73, 75, 77, 79, 81, §106.2; 82 Acts, ch 1028, §2, 3]

86 Acts, ch 1245, §1823 – 1826; 87 Acts, ch 134, §1, 2; 88 Acts, ch 1008, §1; 88 Acts, ch 1134, §24; 92 Acts, ch 1131, §1

C93, §462A.2

2000 Acts, ch 1099, §1; 2002 Acts, ch 1133, §1; 2005 Acts, ch 35, §31; 2007 Acts, ch 28, §2; 2008 Acts, ch 1031, §53; 2010 Acts, ch 1073, §3; 2011 Acts, ch 24, §1; 2012 Acts, ch 1021, §84; 2012 Acts, ch 1100, §59; 2014 Acts, ch 1026, §105; 2019 Acts, ch 59, §148

Referred to in §358.26, 459.310, 459A.404, 459B.202, 713.6A, 713.6B

Subsection 43 amended

462A.3 Powers and duties of commission.

1. The commission is vested with the power and is charged with the duty of observing, administering and enforcing the provisions of this chapter.

2. The commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter and to protect private and public property and the health, safety, and welfare

of the public. In adopting rules, the commission shall give consideration to the various uses to which they may be put by and for public and private purposes, the preservation of each body of water, its bed, waters, ice, banks, and public and private property attached thereto, and the need for uniformity of rules relating to the use, operation, and equipment of vessels and vehicles.

[C97, §2511, 2512; S13, §2512; C24, 27, 31, §1691, 1692, 1694; C35, §1703-e1 – 1703-e3; C39, §**1703.01 – 1703.03, 1703.26;** C46, 50, 54, 58, §106.1 – 106.3, 106.26; C62, 66, 71, 73, 75, 77, 79, 81, §106.3; 82 Acts, ch 1028, §4]

86 Acts, ch 1245, §1826

C93, §462A.3

2019 Acts, ch 24, §63

Referred to in §462A.26

Section amended

462A.3A Public use of water for navigation purposes.

Water occurring in any river, stream, or creek having definite banks and bed with visible evidence of the flow of water is flowing surface water and is declared to be public waters of the state of Iowa and subject to use by the public for navigation purposes in accordance with law. Land underlying flowing surface water is held subject to a trust for the public use of the water flowing over it. Such use is subject to the same rights, duties, limitations, and regulations as presently apply to meandered streams, or other streams deemed navigable for commercial purposes and to any reasonable use by the owner of the land lying under and next to the flowing surface water.

[82 Acts, ch 1028, §34]

C83, §106.69

C93, §462A.69

2015 Acts, ch 30, §204

C2016, §462A.3A

462A.3B Reciprocity.

1. The director, with the consent of the commission, may enter into agreements with the appropriate regulatory agencies of other states as necessary or convenient to carry out the purposes of this chapter and not inconsistent with this chapter, and may do all acts contained in the agreements.

2. The agreements may include, but are not restricted to, the following provisions:

a. Regulations in regard to registration, numbering, and equipment of vessels.

b. Operating requirements for vessels and vessel operators.

c. Enforcement activity of officers.

[82 Acts, ch 1028, §36]

C83, §106.71

C93, §462A.71

2011 Acts, ch 25, §143; 2015 Acts, ch 30, §204

C2016, §462A.3B

462A.4 Operation of unnumbered vessels prohibited.

Every vessel except as provided in sections 462A.6 and 462A.6A on the waters of this state under the jurisdiction of the commission shall be numbered. A person shall not operate, maintain or give permission for the operation or maintenance of any vessel on such waters unless the vessel is numbered in accordance with this chapter or in accordance with applicable federal laws or in accordance with a federally approved numbering system of

another state and unless the certificate of number awarded to the vessel is in full force and effect.

[C97, §2512; S13, §2512; C24, 27, 31, §1692; C35, §1703-e2, 1703-e7; C39, §**1703.02, 1703.07;** C46, 50, 54, 58, §106.2, 106.7; C62, 66, 71, 73, 75, 77, 79, 81, §106.4; 82 Acts, ch 1028, §5]

86 Acts, ch 1245, §1826; 88 Acts, ch 1183, §1

C93, §462A.4

Referred to in §462A.77, 805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.5 Registration and identification number.

1. The owner of each vessel required to be numbered by this state shall initially register it with the commission through the county recorder of the county in which the owner resides, or, if the owner is a nonresident, the owner shall register it in the county in which such vessel is principally used. Both residents and nonresidents shall subsequently renew registration every three years with any county recorder. The commission shall develop and maintain an electronic system for the registration of vessels pursuant to this chapter. The commission shall establish forms and procedures as necessary for the registration of all vessels.

a. The owner of the vessel shall file an application for registration with the appropriate county recorder on forms provided by the commission. The application shall be completed and signed by the owner of the vessel and shall be accompanied by the appropriate fee, and the writing fee specified in section 462A.53. Upon applying for registration, the owner shall display a bill of sale, receipt, or other satisfactory proof of ownership as provided by the rules of the commission to the county recorder. If the county recorder is not satisfied as to the ownership of the vessel or that there are no undisclosed security interests in the vessel, the county recorder may register the vessel but shall, as a condition of issuing a registration certificate, require the applicant to follow the procedure provided in section 462A.5A. Upon receipt of the application in approved form accompanied by the required fees, the county recorder shall enter it upon the records of the recorder's office and shall issue to the applicant a pocket-size registration certificate. The certificate shall be executed and delivered to the owner. The county recorder shall maintain an electronic record of each registration certificate issued by the county recorder under this chapter. The registration certificate shall bear the number awarded to the vessel, the passenger capacity of the vessel, and the name and address of the owner. In the use of all vessels except nonpowered sailboats, nonpowered canoes, and commercial vessels, the registration certificate shall be carried either in the vessel or on the person of the operator of the vessel when in use. In the use of nonpowered sailboats, nonpowered canoes, or commercial vessels, the registration certificate may be kept on shore in accordance with rules adopted by the commission. The operator shall exhibit the certificate to a peace officer upon request or, when involved in an occurrence of any nature with another vessel or other personal property, to the owner or operator of the other vessel or personal property.

b. A vessel that has an expired registration certificate from another state may be registered in this state upon proper application, payment of all applicable registration and writing fees, and payment of a penalty of five dollars.

c. On all vessels except nonpowered sailboats the owner shall cause the identification number to be painted on or attached to each side of the bow of the vessel in such size and manner as may be prescribed by the rules of the commission. On nonpowered boats the number may be placed at alternate locations as prescribed by the rules of the commission. All numbers shall be maintained in a legible condition at all times.

d. No number, other than the number awarded to a vessel under the provisions of this chapter or granted reciprocity pursuant to this chapter, shall be painted, attached or otherwise displayed on either side of the bow of such vessel.

e. The owner of each vessel must display and maintain, in a legible manner and in a prominent spot on the exterior of such vessel, other than the bow, the passenger capacity of the vessel which must conform with the passenger capacity designated on the registration certificate.

2. When an agency of the United States government shall have in force an overall system of identification numbering for vessels, the numbering system prescribed by the commission pursuant to this chapter, shall be in conformity therewith.

3. *a.* The registration fees for vessels subject to this chapter are as follows:

(1) For vessels of any length without motor or sail, twelve dollars.

(2) For motorboats or sailboats less than sixteen feet in length, twenty-two dollars and fifty cents.

(3) For motorboats or sailboats sixteen feet or more, but less than twenty-six feet in length, thirty-six dollars.

(4) For motorboats or sailboats twenty-six feet or more, but less than forty feet in length, seventy-five dollars.

(5) For motorboats or sailboats forty feet in length or more, one hundred fifty dollars.

(6) For all personal watercraft, forty-five dollars.

b. Every registration certificate and number issued becomes delinquent at midnight April 30 of the last calendar year of the registration period unless terminated or discontinued in accordance with this chapter. After January 1, 2007, an unregistered vessel and a renewal of registration may be registered for the three-year registration period beginning May 1 of that year. When unregistered vessels are registered after May 1 of the second year of the three-year registration period, such unregistered vessels may be registered for the remainder of the current registration period at two-thirds of the appropriate registration fee. When unregistered vessels are registered after May 1 of the third year of the three-year registration period, such unregistered vessels may be registered for the remainder of the current registration period at one-third of the appropriate registration fee.

c. If an application for renewal is not made before July 1 of the last calendar year of the registration period, the applicant shall be charged a penalty of five dollars.

4. *a.* If a person, after registering a vessel, moves from the address shown on the registration certificate, the person shall, within ten days, notify any county recorder of the new address.

b. If the name of a person, who has registered a vessel, is changed, the person shall, within ten days, notify any county recorder of the former and new name.

c. No fee shall be paid to any county recorder for making the changes mentioned in this subsection unless the owner requests a new registration certificate showing the change, in which case a fee of one dollar plus a writing fee shall be paid to the recorder.

d. If a registration certificate is lost, mutilated, or becomes illegible, the owner shall immediately make application for and obtain a duplicate registration certificate by furnishing information satisfactory to any county recorder. A fee of one dollar plus a writing fee shall be paid to the county recorder for a duplicate registration certificate.

e. If a vessel, registered under this chapter, is destroyed or abandoned, the destruction or abandonment shall be reported to the county recorder and the registration certificate shall be forwarded to the office of the county recorder within ten days after the destruction or abandonment.

5. All records of the commission and the county recorder, other than those declared by law to be confidential for the use of the commission and the county recorder, shall be open to public inspection during office hours.

6. The owner of each vessel which has a valid marine document issued by the bureau of customs of the United States government or any federal agency successor thereto shall register it every three years with the county recorder in the same manner prescribed for undocumented vessels and shall cause the registration validation decal to be placed on the vessel in the manner prescribed by the rules of the commission. When the vessel bears the identification required in the documentation, it is exempt from the placement of the identification numbers as required on undocumented vessels. The fee for such registration is twenty-five dollars plus a writing fee.

7. If the owner of a currently registered vessel places the vessel in storage, the owner shall return the registration certificate to the county recorder with an affidavit stating that the vessel is placed in storage and the effective date of the storage. The county recorder shall notify the commission of each registered vessel placed in storage. When the owner of a stored

vessel desires to renew the vessel's registration, the owner shall apply to the county recorder and pay the registration fees plus a writing fee as provided in subsections 1 and 3 without penalty. No refund of registration fees shall be allowed for a stored vessel.

8. The registration certificate shall indicate if the vessel is subject to the requirement of a certificate of title and the county from which the certificate of title is issued.

[C97, §2512; S13, §2512; C24, 27, 31, §1694; C35, §1703-e3, 1703-e7; C39, §**1703.03, 1703.07, 1703.08;** C46, 50, 54, 58, §106.3, 106.7, 106.8; C62, 66, 71, 73, 75, 77, 79, 81, §106.5; 82 Acts, ch 1028, §6 – 9]

84 Acts, ch 1082, §1, 2; 85 Acts, ch 110, §1; 87 Acts, ch 134, §3; 92 Acts, ch 1101, §1

C93, §462A.5

2000 Acts, ch 1019, §2; 2002 Acts, ch 1113, §9; 2005 Acts, ch 137, §4 – 7; 2007 Acts, ch 28, §3, 4; 2011 Acts, ch 25, §119, 143; 2014 Acts, ch 1141, §71; 2019 Acts, ch 80, §3 – 5

Referred to in §331.602, 331.605, 462A.5A, 462A.6A, 805.8B(1)(a)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

Subsection 1, unnumbered paragraph 1 amended

Subsection 3, paragraph c amended

Subsection 4, paragraphs a – d amended

462A.5A Filing bond as assurance of ownership.

An applicant for registration of a vessel for which the county recorder is not satisfied as to the ownership of the vessel as provided in section 462A.5, subsection 1, shall file with the department a bond in the form prescribed by the department and executed by the applicant, and also executed by a person authorized to conduct a surety business in this state. The form and amount of the bond shall be established by rule of the department. The bond shall be conditioned to indemnify any prior owner and secured party and any subsequent purchaser of the vessel or person acquiring any security interest in the vessel, and their respective successors in interest, against any expense, loss, or damage, including reasonable attorney fees, by reason of the issuance of the registration certificate of the vessel or on account of any defect in or undisclosed security interest upon the right, title, and interest of the applicant in and to the vessel. Any such interested person has a right of action to recover on the bond for any breach of its conditions, but the aggregate liability of the surety to all persons shall not exceed the amount of the bond. The bond shall be returned at the end of three years or prior thereto if the vessel is no longer registered in this state and the registration certificate is surrendered to the department, unless the department has been notified of the pendency of an action to recover on the bond.

2002 Acts, ch 1113, §10

Referred to in §462A.5

462A.6 Exemption from registration provisions of this chapter.

A vessel shall not be required to be registered if it is:

1. Covered by a number in full force and effect which has been awarded to it pursuant to a federally approved numbering system of another state if such vessel shall not have been within this state for a period in excess of sixty days within one calendar year.

2. Foreign vessels temporarily using the navigable waters of the United States and of this state.

3. A public vessel of the United States, a state or subdivision thereof which is used for enforcement, search and rescue or official research and studies, but not including vessels used for recreation or commercial purposes.

4. A ship's lifeboat.

5. A type of vessel which has been exempted from registration by the commission after said commission has found that the registration or numbering of such vessel will not materially aid in their identification and such vessel would be exempt from numbering if it were subject to federal law.

6. An air mattress, inner tube, or other toy or beach type item which is being used in a recognized swimming area. In the case of a natural lake or reservoir these beach or swimming areas may be less, but in no case shall exceed three hundred feet from shore.

7. The following nonpower or nonsail vessels:

a. Inflatable vessels, seven feet or less in length.

b. Conventional design canoes and kayak type vessels, thirteen feet or less in length.

[C39, §**1703.16, 1703.22;** C46, 50, 54, 58, §106.16, 106.22; C62, 66, 71, 73, 75, 77, 79, 81, §106.6]

C93, §462A.6

Referred to in §462A.4

462A.6A Exemption from display of registration and capacity numbers.

The following vessels are exempt from displaying a registration number and a passenger capacity number as required in section 462A.5:

1. Authentically constructed native American styled craft including birchbark canoes, dugout canoes, competitive racing shells, reed boats, and skin-covered canoes or boats.

2. Historically styled craft such as keel boats used only during historic recreations or public demonstrations.

3. A vessel which has a valid marine document issued by the United States coast guard and the vessel bears the identification required in the document.

4. A sailboard. However, the registration decal shall be attached to the bottom surface of the bow.

88 Acts, ch 1183, §2

C89, §106.6A

92 Acts, ch 1131, §2

C93, §462A.6A

Referred to in §462A.4

462A.7 Occurrences involving vessels.

1. The operator of a vessel involved in an occurrence that results in personal property damage or the injury or death of a person, shall, so far as possible without serious danger to the operator's own vessel, crew, or passengers, render to other persons affected by the occurrence such assistance as may be practicable and necessary to save them from or minimize any danger caused by the occurrence. The operator shall also give the operator's name, address, and identification of the operator's vessel in writing to any person injured and to the owner of any property damaged in the occurrence.

2. Whenever any vessel is involved in an occurrence that results in personal property damage or the injury or death of a person, except one which results only in property damage not exceeding two thousand dollars, a report of the occurrence shall be filed with the commission. The report shall be filed by the operator of the vessel and shall contain such information as the commission may, by rule, require. The report shall be submitted within forty-eight hours of the occurrence in cases that result in death, disappearance, or personal injuries requiring medical treatment by a licensed health care provider, and within five days of the occurrence in all other cases.

3. Every law enforcement officer who, in the regular course of duty, investigates an occurrence which is required to be reported by this section, shall, after completing such investigation, forward a report of such occurrence to the commission.

4. *a.* All reports shall be in writing. A vessel operator's report shall be without prejudice to the person making the report and shall be for the confidential use of the department. However, upon request the department shall disclose the identities of the persons on board the vessels involved in the occurrence and their addresses. Upon request of a person who made and filed a vessel operator's report, the department shall provide a copy of the vessel operator's report to the requester. A written vessel operator's report filed with the department shall not be admissible in or used in evidence in any civil or criminal action arising out of the facts on which the report is based.

b. All written reports filed by law enforcement officers as required under subsection 3 are confidential to the extent provided in section 22.7, subsection 5, and section 622.11. However, a completed law enforcement officer's report shall be made available by the department or the investigating law enforcement agency to any party to an occurrence involving a vessel, the party's insurance company or its agent, or the party's attorney on written request and payment of a fee.

5. Failure of the operator of any vessel involved in an occurrence to offer assistance and aid to other persons affected by such occurrence, as set forth in this chapter, or to otherwise comply with the requirements of subsection 1, is punishable as follows:

a. In the event of an occurrence resulting only in property damage, the operator is guilty upon conviction of a simple misdemeanor.

b. In the event of an occurrence resulting in an injury to a person, the operator is guilty upon conviction of a serious misdemeanor.

c. In the event of an occurrence resulting in a serious injury to a person, the operator is guilty upon conviction of an aggravated misdemeanor.

d. In the event of an occurrence resulting in the death of a person, the operator is guilty upon conviction of a class "D" felony.

[C39, §**1703.21, 1703.23;** C46, 50, 54, 58, §106.21, 106.23; C62, 66, 71, 73, 75, 77, 79, 81, §106.7; 82 Acts, ch 1028, §10]

C93, §462A.7

97 Acts, ch 55, §1 – 3; 2006 Acts, ch 1124, §1; 2007 Acts, ch 28, §5

Referred to in §915.80

462A.8 Transmittal of information.

When any request is duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the commission under this chapter, such information shall be transmitted to said official or agency.

[C62, 66, 71, 73, 75, 77, 79, 81, §106.8]

C93, §462A.8

462A.9 Classification and required equipment.

1. Vessels subject to the provisions of this chapter shall be divided into four classes as follows:

a. Class I. Less than sixteen feet in length.

b. Class II. Sixteen feet or over and less than twenty-six feet in length.

c. Class III. Twenty-six feet or over and less than forty feet in length.

d. Class IV. Forty feet or over.

2. Every vessel, in all weathers, from sunset to sunrise, shall carry and exhibit the following lights when underway, and during that time shall exhibit no other lights which may be mistaken for those required except that the international lighting system as approved by the United States coast guard will be accepted for use on motorboats on the waters of this state.

a. Every motorboat of classes I and II shall carry the following lights:

(1) A bright white light aft to show all around the horizon.

(2) A combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

b. Every motorboat of classes III and IV shall carry the following lights:

(1) A bright white light in the fore part of the vessel as near the bow as practicable, so constructed as to show an unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the vessel; namely, from right ahead to two points abaft the beam on either side.

(2) A bright white light aft to show all around the horizon and higher than the white light forward.

(3) A green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side. A red light on the port side, so constructed as to show an unbroken light over an arc of the horizon of ten points of the compass so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The said side lights shall be fitted with inboard screens of sufficient height so set as to prevent these lights from being seen across the bow.

c. Vessels of classes I and II, when propelled by sail alone, shall carry the combined

lantern, but not the white light aft prescribed by this section. Vessels of classes III and IV when so propelled, shall carry the colored side lights, suitably screened, but not the white lights required by this section.

d. Every white light required by this section shall be of such character as to be visible at a distance of at least two miles. Every colored light required by this section shall be of such character as to be visible at a distance of at least one mile. The term "*visible*" in this section, when applied to lights, shall mean visible on a dark night with clear atmosphere.

e. When propelled by sail and machinery, such motorboat shall carry the lights required by this section for a motorboat propelled by machinery only.

3. Every vessel shall carry and exhibit such other lights required by the rules and regulations of the commission.

4. Every motorboat of class II, III or IV shall be provided with an efficient whistle or other sound producing appliance.

5. Every motorboat of class III or IV shall be provided with an efficient bell.

6. Every vessel shall carry at least one life preserver, life belt, ring buoy or other device, of the sort prescribed by the rules of the commission, for each passenger, so placed as to be readily accessible. This does not apply to a vessel which is a racing shell used in the sport of sculling or to a sailboard while used for windsurfing.

7. Every motorboat shall be provided with such number, size and type of fire extinguishers capable of promptly and effectually extinguishing burning gasoline, as may be prescribed by the regulations of the commission. Such fire extinguishers shall, at all times, be kept in condition for immediate and effective use and shall be so placed as to be readily accessible. Vessels powered by outboard motors of ten horsepower or less, need not carry the extinguishers as provided herein.

8. *a.* The provisions of subsections 4, 5 and 7 of this section shall not apply to motorboats while competing in any race conducted pursuant to section 462A.16 or, if such boats are designed and used solely for racing, while engaged in such navigation as is incidental to the tuning up of the boats and engines for the race.

b. The operator of a motorboat, while engaged in such race, must wear a crash helmet and life preserver.

9. Every motorboat shall have the carburetor or carburetors of every engine therein, except outboard motors, using a liquid of a volatile nature as fuel, equipped with such efficient flame arrestor, backfire trap or other similar device as may be prescribed by the rules and regulations of the commission.

10. Every motorboat, except open boats, using any liquid of a volatile nature as fuel, shall be provided with the means prescribed by the rules of the commission for properly and efficiently ventilating the bilges of the engines and fuel tank compartments so as to remove any explosive or flammable gases.

11. The commission is hereby authorized to make rules and regulations modifying the equipment requirements contained in this section to the extent necessary for the safety of operators and passengers.

12. The commission is hereby authorized to establish such pilot rules as may be necessary for the safe operation of vessels on the waters of this state under the jurisdiction of the commission.

13. An owner of a personal watercraft equipped with a cut-off switch shall maintain the cut-off switch and the accompanying cut-off switch lanyard in an operable, fully functional condition.

14. No person shall operate or give permission for the operation of a vessel which is not equipped as required by this section or modification thereof.

[S13, §2514-a; C24, 27, 31, §1697; C39, §**1703.10 – 1703.13;** C46, 50, 54, 58, §106.10 – 106.13; C62, 66, 71, 73, 75, 77, 79, 81, §106.9; 82 Acts, ch 1028, §11 – 13]

92 Acts, ch 1131, §3; 92 Acts, ch 1163, §26

C93, §462A.9

2007 Acts, ch 28, §6; 2011 Acts, ch 25, §143

Referred to in §805.8B(1)(a), 805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs a and b

462A.10 Boat liveries.

1. The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is designed or permitted by the owner to be operated for hire, the identification number thereof, the departure date and time and the expected time of return. The records shall be preserved for six months.

2. The owner of a boat livery shall not permit any of the owner's vessels, operated for hire, to depart from the owner's premises unless it shall have been provided, either by the owner or renter, with the equipment required by the commission.

[C97, §2512; S13, §2512; C24, 27, 31, §1692; C35, §1703-e2; C39, §**1703.02, 1703.11, 1703.24;** C46, 50, 54, 58, §106.2, 106.11, 106.24; C62, 66, 71, 73, 75, 77, 79, 81, §106.10]

C93, §462A.10

Referred to in §805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.11 Muffling devices.

The exhaust of every internal combustion engine used on any motorboat shall be effectively muffled by equipment so constructed and used as to muffle the total vessel noise in a reasonable manner in accordance with rules adopted by the commission. The use of cut-outs is prohibited, except for motorboats competing in a regatta or boat race approved as provided in section 462A.16 and for such motorboats while on trial run during a period from 8:00 a.m. to 6:00 p.m. not to exceed twenty-four hours immediately preceding such regatta or race.

[C39, §**1703.11, 1703.17;** C46, 50, 54, 58, §106.11, 106.17; C62, 66, 71, 73, 75, 77, 79, 81, §106.11; 82 Acts, ch 1028, §14]

C93, §462A.11

Referred to in §805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.12 Prohibited operation.

1. No person shall operate any vessel, or manipulate any water skis, surfboard or similar device in a careless, reckless or negligent manner so as to endanger the life, limb or property of any person.

2. A person shall not operate any vessel, or manipulate any water skis, surfboard or similar device while under the influence of an alcoholic beverage, marijuana, a narcotic, hypnotic or other drug, or any combination of these substances. However, this subsection does not apply to a person operating any vessel or manipulating any water skis, surfboard or similar device while under the influence of marijuana, or a narcotic, hypnotic or other drug if the substances were prescribed for the person and have been taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A, provided there is no evidence of the consumption of alcohol and further provided the medical practitioner has not directed the person to refrain from operating a motor vehicle, any vessel or from manipulating any water skis, surfboard or similar device.

3. No person shall place, cause to be placed, throw or deposit onto or in any of the public waters, ice or land of this state any cans, bottles, garbage, rubbish, and other debris.

4. No person shall operate on the waters of this state under the jurisdiction of the conservation commission any vessel displaying or reflecting a blue light or flashing blue light unless such vessel is an authorized emergency vessel.

5. No person shall operate a vessel and enter into areas in which search and rescue operations are being conducted or an area affected by a natural disaster unless authorized by the officer in charge of the search and rescue or disaster operation. Any person authorized in an area of operation shall operate the person's vessel at a no wake speed and shall keep clear of all other vessels engaged in the search and rescue or disaster operation. A person who must operate a vessel in a disaster area to gain access or egress from the person's home shall be considered an authorized person by the officer in charge.

6. An owner or operator of a vessel propelled by a motor of more than ten horsepower shall not permit any person under twelve years of age to operate the vessel unless accompanied in or on the same vessel by a responsible person of at least eighteen years of age who is

experienced in motorboat operation. A person who is twelve years of age or older but less than eighteen years of age shall not operate any vessel propelled by a motor of more than ten horsepower unless the person has successfully completed a department-approved watercraft education course and obtained a watercraft education certificate or is accompanied in or on the same vessel by a responsible person of at least eighteen years of age who is experienced in motorboat operation. A person required to have a watercraft education certificate shall carry and shall exhibit or make available the certificate upon request of an officer of the department. A violation of this subsection is a simple misdemeanor as provided in section 462A.13. However, a person charged with violating this subsection shall not be convicted if the person produces in court, within a reasonable time, a watercraft education certificate. The cost of a watercraft education certificate, or any duplicate, shall not exceed five dollars.

7. A person shall not operate watercraft in a manner which unreasonably or unnecessarily interferes with other watercraft or with the free and proper navigation of the waters of the state. Anchoring under bridges, in a heavily traveled channel, in a lock chamber, or near the entrance of a lock constitutes such interference if unreasonable under the prevailing circumstances.

8. A person shall not operate a vessel in violation of restrictions as given by state-approved buoys or signs marking an area.

9. A person shall not operate on the waters of this state under the jurisdiction of the commission a vessel equipped with an engine of greater horsepower rating than is designated for the vessel by the federally required capacity plate or by the manufacturer's plate on those vessels not covered by federal regulations.

10. A person shall not leave an unattended vessel tied or moored to a dock which is placed immediately adjacent to a public boat launching ramp or to a dock which is posted for loading and unloading.

11. A person shall not operate a vessel within fifty feet of a diver's flag placed in accordance with the rules of the commission adopted under chapter 17A.

12. A person shall not operate a personal watercraft at any time between sundown and sunup.

13. A person shall not chase or harass animals while operating a personal watercraft or motorboat.

14. A person shall not operate a personal watercraft that is equipped with a cut-off switch, at any time, without first attaching the accompanying cut-off switch lanyard to the operator's person while the engine is running and the personal watercraft is in use.

15. A person shall not operate a vessel on the waters of this state under the jurisdiction of the commission unless every person on board the vessel who is under thirteen years of age is wearing a type I, II, III, or V personal flotation device, including "float coats" that meet this definition, that is approved by the United States coast guard, while the vessel is under way. This subsection does not apply when the person under thirteen years of age is in an enclosed cabin or below deck, or is a passenger on a commercial vessel with a passenger capacity of twenty-five persons or more.

[C39, §**1703.17, 1703.21;** C46, 50, 54, 58, §106.17, 106.21, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.12; 82 Acts, ch 1028, §15, 16]

86 Acts, ch 1143, §1; 87 Acts, ch 215, §38

C93, §462A.12

2002 Acts, ch 1133, §2, 3; 2003 Acts, ch 44, §77; 2005 Acts, ch 137, §8; 2007 Acts, ch 28, §7; 2008 Acts, ch 1161, §11 – 13; 2012 Acts, ch 1100, §60

Referred to in §462A.2, 462A.14A, 805.8B(1)(c), 915.80

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

462A.12A Online watercraft education courses.

1. The department shall develop requirements and standards for online watercraft education courses. Only vendors who have entered into a memorandum of understanding with the department shall be approved by the department to offer an online watercraft education course that upon successful completion is sufficient to result in the issuance of a watercraft education certificate to the person who completes the course.

2. A vendor approved to offer an online watercraft education course as provided in subsection 1 may charge a fee for the course as agreed to in the memorandum of understanding with the department and may also collect the watercraft education certificate fee on behalf of the department as agreed to in the memorandum of understanding.

2012 Acts, ch 1100, §61

462A.13 Penalty.

1. Any person violating any of the provisions of this chapter, or any of the rules adopted under this chapter, for which another penalty is not otherwise specifically provided, is guilty of a simple misdemeanor.

2. Chapter 232 shall have no application in the prosecution of offenses committed in violation of this chapter or rules and regulations which are adopted under the authority of this chapter which constitute simple misdemeanors.

[C97, §2313, 2315; S13, §2313, 2315; C24, 27, 31, §1695; C35, §1703-e5, 1703-e6; C39, §**1703.05, 1703.06;** C46, 50, 54, 58, §106.5, 106.6; C62, 66, 71, 73, 75, 77, 79, 81, §106.13; 82 Acts, ch 1028, §17]

C93, §462A.13

2019 Acts, ch 24, §104

Referred to in §462A.12

Code editor directive applied

462A.14 Operating a motorboat or sailboat while intoxicated.

1. A person commits the offense of operating a motorboat or sailboat while intoxicated if the person operates a motorboat or sailboat on the navigable waters of this state in any of the following conditions:

a. While under the influence of an alcoholic beverage or other drug or a combination of such substances.

b. While having an alcohol concentration of .08 or more.

c. While any amount of a controlled substance is present in the person, as measured in the person's blood or urine.

2. A person who violates subsection 1 commits:

a. A serious misdemeanor for the first offense, punishable by all of the following:

(1) Imprisonment in the county jail for not less than forty-eight hours, to be served as ordered by the court, less credit for any time the person was confined in a jail or detention facility following arrest. However, the court, in ordering service of the sentence and in its discretion, may accommodate the defendant's work schedule.

(2) Assessment of a fine of one thousand dollars. However, in the discretion of the court, if no personal or property injury has resulted from the defendant's actions, up to five hundred dollars of the fine may be waived. As an alternative to a portion or all of the fine, the court may order the person to perform unpaid community service.

(3) Prohibition of operation of a motorboat or sailboat for one year, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsection 12, and a course for drinking drivers.

b. An aggravated misdemeanor for a second offense, punishable by all of the following:

(1) Imprisonment in the county jail or community-based correctional facility for not less than seven days.

(2) Assessment of a fine of not less than one thousand five hundred dollars nor more than five thousand dollars.

(3) Prohibition of operation of a motorboat or sailboat for two years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

c. A class "D" felony for a third offense and each subsequent offense, punishable by all of the following:

(1) Imprisonment in the county jail for a determinate sentence of not more than one year

but not less than thirty days, or committed to the custody of the director of the department of corrections. A person convicted of a third or subsequent offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513 or the offender may be committed to treatment in the community under the provisions of section 907.13.

(2) Assessment of a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars.

(3) Prohibition of operation of a motorboat or sailboat for six years, pursuant to court order.

(4) Assignment to substance abuse evaluation and treatment, pursuant to subsections 12 and 13, and a course for drinking drivers.

d. A class "D" felony for any offense under this section resulting in serious injury to persons other than the defendant, if the court determines that the person who committed the offense caused the serious injury, and shall be imprisoned for a determinate sentence of not more than five years but not less than thirty days, or committed to the custody of the director of the department of corrections, and assessed a fine of not less than two thousand five hundred dollars nor more than seven thousand five hundred dollars. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for one year in addition to any other period of time the defendant would have been ordered not to operate if no injury had occurred in connection with the violation. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

e. A class "B" felony for any offense under this section resulting in the death of persons other than the defendant, if the court determines that the person who committed the offense caused the death, and shall be imprisoned for a determinate sentence of not more than twenty-five years, or committed to the custody of the director of the department of corrections. A person convicted of a felony offense may be committed to the custody of the director of the department of corrections, who shall assign the person to a facility pursuant to section 904.513. The court shall also order that the person not operate a motorboat or sailboat for six years. The court shall also assign the defendant to substance abuse evaluation and treatment pursuant to subsections 12 and 13, and a course for drinking drivers.

3. *a.* Notwithstanding the provisions of sections 901.5 and 907.3, the court shall not defer judgment or sentencing, or suspend execution of any mandatory minimum sentence of incarceration applicable to the defendant under subsection 2, and shall not suspend execution of any other part of a sentence not involving incarceration imposed pursuant to subsection 2, if any of the following apply:

(1) If the defendant's alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn in accordance with this chapter exceeds .15, regardless of whether or not the alcohol concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the test equals an alcohol concentration of .15 or more.

(2) If the defendant has previously been convicted of a violation of subsection 1 or a statute in another state substantially corresponding to subsection 1.

(3) If the defendant has previously received a deferred judgment or sentence for a violation of subsection 1 or for a violation of a statute in another state substantially corresponding to subsection 1.

(4) If the defendant refused to consent to testing requested in accordance with section 462A.14A.

(5) If the offense under this section results in bodily injury to a person other than the defendant.

b. A minimum term of imprisonment in a county jail or community-based correctional facility imposed on a person convicted of a second or subsequent offense under subsection 2 shall be served on consecutive days. However, if the sentencing court finds that service of the full minimum term on consecutive days would work an undue hardship on the person,

or finds that sufficient jail space is not available and is not reasonably expected to become available within four months after sentencing to incarcerate the person serving the minimum sentence on consecutive days, the court may order the person to serve the minimum term in segments of at least forty-eight hours and to perform a specified number of hours of unpaid community service as deemed appropriate by the sentencing court.

4. In determining if a violation charged is a second or subsequent offense for purposes of criminal sentencing or license or privilege revocation under this section:

a. Any conviction under this section within the previous twelve years shall be counted as a previous offense.

b. Deferred judgments entered pursuant to section 907.3 for violations of this section shall be counted as previous offenses.

c. Convictions or the equivalent of deferred judgments for violations in any other states under statutes substantially corresponding to this section shall be counted as previous offenses. The courts shall judicially notice the statutes of other states which define offenses substantially equivalent to an offense defined in this section and can therefore be considered corresponding statutes. Each previous violation on which conviction or deferral of judgment was entered prior to the date of the violation charged shall be considered and counted as a separate previous offense.

5. A person shall not be convicted and sentenced for more than one violation of this section for actions arising out of the same event or occurrence, even if the event or occurrence involves more than one of the conditions specified in subsection 1. However, a person who refuses a test pursuant to section 462A.14B may be subject to imposition of the penalties under that section in addition to the penalties under this section if the person violates both sections, even though the actions arise out of the same event or occurrence.

6. The clerk of the district court shall immediately certify to the department a true copy of each order entered with respect to deferral of judgment, deferral of sentence, or pronouncement of judgment and sentence for a defendant under this section.

7. *a.* This section does not apply to a person operating a motorboat or sailboat while under the influence of a drug if the substance was prescribed for the person and was taken under the prescription and in accordance with the directions of a medical practitioner as defined in chapter 155A or if the substance was dispensed by a pharmacist without a prescription pursuant to the rules of the board of pharmacy, if there is no evidence of the consumption of alcohol and the medical practitioner or pharmacist had not directed the person to refrain from operating a motor vehicle, or motorboat or sailboat.

b. When charged with a violation of subsection 1, paragraph "*c*", a person may assert, as an affirmative defense, that the controlled substance present in the person's blood or urine was prescribed or dispensed for the person and was taken in accordance with the directions of a practitioner and the labeling directions of the pharmacy, as that person and place of business are defined in section 155A.3.

8. In any prosecution under this section, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation.

a. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operating or being in physical control of the motorboat or sailboat.

b. The presence of a controlled substance or other drug established by the results of analysis of a specimen of the defendant's blood or urine withdrawn within two hours after the defendant was operating or in physical control of a motorboat or sailboat is presumed to show the presence of such controlled substance or other drug in the defendant at the time of operating or being in physical control of the motorboat or sailboat.

c. The nationally accepted standards for determining detectable levels of controlled substances in the division of criminal investigation's initial laboratory screening test for controlled substances adopted by the department of public safety shall be utilized in prosecutions under this section.

9. *a.* In addition to any fine or penalty imposed under this chapter, the court shall order

a defendant convicted of or receiving a deferred judgment for a violation of this section to make restitution for damages resulting directly from the violation, to the victim, pursuant to chapter 910. An amount paid pursuant to this restitution order shall be credited toward any adverse judgment in a subsequent civil proceeding arising from the same occurrence. However, other than establishing a credit, a restitution proceeding pursuant to this section shall not be given evidentiary or preclusive effect in a subsequent civil proceeding arising from the same occurrence.

b. The court may order restitution paid to any public agency for the costs of the emergency response resulting from the actions constituting a violation of this section, not exceeding five hundred dollars per public agency for each such response. For the purposes of this paragraph, *"emergency response"* means any incident requiring response by fire fighting, law enforcement, ambulance, medical, or other emergency services. A public agency seeking such restitution shall consult with the county attorney regarding the expenses incurred by the public agency, and the county attorney may include the expenses in the statement of pecuniary damages pursuant to section 910.3.

10. In any prosecution under this section, the results of a chemical test shall not be used to prove a violation of subsection 1, paragraph *"b"* or paragraph *"c"*, if the alcohol, controlled substance, or other drug concentration indicated by the chemical test minus the established margin of error inherent in the device or method used to conduct the chemical test does not equal or exceed the level prohibited by subsection 1.

11. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

12. *a.* All substance abuse evaluations required under this section shall be completed at the defendant's expense.

b. In addition to assignment to substance abuse evaluation and treatment under this section, the court shall order any defendant convicted under this section to follow the recommendations proposed in the substance abuse evaluation for appropriate substance abuse treatment for the defendant. Court-ordered substance abuse treatment is subject to the periodic reporting requirements of section 125.86.

c. If a defendant is committed by the court to a substance abuse treatment facility, the administrator of the facility shall report to the court when it is determined that the defendant has received the maximum benefit of treatment at the facility and the defendant shall be released from the facility. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

d. The court may prescribe the length of time for the evaluation and treatment or the court may request that the community college or licensed substance abuse program conducting the course for drinking drivers which the defendant is ordered to attend or the treatment program to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the course for drinking drivers or treatment program or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

e. Upon successfully completing a course for drinking drivers or an ordered substance abuse treatment program, a court may place the defendant on probation for six months and as a condition of probation, the defendant shall attend a program providing posttreatment services relating to substance abuse as approved by the court.

f. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

g. A defendant who fails to carry out the order of the court shall be confined in the county jail for twenty days in addition to any other imprisonment ordered by the court or may be ordered to perform unpaid community service work, and shall be placed on probation for one year with a violation of this probation punishable as contempt of court.

h. In addition to any other condition of probation, the defendant shall attend a program providing substance abuse prevention services or posttreatment services related to substance

abuse as ordered by the court. The defendant shall report to the defendant's probation officer as ordered concerning proof of attendance at the treatment program or posttreatment program ordered by the court. Failure to attend or complete the program shall be considered a violation of probation and is punishable as contempt of court.

13. *a.* Upon a second or subsequent offense in violation of section 462A.14, the court upon hearing may commit the defendant for inpatient treatment of alcoholism or drug addiction or dependency to any hospital, institution, or community correctional facility in this state providing such treatment. The time for which the defendant is committed for treatment shall be credited against the defendant's sentence.

b. The court may prescribe the length of time for the evaluation and treatment or the court may request that the hospital to which the defendant is committed immediately report to the court when the defendant has received maximum benefit from the program of the hospital or institution or has recovered from the defendant's addiction, dependency, or tendency to chronically abuse alcohol or drugs.

c. A defendant committed under this section who does not possess sufficient income or estate to make payment of the costs of the treatment in whole or in part shall be considered a state patient and the costs of treatment shall be paid as provided in section 125.44.

[C97, §2513; S13, §2513; C24, 27, 31, §1695; C35, §1703-e5; C39, §**1703.05;** C46, 50, 54, 58, §106.5, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.14; 82 Acts, ch 1028, §18]

C93, §462A.14

2000 Acts, ch 1099, §2; 2000 Acts, ch 1232, §74; 2007 Acts, ch 10, §176; 2011 Acts, ch 24, §2

Referred to in §462A.2, 462A.14A, 462A.14B, 462A.14C, 462A.14D, 462A.14E, 462A.14F, 462A.34B, 811.1, 907.3, 915.80

462A.14A Implied consent to test.

1. A person who operates a motorboat or sailboat on the navigable waters in this state under circumstances which give reasonable grounds to believe that the person has been operating a motorboat or sailboat in violation of section 462A.14 is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of controlled substances or other drugs, subject to this section.

2. *a.* If a peace officer has reasonable grounds to believe that any of the following has occurred, the peace officer may request that the motorboat or sailboat operator provide a sample of the operator's breath for a preliminary screening test using a device approved by the commissioner of public safety for that purpose:

(1) The motorboat or sailboat operator may be violating or has violated section 462A.14.

(2) The motorboat or sailboat has been involved in an accident resulting in injury or death.

(3) The motorboat or sailboat operator is or has been operating carelessly or recklessly, in violation of section 462A.12.

b. The results of this preliminary screening test may be used for the purpose of deciding whether an arrest should be made or whether to request a chemical test authorized in this chapter, but shall not be used in any court action except to prove that a chemical test was properly requested of a person pursuant to this section.

3. The withdrawal of the body substances and the test or tests shall be administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motorboat or sailboat in violation of section 462A.14, and if any of the following conditions exist:

a. A peace officer has lawfully placed the person under arrest for violation of section 462A.14.

b. The motorboat or sailboat has been involved in an occurrence resulting in personal injury or death.

c. The person has refused to take a preliminary breath screening test provided by this chapter.

d. The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 462A.14.

e. The preliminary breath screening test was administered and it indicated an alcohol concentration of less than the level prohibited under section 462A.14, and the peace officer

has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol or a combination of alcohol and another drug.

4. *a.* The peace officer shall determine which of the three substances, breath, blood, or urine, shall be tested.

b. If the peace officer fails to offer a test within two hours after the preliminary screening test is administered or refused, or the arrest is made, whichever occurs first, a test is not required, and there shall be no suspension of motorboat or sailboat operation privileges.

c. Refusal to submit to a chemical test of urine or breath is deemed a refusal to submit, and the peace officer shall inform the person that the person's refusal will result in the suspension of the person's privilege to operate a motorboat or sailboat.

d. Refusal to submit to a chemical test of blood is not deemed a refusal to submit, but in that case, the peace officer shall then determine which one of the other two substances shall be tested and shall offer the test.

e. Notwithstanding paragraphs "*a*" through "*d*", if the peace officer has reasonable grounds to believe that the person was under the influence of a drug other than alcohol, or a combination of alcohol and another drug, a urine test may be required even after a blood or breath test has been administered.

f. A person who is dead, unconscious, or otherwise in a condition rendering the person incapable of consent or refusal is deemed not to have withdrawn the consent provided by this section, and the test may be given if a licensed physician certifies in advance of the test that the person is dead, unconscious, or otherwise in a condition rendering that person incapable of consent or refusal.

g. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

(1) A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

(2) If the person submits to the test and the results indicate an alcohol concentration equal to or in excess of the level prohibited under section 462A.14 and the person is convicted, the person's motorboat or sailboat operating privileges will be suspended for at least one year and up to six years, depending upon how many previous convictions the person has under this chapter, and whether or not the person has caused serious injury or death, in addition to any sentence and fine imposed for a violation of section 462A.14.

5. Refusal to submit to a test under this section does not prohibit the withdrawal of a specimen for chemical testing if a motorboat or sailboat has been involved in an accident resulting in death or serious bodily injury, if the peace officer has reasonable grounds to believe that the operator of the motorboat or sailboat was violating section 462A.14 at the time of the accident, and the peace officer has obtained, in compliance with chapter 808 or according to the procedure in section 462A.14D, a search warrant permitting the withdrawal of a specimen for chemical testing. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under this section constitutes a contempt punishable by a fine not exceeding one thousand dollars or imprisonment in a county jail not exceeding one year or by both such fine and imprisonment, and further constitutes a refusal to submit, punishable under this section.

6. Only a licensed physician, licensed physician assistant as defined in section 148C.1, medical technologist, or registered nurse, acting at the request of a peace officer, may withdraw a specimen of blood for the purpose of determining the alcohol concentration or the presence of a controlled substance or other drugs. However, any peace officer, using devices and methods approved by the commissioner of public safety, may take a specimen of a person's breath or urine for the purpose of determining the alcohol concentration or the presence of drugs. Only new equipment kept under strictly sanitary and sterile conditions shall be used for drawing blood. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to this section.

7. The person may have an independent chemical test or tests administered at the person's

own expense in addition to any administered at the direction of a peace officer. The failure or inability of the person to obtain an independent chemical test or tests does not preclude the admission of evidence of the results of the test or tests administered at the direction of the peace officer. Upon the request of the person who is tested, the results of the test or tests administered at the direction of the peace officer shall be made available to the person.

8. In any prosecution under section 462A.14, evidence of the results of analysis of a specimen of the defendant's blood, breath, or urine is admissible upon proof of a proper foundation. The alcohol concentration established by the results of an analysis of a specimen of the defendant's blood, breath, or urine withdrawn within two hours after the defendant was operating or was otherwise in physical control of a motorboat or sailboat is presumed to be the alcohol concentration at the time of operation or being in physical control of the motorboat or sailboat. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14. This section does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or a controlled substance or other drug, including the results of chemical tests of specimens of blood, breath, or urine obtained more than two hours after the person was operating a motorboat or sailboat.

2000 Acts, ch 1099, §3; 2007 Acts, ch 28, §8

Referred to in §462A.2, 462A.14, 462A.14B, 462A.14C, 462A.14D

462A.14B Refusal to submit — penalty.

1. If a person refuses to submit to the chemical testing, a test shall not be given unless the procedure in section 462A.14D is invoked. However, if the person refuses the test, the person shall be punishable by the court according to this section.

2. The court, upon finding that the officer had reasonable ground to believe the person to have been operating a motorboat or sailboat in violation of section 462A.14, that specified conditions existed for chemical testing pursuant to section 462A.14A, and that the person refused to submit to the chemical testing, shall:

a. Order that the person shall not operate a motorboat or sailboat for one year.

b. Impose a mandatory civil penalty as follows:

(1) For a first refusal under this section, five hundred dollars.

(2) For a second refusal under this section, one thousand dollars.

(3) For a third or subsequent refusal under this section, two thousand dollars.

3. If the person does not pay the civil penalty by the time the one-year order not to operate expires, the court shall extend the order not to operate a motorboat or sailboat for an additional year, and may also impose penalties for contempt.

4. The court shall not defer judgment or sentencing, or suspend execution of any order or fine applicable under this section.

5. The penalties imposed by this section shall apply in addition to any penalties imposed under section 462A.14, except that the one-year period under the order not to operate a motorboat or sailboat under this section shall be imposed and run concurrently with any period of time a defendant is ordered not to operate a motorboat or sailboat under section 462A.14.

2000 Acts, ch 1099, §4

Referred to in §462A.2, 462A.14, 462A.14E, 915.80

462A.14C Statement of officer.

1. A person who has been requested to submit to a chemical test shall be advised by a peace officer of the following:

a. A refusal to submit to the test is punishable by a mandatory civil penalty of five hundred to two thousand dollars, and suspension of motorboat or sailboat operating privileges for at least a year. In addition, if the person is also convicted of operating a motorboat or sailboat while intoxicated, the person shall be subject to additional penalties.

b. If the person submits to the test and the results indicate the presence of a controlled

substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 462A.14, the person's privilege to operate a motorboat or sailboat will be prohibited for at least one year, and up to six years.

2. This section does not apply in any case involving a person described in section 462A.14A, subsection 4, paragraph *"f"*.

3. If a person refuses to submit to a chemical test, proof of refusal is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or sailboat in violation of section 462A.14.

2000 Acts, ch 1099, §5
Referred to in §462A.2

462A.14D Tests pursuant to warrants.

1. Refusal to consent to a test under section 462A.14A does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 462A.14 if all of the following grounds exist:

a. An accident has resulted in a death or personal injury reasonably likely to cause death.

b. There are reasonable grounds to believe that one or more of the persons whose operation of a motorboat or sailboat may have been the proximate cause of the accident was violating section 462A.14 at the time of the accident.

2. Search warrants may be issued under this section in full compliance with chapter 808 or search warrants may be issued under subsection 3.

3. Notwithstanding section 808.3, the issuance of a search warrant under this section may be based upon sworn oral testimony communicated by telephone if the magistrate who is asked to issue the warrant is satisfied that the circumstances make it reasonable to dispense with a written affidavit. The following shall then apply:

a. When a caller applies for the issuance of a warrant under this section and the magistrate becomes aware of the purpose of the call, the magistrate shall place under oath the person applying for the warrant.

b. The person applying for the warrant shall prepare a duplicate warrant and read the duplicate warrant, verbatim, to the magistrate who shall enter, verbatim, what is read to the magistrate on a form that will be considered the original warrant. The magistrate may direct that the warrant be modified.

c. The oral application testimony shall set forth facts and information tending to establish the existence of the grounds for the warrant and shall describe with a reasonable degree of specificity the person or persons whose operation of a motorboat or sailboat is believed to have been the proximate cause of the accident and from whom a specimen is to be withdrawn and the location where the withdrawal of the specimen or specimens is to take place.

d. If a voice recording device is available, the magistrate may record by means of that device all of the call after the magistrate becomes aware of the purpose of the call. Otherwise, the magistrate shall cause a stenographic or longhand memorandum to be made of the oral testimony of the person applying for the warrant.

e. If the magistrate is satisfied from the oral testimony that the grounds for the warrant exist or that there is probable cause to believe that they exist, the magistrate shall order the issuance of the warrant by directing the person applying for the warrant to sign the magistrate's name on the duplicate warrant. The magistrate shall immediately sign the original warrant and enter on its face the exact time when the issuance was ordered.

f. The person who executes the warrant shall enter the time of execution on the face of the duplicate warrant.

g. The magistrate shall cause any record of the call made by means of a voice recording device to be transcribed, shall certify the accuracy of the transcript, and shall file the transcript and the original record with the clerk. If a stenographic or longhand memorandum was made of the oral testimony of the person who applied for the warrant, the magistrate shall file a signed copy with the clerk.

h. The clerk of court shall maintain the original and duplicate warrants along with the record of the telephone call and any transcript or memorandum made of the call in a confidential file until a charge, if any, is filed.

4. *a.* Search warrants issued under this section shall authorize and direct peace officers to secure the withdrawal of blood specimens by medical personnel under section 462A.14A. Reasonable care shall be exercised to ensure the health and safety of the persons from whom specimens are withdrawn in execution of the warrants.

b. If a person from whom a specimen is to be withdrawn objects to the withdrawal of blood, the warrant may be executed as follows:

(1) If the person is capable of giving a specimen of breath, and a direct breath testing instrument is readily available, the warrant may be executed by the withdrawal of a specimen of breath for chemical testing, unless the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.

(2) If the testimony in support of the warrant sets forth facts and information that the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug, a urine sample shall be collected in lieu of a blood sample, if the person is capable of giving a urine sample and the sample can be collected without the need to physically compel the execution of the warrant.

5. The act of any person knowingly resisting or obstructing the withdrawal of a specimen pursuant to a search warrant issued under section 462A.14D constitutes contempt punishable as provided in that section and further constitutes a refusal to submit. Also, if the withdrawal of a specimen is so resisted or obstructed, section 462A.14A applies.

6. Nonsubstantive variances between the contents of the original and duplicate warrants shall not cause a warrant issued under subsection 3 to be considered invalid.

7. Specimens obtained pursuant to warrants issued under this section are not subject to disposition under section 808.9 or chapter 809 or 809A.

8. Subsections 3 to 7 of this section do not apply where a test may be administered under section 462A.14A, subsection 4, paragraph *"f"*.

9. Medical personnel who use reasonable care and accepted medical practices in withdrawing blood specimens are immune from liability for their actions in complying with requests made of them pursuant to search warrants or pursuant to section 462A.14A.

2000 Acts, ch 1099, §6

Referred to in §462A.2, 462A.14A, 462A.14B

462A.14E Violations of orders not to operate a motorboat or sailboat.

1. A person who operates a motorboat or sailboat after the person has been ordered, pursuant to section 462A.14 or 462A.14B, not to operate a motorboat or sailboat commits a serious misdemeanor, punishable with a jail term and a mandatory fine of one thousand dollars.

2. In addition to the jail term and fine, the court shall extend the period of prohibition of operating a motorboat or sailboat for an additional like period.

2000 Acts, ch 1099, §7

Referred to in §462A.2

462A.14F Department recordkeeping.

The department shall collect and maintain statistics on the number of arrests and convictions for violations of section 462A.14 that occur each year.

2000 Acts, ch 1099, §8

462A.15 Water skis and surfboards.

1. No person shall operate a vessel on any waters of this state under the jurisdiction of the commission for towing a person or persons on water skis, surfboard or similar device unless there is in such vessel a responsible person, in addition to the operator, in a position to observe the progress of the person or persons being towed.

2. This section does not apply to a performer engaged in a professional exhibition or a

person or persons engaged in a professional exhibition or a person or persons engaged in an activity authorized under section 462A.16.

[C39, §**1703.17;** C46, 50, 54, 58, §106.17; C62, 66, 71, 73, 75, 77, 79, 81, §106.15; 82 Acts, ch 1028, §19]

C93, §462A.15

2002 Acts, ch 1050, §43

Referred to in §805.8B(1)(c)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

462A.16 Regattas, races, marine parades, tournaments, or exhibitions.

1. The commission may authorize the holding of regattas, motorboat or other boat races, marine parades, tournaments, or exhibitions on any waters of this state under the jurisdiction of the commission. The commission shall adopt and may, from time to time, amend regulations concerning the safety of vessels and persons, either observers or participants. If a regatta, motorboat or other boat race, marine parade, tournament, or exhibition is proposed to be held, the person in charge thereof shall file an application with the commission for permission to hold such regatta, motorboat or other boat race, marine parade, tournament, or exhibition. The application shall set forth the date, time, and location where it is proposed to hold such regatta, motorboat or other boat race, marine parade, tournament, or exhibition and it shall not be conducted without written authorization of the commission.

2. The provisions of this section shall not exempt any person from compliance with applicable federal law or regulation, but nothing contained herein shall be construed to require the securing of a state permit under this section if a permit therefor has been obtained from an authorized agency having jurisdiction of the waters where such regatta, race, marine parade, tournament, or exhibition is being conducted.

[C39, §**1703.17;** C46, 50, 54, 58, §106.17, 106.28; C62, 66, 71, 73, 75, 77, 79, 81, §106.16]

C93, §462A.16

Referred to in §462A.9, 462A.11, 462A.15

462A.17 Local regulations restricted.

1. This chapter and other applicable laws of this state govern the operation, equipment, numbering and all other matters relating thereto of any vessel whenever the vessel is operated or maintained on the waters of this state under the jurisdiction of the commission, but this chapter does not prevent the adoption of any ordinance or local law relating to the operation or equipment of vessels. Such ordinances or local law are operative only so long as they are not inconsistent with this chapter or the rules adopted by the commission.

2. Any subdivision of this state may, but only after public notice thereof by publication in a newspaper having a general circulation in such subdivision, make formal application to the commission for special rules and regulations concerning the operation of vessels on any waters within its territorial limits and shall set forth therein the reasons which make such special rules or regulations necessary or appropriate.

3. The commission, upon application of local authorities, may make special rules in conformity with this chapter, concerning the operation of vessels on any waters of this state under the jurisdiction of the commission within the territorial limits of any subdivision of this state. Special rules shall only be adopted upon a finding by the commission that the rules are necessary to carry out the policies and purposes of this chapter due to special conditions with regard to a particular body of water and that the special rules provide greater protection to the public health, safety, and welfare than the rules of general application.

[C39, §**1703.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §106.17; 82 Acts, ch 1028, §20, 21]

C93, §462A.17

Referred to in §805.8B(1)(e)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph e

462A.18 Owner's civil liability.

The owner and operator of any undocumented vessel shall be liable for any injury or damage occasioned by the negligent operation of such vessel.

[C39, §**1703.21;** C46, 50, 54, 58, §106.21; C62, 66, 71, 73, 75, 77, 79, 81, §106.18]

C93, §462A.18

462A.19 Reserved.

462A.20 Boat inspection.

1. A vessel either for hire or offered for hire upon any waters of this state under the jurisdiction of the commission may be inspected at any time by representatives of the commission or by any peace officer who is trained in enforcing, and who in the regular course of duty enforces, boating and navigation laws.

2. Officers appointed by the commission or any peace officer who is trained in enforcing, and who in the regular course of duty enforces, boating and navigation laws shall have the power and authority to determine whether such vessel is safe for the transportation of passengers or cargo and upon what waters it may be used. They may determine and designate the number of passengers or cargo, including crew, that may be carried and determine whether the machinery, equipment, and all appurtenances are such as to make the vessel seaworthy, where used, and such other matters as are pertinent.

3. Private vessels may also be inspected to determine their seaworthiness at any time by representatives of the commission or by any peace officer who is trained in enforcing, and who in the regular course of duty enforces, boating and navigation laws.

[C97, §2511, 2512, 2513; S13, §2512, 2513; C24, 27, 31, §1691, 1692, 1694; C35, §1703-e1 – e3, 1703-e5; C39, §**1703.01 – 1703.03, 1703.05;** C46, 50, 54, 58, §106.1 – 106.3, 106.5; C62, 66, 71, §106.19, 106.20; C73, 75, 77, 79, 81, §106.20]

C93, §462A.20

2005 Acts, ch 137, §9; 2018 Acts, ch 1041, §127

462A.21 and 462A.22 Repealed by 2005 Acts, ch 137, §19.

462A.23 Suspension or revocation.

1. Any officer appointed by the commission may, for cause, temporarily suspend the registration certificate of any vessel that has been issued under this chapter, and the commission, after a due hearing on the matter at its next session, shall make final determination in the matter.

2. The commission shall forthwith revoke the registration certificate of any vessel and the owner's or operator's privilege to operate a vessel for hire or commercial vessel, upon receiving a record of such owner or operator's conviction of any of the following offenses, when such conviction has become final:

a. Manslaughter resulting from the operation of a vessel.

b. Operating a motorboat or sailboat while intoxicated, or manipulating water skis, a surfboard, or a similar device while in an intoxicated condition or under the influence of a narcotic drug.

c. Failure to stop and render aid as required by this chapter when an occurrence involving a vessel results in the death or personal injury of another.

d. Perjury or the making of a false affidavit or statement under oath to the commission under this chapter relating to the ownership or operation of a vessel.

3. The commission is hereby authorized to suspend the registration certificate of any vessel and the owner's or operator's privilege to operate a vessel for hire or commercial vessel upon a showing by its records that the owner or operator:

a. Has committed an offense for which mandatory revocation of the registration certificate or of the privilege to operate a vessel for hire or commercial vessel is required upon conviction.

b. Is a habitual reckless or negligent operator of a vessel for hire or commercial vessel.

c. Is incompetent to operate a vessel for hire or commercial vessel.

d. Has permitted an unlawful or fraudulent use of such registration certificate.

4. The commission is hereby authorized to suspend or revoke the certificate of registration of a vessel registered under the provisions of this chapter when:

a. It is satisfied that such registration certificate was fraudulently or erroneously obtained.

b. It determines that a registered vessel is unsafe to be operated on waters of the state under the jurisdiction of the commission.

c. A registered vessel has been abandoned or wrecked.

d. Identification numbers are knowingly displayed on a vessel other than the one to which assigned.

5. Upon revocation of any registration certificate, the commission shall notify the county recorder who issued the same, who shall immediately enter the revocation upon the recorder's records.

6. The commission is hereby authorized to suspend or revoke the special certificate of any manufacturer or dealer when it is satisfied that:

a. Such special certificate was fraudulently or erroneously obtained.

b. Such special certificate is being used in violation of the provisions of this chapter or the rules and regulations of the commission.

c. Such manufacturer or dealer is violating any of the provisions of this chapter or the rules and regulations of the commission.

[C97, S13, §2513; C24, 27, 31, §1695; C35, §1703-e5; C39, §**1703.05;** C46, 50, 54, 58, §106.5; C62, 66, 71, 73, 75, 77, 79, 81, §106.23]

C93, §462A.23

2000 Acts, ch 1099, §9; 2005 Acts, ch 137, §10 – 12; 2007 Acts, ch 28, §9

Referred to in §331.602, 462A.2, 915.80

462A.24 Overloading of vessels.

No person owning or operating a vessel shall permit said vessel to be occupied by more passengers and crew than the registration capacity permits.

[C39, §**1703.16, 1703.24;** C46, 50, 54, 58, §106.16, 106.24; C62, 66, 71, 73, 75, 77, 79, 81, §106.24]

C93, §462A.24

Referred to in §805.8B(1)(c)

For applicable scheduled fine, see §805.8B, subsection 1, paragraph c

462A.25 Penalty.

If an owner or operator of a vessel for hire or commercial vessel operated upon the waters of this state under the jurisdiction of the commission permits such vessel to be occupied by more passengers and crew than the registration capacity allows or if a person continues to operate a vessel for hire or commercial vessel after the person's privilege to operate the vessel has been revoked, the person shall be guilty of a serious misdemeanor. The provisions of this section shall not apply to vessels registered or numbered by authority of the United States.

[C97, §2513; S13, §2513, 2514-d; C24, 27, 31, §1695, 1700; C35, §1703-e6, 1703-e10; C39, §**1703.06, 1703.22, 1703.27;** C46, 50, 54, 58, §106.6, 106.22, 106.27; C62, 66, 71, 73, 75, 77, 79, 81, §106.25]

C93, §462A.25

2005 Acts, ch 137, §13

462A.26 Right-of-way rules — speed and distance rules — zoning water areas.

1. Vessel traffic shall be governed by the following rules:

a. Passing from rear — keep to the operator's left.

b. Passing head on — keep to the operator's right.

c. Passing at right angles — vessel at the right has the right-of-way.

d. Manually propelled vessels have the right-of-way over all other vessels.

e. Sailboats have the right-of-way over all motor driven vessels. Motorboats, when meeting or overtaking sailboats, shall always pass on the leeward side.

f. Any vessel backing from a landing has the right-of-way over incoming vessels.

g. When necessary to protect the public health, safety, and welfare due to the physical

nature and characteristics of any waters under the jurisdiction of the commission, the commission may promulgate further rules governing vessel traffic on such waters.

2. The commission may adopt rules governing all activities on waters and ice of this state under the jurisdiction of the commission, including impoundments constructed by or in cooperation with the federal government, when necessary and desirable to permit appropriate utilization of specific water areas, consistent with section 462A.3. The rules may include rules relating to the following:

a. Zoning as to area, activity, vessel, or vehicle, speed, and time of day during which specified activities are permitted.

b. Horsepower, size, and types of vessels and vehicles which may be operated.

c. Safety precautions and practices required.

3. Except as provided in special rules promulgated under this chapter, the following speed and distance regulations apply:

a. On all waters under the jurisdiction of the commission:

(1) A motorboat shall not be operated at speeds greater than five miles per hour when within one hundred feet of another craft traveling at five miles per hour or less.

(2) Motorboats shall maintain a minimum passing or meeting distance of fifty feet when both boats are traveling at speeds greater than five miles per hour.

(3) A motorboat shall not be operated at a speed exceeding ten miles per hour unless vision is unobstructed at least two hundred feet ahead.

b. On all inland lakes and federal impoundments under the jurisdiction of the commission, a motorboat shall not be operated within three hundred feet of shore at a speed greater than ten miles per hour.

[C39, §**1703.14;** C46, 50, 54, 58, §106.14; C62, 66, §106.26; C71, 73, 75, 77, 79, 81, §106.26, 106.31; 82 Acts, ch 1028, §22]

C93, §462A.26

2011 Acts, ch 25, §57

Referred to in §805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.27 Removal of nonpermanent structures.

Every structure, not considered a permanent structure by the commission or excepted by the rules of the commission, shall be removed from the waters, ice, or land of this state under the jurisdiction of the commission on or before December 15 of each year. Failure to comply with this section shall cause the structure to be declared a public nuisance and disposition shall be in accordance with sections 483A.32 to 483A.34.

[C39, §**1703.16, 1703.25;** C46, 50, 54, 58, §106.16, 106.25; C62, 66, 71, 73, 75, 77, 79, 81, §106.27; 82 Acts, ch 1028, §23]

C93, §462A.27

Referred to in §805.8B(1)(d)

For applicable scheduled fine, see §805.8B, subsection 1, paragraph d

462A.27A Dock requirements — exemptions.

1. A dock in a boat harbor located on the Cedar river in a city with a population of more than one hundred twenty-five thousand located in a county with a population of more than two hundred thousand is exempt from all dock requirements of the department of natural resources if the dock is in compliance with local city regulations for a dock in such a boat harbor except as provided in subsection 2.

2. A dock in a boat harbor located on the Cedar river in a city with a population of more than one hundred twenty-five thousand located in a county with a population of more than two hundred thousand that meets the requirements of subsection 1 and that uses containers as dock flotation devices that were not originally manufactured as dock flotation devices, may continue to use such containers as dock flotation devices if the containers were in use on or before April 10, 2010. At the time that such containers are replaced, the replacement dock flotation devices shall be dock flotation devices that comply with the rules of the department of natural resources. However, if the ownership of the dock is transferred, the new owner

shall have six months from the date of transfer to replace such containers with dock flotation devices that comply with the rules of the department of natural resources.

2010 Acts, ch 1123, §1, 2

462A.28 Unworthy vessels drydocked.

A person shall not place or allow to remain in the waters of this state under the jurisdiction of the commission, any vessel which has failed to pass inspection. All vessels shall be seaworthy for the waters on which they are being used.

[C39, §**1703.25;** C46, 50, 54, 58, §106.25; C62, 66, 71, 73, 75, 77, 79, 81, §106.28; 82 Acts, ch 1028, §24]

C93, §462A.28

Referred to in §805.8B(1)(d)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d

462A.29 Official duty exempted.

Peace officers, members of the commission, its deputies, agents and employees are not violating the provisions of this chapter while acting within the scope of their employment in search and rescue operations, law enforcement duty, emergency duty, and other resource management activities as determined by rules of the commission.

[C39, §**1703.26;** C46, 50, 54, 58, §106.26; C62, 66, 71, 73, 75, 77, 79, 81, §106.29; 82 Acts, ch 1028, §25]

C93, §462A.29

462A.30 Aircraft restriction.

It is unlawful for any aircraft to make use of the inland lakes of the state, except in the transportation of persons or property between points separated by a distance of thirty miles or more. However, this section does not prohibit the use of such waters by any aircraft in danger or distress or the use of such waters by the operators of private aircraft, not operated for hire. In addition, the commission may, on the recommendation of the state department of transportation, designate certain areas on inland lakes of the state where seaplane flight instruction may be conducted under such conditions as may be adopted by the commission and the state department of transportation.

[C39, §**1703.15;** C46, 50, 54, 58, §106.15; C62, 66, 71, 73, 75, 77, 79, 81, §106.30]

C93, §462A.30

462A.31 Artificial lakes.

1. Except as provided in rules adopted under this chapter, a motorboat shall not be permitted on any artificial lake under the jurisdiction of the commission except the following:

a. A motorboat equipped with one or more outboard battery operated electric trolling motors.

b. A motorboat equipped with any power unit mounted or carried aboard the vessel may be operated at a no-wake speed on all artificial lakes of more than one hundred acres in size under the custody of the department. However, on lake Macbride, a motorboat with a power unit exceeding ten horsepower may be operated only when permitted by rule and the rule shall not authorize such use during the period beginning on the Friday before Memorial Day and ending on Labor Day inclusively. This paragraph does not limit motorboat horsepower on natural lakes under the custody of the department or limit the department's authority to establish special speed zoning regulations.

2. All privately owned vessels on artificial lakes under the jurisdiction of the commission shall be kept at locations designated by the commission.

3. All privately owned vessels, used on or kept at the artificial lakes under the jurisdiction of the commission, shall be seaworthy for the waters where they are kept and used. All such vessels shall be removed from state property whenever ordered by the commission, and, in any event, shall be removed from such property not later than December 15 of each year.

4. Upon construction of an artificial lake by a political subdivision of this state, the subdivision may, after publication in a newspaper of general circulation in the subdivision, make formal application to the commission for special rules relating to the operation of

watercraft on the lake, and shall set forth therein the reasons which make such special rules necessary or appropriate. The commission may promulgate the special rules as provided in this chapter, concerning the operation of watercraft on a lake constructed and maintained by a subdivision of this state. Such special rules may include the following:

a. Zoning by area and time to regulate navigation and other types of activity.

b. Regulating the horsepower, size and type of watercraft.

5. As provided in section 350.5, county conservation boards may make regulations concerning horsepower limits and no-wake speeds on artificial lakes under their jurisdiction, except for state-owned artificial lakes managed by a county conservation board under a management agreement.

[C39, §**1703.16;** C46, 50, 54, 58, §106.16; C62, 66, 71, 73, 75, 77, 79, 81, §106.31; 82 Acts, ch 1028, §26]

86 Acts, ch 1227, §1; 87 Acts, ch 124, §1, 2; 92 Acts, ch 1101, §2, 3

C93, §462A.31

97 Acts, ch 91, §1

Referred to in §805.8B(1)(b), 805.8B(1)(e)

For applicable scheduled fines, see §805.8B, subsection 1, paragraphs b and e

462A.32 Rules for buoys.

1. No private buoy shall be maintained in the waters of this state under the jurisdiction of the commission except as specified by the rules of the commission.

2. No other obstruction of any kind shall be maintained in the waters of this state under the jurisdiction of the commission without first receiving permission from the commission to maintain such obstruction.

3. It is unlawful to tamper with, move or attempt to move or, except in an emergency, moor a vessel to any waterway marker or state-approved buoy or sign.

4. No boat shall be anchored away from the shore and left unguarded unless it is attached to a legal buoy.

[C39, §**1703.18;** C46, 50, 54, 58, §106.18; C62, 66, 71, 73, 75, 77, 79, 81, §106.32; 82 Acts, ch 1028, §27]

C93, §462A.32

Referred to in §805.8B(1)(d)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph d

462A.33 Driving over ice.

1. A person operating a craft or vehicle propelled by sail or by machinery in whole or in part shall not operate the craft or vehicle on the surface of ice on the lakes and streams of this state including but not limited to boundary streams and lakes unless the commission issues the person a permit.

2. Subsection 1 does not apply to automobiles, motorcycles, or trucks registered under chapter 321; snowmobiles registered under chapter 321G; or all-terrain vehicles, off-road motorcycles, or off-road utility vehicles registered under chapter 321I, when any of those vehicles are used without endangering public safety.

3. Except when authorized by a permit for a special event, persons shall not operate automobiles, motorcycles, trucks, all-terrain vehicles, off-road motorcycles, or off-road utility vehicles on the ice of waters under the jurisdiction of the commission at a rate of speed greater than is reasonable or proper under all existing circumstances.

4. A permit issued by the commission pursuant to this section may be suspended or revoked by the commission if a craft or vehicle is operated in a careless manner which endangers others.

[C39, §**1703.20;** C46, 50, 54, 58, §106.20; C62, 66, 71, 73, 75, 77, 79, 81, §106.33; 82 Acts, ch 1028, §28]

85 Acts, ch 67, §13

C93, §462A.33

2008 Acts, ch 1161, §14

Referred to in §805.8B(1)(b)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph b

462A.34 Authorized emergency vessels.

Upon approach of an authorized emergency vessel displaying a blue light or flashing blue light, the operator of every other vessel shall stop and yield the right-of-way until the authorized vessel has passed. The provisions of this section shall not relieve the operator of an authorized emergency vessel from the duty to operate the vessel with due regard for the safety of all persons using the waters of this state, nor shall the provisions relieve the operator of any such vessel from liability from the operator's negligence.

[C71, 73, 75, 77, 79, 81, §106.34]

C93, §462A.34

Referred to in §805.8B(1)(c)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph c

462A.34A Vehicles prohibited in streambed.

1. Except as provided in subsection 2, a person shall not operate a motor vehicle in any of the following:

a. Any portion of a meandered stream.

b. Any portion of the bed of a nonmeandered stream which has been identified as a navigable stream or river by rule adopted by the department and which is covered by water.

c. Any portion of a stream identified as a trout stream by the department.

2. This section does not prohibit the use of ford crossings of public or private roads or any other ford crossing when used for agricultural purposes, the operation of construction vehicles engaged in lawful construction, repair, or maintenance in a streambed, or the operation of motor vehicles on ice.

3. The department of natural resources shall adopt rules identifying the navigable streams and rivers in which a motor vehicle may be operated. The department may exempt participants of organized special events from this section where the organized special event is approved by a state or local authority.

4. As used in this section, "*motor vehicle*" means a motor vehicle as defined in section 321.1, subsection 42.

89 Acts, ch 244, §41

CS89, §106.34A

C93, §462A.34A

462A.34B Eluding or attempting to elude pursuing law enforcement vessel — penalty.

1. The operator of a vessel commits a serious misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop. The signals given by the officer shall be by displaying a blue light or flashing blue and red lights and by sounding a horn or siren.

2. The operator of a vessel commits an aggravated misdemeanor if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section and in doing so exceeds a reasonable speed.

3. The operator of a vessel commits a class "D" felony if the operator willfully fails to bring the vessel to a stop or otherwise eludes or attempts to elude an authorized marked law enforcement vessel operated by a uniformed peace officer or by a water patrol officer of the department of natural resources, after being given a visual and audible signal to stop as provided in this section, and in doing so exceeds a reasonable speed, and if any of the following occurs:

a. The operator is participating in a public offense, as defined in section 702.13, that is a felony.

b. The operator is in violation of section 462A.14 or 124.401.

c. The offense results in bodily injury to a person other than the operator.

2007 Acts, ch 28, §10

SUBCHAPTER II

VESSEL REGISTRATION REGULATIONS

462A.35 Special certificate for manufacturer or dealer.

A manufacturer or dealer owning, storing, repairing, or altering a vessel required to be registered under this chapter may operate the vessel for purposes of transporting, testing, demonstrating, or selling the vessel without registering each such vessel, provided that any such vessel displays thereon a special certificate issued to the manufacturer or dealer as provided in this chapter. This special certificate shall not be used for any vessel offered for hire or for any work or service vessels owned by a manufacturer or dealer.

[C71, 73, 75, 77, 79, 81, §106.35]

91 Acts, ch 57, §1; 92 Acts, ch 1163, §27

C93, §462A.35

Referred to in §805.8B(1)(a)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

462A.36 Fee for special certificate — minimum requirements for issuance.

1. Any manufacturer or dealer may, upon payment of a fee of fifteen dollars, make application to the commission, upon such forms as the commission prescribes, for a special certificate containing a general distinguishing number and for one or more duplicate special certificates. The applicant shall submit such reasonable proof of the applicant's status as a bona fide manufacturer or dealer as the commission may require.

2. The commission may adopt rules consistent with this chapter establishing minimum requirements for a dealer or manufacturer to be issued a special certificate. In adopting such rules the department shall consider the need to protect persons, property, and the environment, and to promote uniform practices relating to the sale and use of vessels. The commission may also adopt rules providing for the suspension or revocation of a dealer's or manufacturer's special certificate issued pursuant to this section.

[C71, 73, 75, 77, 79, 81, §106.36]

C93, §462A.36

2012 Acts, ch 1100, §62

462A.37 Number assigned — special signs.

The commission, upon granting any such application, shall issue to the applicant a special certificate containing the applicant's name and address, the general distinguishing number assigned to the applicant, the word "manufacturer" or "dealer", and such other information as the commission may prescribe. The manufacturer or dealer shall have the number so awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the vessel being used, and the display must meet the requirements of this chapter and the rules and regulations of the commission.

[C71, 73, 75, 77, 79, 81, §106.37]

C93, §462A.37

Referred to in §805.8B(1)(a)

For applicable scheduled fines, see §805.8B, subsection 1, paragraph a

462A.38 Duplicates.

The commission shall also issue duplicate special certificates as applied for which shall have displayed thereon the general distinguishing number assigned to the applicant. Each duplicate special certificate so issued shall contain a number or symbol identifying the same from every other duplicate special certificate bearing the same general distinguishing number. The fee for each additional duplicate special certificate shall be two dollars.

[C71, 73, 75, 77, 79, 81, §106.38]

C93, §462A.38

462A.39 Expiration date.
Each special certificate issued under this chapter shall expire at midnight on April 30 of the last calendar year of the registration period, and a new special certificate for the ensuing registration period may be obtained upon application to the commission and payment of the fee provided by law.
[C71, 73, 75, 77, 79, 81, §106.39]
C93, §462A.39
2005 Acts, ch 137, §14; 2019 Acts, ch 59, §149
Section amended

462A.40 Record of use. Repealed by 2012 Acts, ch 1100, §69.

462A.41 Separate certificate for each city.
If a manufacturer or dealer has an established place of business in more than one city, the manufacturer or dealer shall secure a separate and distinct special certificate and general distinguishing number for each such place of business.
[C71, 73, 75, 77, 79, 81, §106.41]
C93, §462A.41

462A.42 List of used boats on hand furnished. Repealed by 2012 Acts, ch 1100, §69.

462A.43 Transfer of ownership.
Upon the transfer of ownership of any vessel, the owner shall, at the time of delivering the vessel, provide the purchaser or transferee with either the title of the vessel assigned in the purchaser's or transferee's name or, if there is no title, the registration certificate with the form on the back completely filled in. Once a vessel has been titled, a person shall not sell or transfer ownership without assigning and delivering the title to the purchaser or transferee. If a vessel has an expired registration at the time of transfer, the transferee shall pay all applicable fees for the current registration period, the appropriate writing fee, and a penalty of five dollars. All penalties collected pursuant to this section shall be forwarded by the commission to the treasurer of state, who shall place the money in the state fish and game protection fund. The money so collected is appropriated to the commission solely for the administration and enforcement of navigation laws and water safety.
[C71, 73, 75, 77, 79, 81, §106.43]
C93, §462A.43
2007 Acts, ch 28, §11; 2019 Acts, ch 80, §6
Section amended

462A.44 Application for transfer.
The purchaser or transferee shall, except as otherwise provided by this chapter, within thirty days of the purchase or transfer, file a new application form with the county recorder with a fee of one dollar and the appropriate writing fee, and a transfer of number shall be awarded in the same manner as provided for in an original registration.
[C71, 73, 75, 77, 79, 81, §106.44]
C93, §462A.44
2002 Acts, ch 1035, §1
Referred to in §331.605

462A.45 Transfer by dealer.
When the purchaser or transferee of a vessel is a dealer who holds the same for resale and operates the vessel only for purposes incident to a resale and displays thereon a special dealers' certificate, or does not operate such vessel or permit it to be operated, such transferee shall not be required to obtain a new registration certificate but upon transferring the title or interest to another person the dealer shall sign the reverse side of the registration certificate of such vessel indicating the name and address of the new purchaser.
[C71, 73, 75, 77, 79, 81, §106.45]
C93, §462A.45

462A.46 Purchase of registered vessel by dealer.

Whenever a dealer purchases or otherwise acquires a vessel registered in this state, the dealer shall issue a signed receipt to the previous owner, indicating the date of purchase or acquisition, the name and address of such previous owner, and the registration number of the vessel purchased or acquired.

[C71, 73, 75, 77, 79, 81, §106.46]
C93, §462A.46
2012 Acts, ch 1100, §63

462A.47 Transfer to dealer.

Nothing in this section shall prohibit a dealer from obtaining a new registration and transfer of registration in the same manner as other purchasers.

[C71, 73, 75, 77, 79, 81, §106.47]
C93, §462A.47

462A.48 Sales by manufacturer or dealer.

Upon the sale of a vessel by a manufacturer or dealer, the purchaser shall, within thirty days of the purchase, make application for registration and the purchaser may operate the vessel without its individual identification number thereon for a period of not more than thirty-five days after the purchase date, provided that during such period the vessel shall have attached thereto, in accordance with the provisions of this chapter, a pasteboard card bearing the words "registration applied for" and the special certificate number of the dealer from whom the vessel was purchased together with the date of purchase plainly stamped or stenciled thereon.

[C71, 73, 75, 77, 79, 81, §106.48]
C93, §462A.48
2002 Acts, ch 1035, §2

462A.49 Prohibited use of "registration applied for" card.

A manufacturer or dealer shall not permit the use of a "registration applied for" card unless an application for a registration certificate has been made.

[C71, 73, 75, 77, 79, 81, §106.49]
C93, §462A.49
2014 Acts, ch 1092, §99

462A.50 Official cards only to be used.

The commission shall, upon the application of any manufacturer or dealer, furnish "registration applied for" cards free of charge. No cards shall be used except those furnished by the commission.

[C71, 73, 75, 77, 79, 81, §106.50]
C93, §462A.50

462A.51 County recorder — duties.

The county recorder shall be responsible for all fees and penalties for the issuance of vessel registrations. All unused registration certificates shall be surrendered to the commission upon demand.

[C71, 73, 75, 77, 79, 81, §106.51]
C93, §462A.51
Referred to in §331.602

462A.52 Fees remitted to commission.

1. A county recorder shall remit to the commission all fees collected by the recorder through a process determined by the department. All fees collected for the registration of vessels shall be forwarded by the commission to the treasurer of the state, who shall place the money in the state fish and game protection fund. The money so collected is

appropriated to the commission solely for the administration and enforcement of navigation laws and water safety.

2. Notwithstanding subsection 1, any increase in revenues received on or after July 1, 2007, but on or before June 30, 2023, pursuant to this section as a result of fee increases pursuant to 2005 Iowa Acts, ch. 137, shall be used by the commission only for the administration and enforcement of programs to control aquatic invasive species and for the administration and enforcement of navigation laws and water safety upon the inland waters of this state and shall be used in addition to funds already being expended by the commission each year for these purposes. The commission shall not reduce the amount of other funds being expended on an annual basis for these purposes as of July 1, 2005, during the period of the appropriation provided for in this subsection.

3. The commission shall submit a written report to the general assembly by December 31, 2007, and by December 31 of each year thereafter through December 31, 2023, summarizing the activities of the department in administering and enforcing programs to control aquatic invasive species and administering and enforcing navigation laws and water safety upon the inland waters of the state. The report shall include information concerning the amount of revenues collected pursuant to this section as a result of fee increases pursuant to 2005 Iowa Acts, ch. 137, and how the revenues were expended. The report shall also include information concerning the amount and source of all other funds expended by the commission during the year for the purposes of administering and enforcing programs to control aquatic invasive species and administering and enforcing navigation laws and water safety upon the inland waters of the state and how the funds were expended.

[C71, 73, 75, 77, 79, 81, §106.52]
89 Acts, ch 102, §1
C93, §462A.52
2005 Acts, ch 137, §15; 2012 Acts, ch 1023, §64; 2013 Acts, ch 72, §1; 2019 Acts, ch 80, §7
Referred to in §331.602
Subsection 1 amended

462A.53 Amount of writing fees.

A writing fee of one dollar and twenty-five cents for each privilege shall be collected by the county recorder.

[C71, 73, 75, 77, 79, 81, §106.5, 106.53; 82 Acts, ch 1028, §29]
C93, §462A.53
2005 Acts, ch 137, §16; 2012 Acts, ch 1100, §64
Referred to in §331.605, 462A.5

462A.54 Disposal of writing fees.

The writing fees collected by the county recorder shall be paid to the county treasurer by the county recorder as other such fees are paid to the county treasurer by the county recorder.

[C71, 73, 75, 77, 79, 81, §106.54]
C93, §462A.54
Referred to in §331.602

462A.55 Sales or use tax to be paid before registration.

No vessel shall be registered by the county recorder until there has been presented to the recorder receipts, bills of sale, or other satisfactory evidence that the sales or use tax has been paid for the purchase of the vessel. If the owner of the vessel is unable to present satisfactory evidence that the sales or use tax has been paid, the county recorder shall collect the tax. On or before the tenth day of each month, the county recorder shall remit to the department of revenue the amount of the taxes so collected during the preceding month, together with an itemized statement on forms furnished by the department of revenue showing the name of each taxpayer, the make and purchase price of each vessel and motor, the amount of tax paid, and such other information as the department of revenue shall require.

[C71, 73, 75, 77, 79, 81, §106.55]
C93, §462A.55
2003 Acts, ch 145, §286
Referred to in §331.602

462A.56 through 462A.65 Reserved.

462A.66 Inspection authority.

An officer of the commission or any peace officer who is trained in enforcing, and who in the regular course of duty enforces, boating and navigation laws may stop and inspect a vessel being launched, being operated, or being moored on the waters of this state under the jurisdiction of the commission to determine whether the vessel is properly registered, numbered, and equipped as provided under this chapter and rules of the commission. An officer may board a vessel in the course of an inspection if the operator is unable to supply visual evidence that the vessel is properly registered and equipped as required by this chapter and rules of the commission. The inspection shall not include an inspection of an area that is not essential to determine compliance with the provisions of this chapter and rules of the commission.

[82 Acts, ch 1028, §31]
C83, §106.66
C93, §462A.66
2005 Acts, ch 137, §17

462A.67 Inspection deficiency order.

If after performing an inspection the officer determines that the vessel is not properly registered, numbered, or equipped, the officer may issue an inspection deficiency order or citation to the operator of the vessel. The inspection deficiency order may indicate any deficiencies found to exist during the inspection and shall direct the owner or operator of the vessel to properly register or number the vessel or have equipment repairs or replacements made and return a copy of the inspection deficiency order with proof of compliance with the registration, numbering, or equipment requirements to the commission within fourteen days. If such proof is not provided within fourteen days, the owner or operator is in violation of this chapter.

[82 Acts, ch 1028, §32]
C83, §106.67
C93, §462A.67

462A.68 Termination of use.

A vessel for which an inspection deficiency order has been issued shall cease to be used as soon as possible and shall not be launched upon the waters of this state under the jurisdiction of the commission until the vessel is in compliance with the registration, numbering, or equipment requirement for which the order was issued.

[82 Acts, ch 1028, §33]
C83, §106.68
C93, §462A.68

462A.69 Public use of water for navigation purposes. Transferred to §462A.3A; 2015 Acts, ch 30, §204.

462A.70 Hull identification, capacity plates, warning labels.

1. *Altering or changing numbers on plates.*

a. A person shall not with fraudulent intent, deface, destroy, or alter the hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law on a vessel or component part nor shall a person place or stamp a hull identification number, capacity plate, or any other warning label or instrument upon a vessel or component part except one assigned thereto by state or federal law.

b. This section does not prohibit the restoration of an original hull identification number, capacity plate, or any other original plate, warning label, or instrument required by state or federal law when the restoration is made by the commission nor prevent a manufacturer from placing in the ordinary course of business numbers, plates, or marks upon vessels or component parts.

2. *Test to determine true number or plate.* When it appears that a hull identification number, capacity plate, or any other plate, warning label, or instrument required by state or federal law has been altered, defaced, or tampered with, a peace officer or inspector employed by the commission or any other person acting under the direction of a peace officer or inspector, may apply any recognized process or test to the vessel or part containing such number or plate for the purpose of determining the true number or plate content.

3. *Right of inspection.* Peace officers or examiners employed by the commission may inspect any vessel or component part in possession of any person or found upon the waters of this state under the jurisdiction of the commission or in a public mooring or storage area or enclosure in which vessels or component parts are kept for sale, storage, hire, or repair and to determine vessel or component part identification may board the vessel or enter the public mooring or storage area or enclosure.

4. *Penalty.* A person who is convicted of a violation of any of the provisions of this section or rules adopted under this section by the commission is guilty of a class "D" felony.

[82 Acts, ch 1028, §35]
C83, §106.70
C93, §462A.70

462A.71 Reciprocity. Transferred to §462A.3B; 2015 Acts, ch 30, §204.

462A.72 through 462A.76 Reserved.

SUBCHAPTER III

VESSEL CERTIFICATES OF TITLE

462A.77 Owner's certificate of title — in general.

1. Except as provided in subsection 3, an owner of a vessel seventeen feet or longer in length principally used on the waters of the state and to be numbered pursuant to section 462A.4 shall apply to the county recorder of the county in which the owner resides for a certificate of title for the vessel. The requirement of a certificate of title does not apply to canoes, kayaks, or inflatable vessels regardless of length.

2. Each certificate of title shall contain the information and shall be issued in a form the department prescribes.

3. *a.* A person who, on January 1, 1988, is the owner of a vessel seventeen feet or longer in length with a valid certificate of number issued by the state is not required to file an application for a certificate of title for the vessel. A person who, on or after January 1, 1988, purchases a vessel seventeen feet or longer in length which was registered with a valid certificate of number issued by this state before January 1, 1988, shall obtain a certificate of title for the vessel.

b. A person who is the owner of a vessel that is documented with the United States coast guard is not required to file an application for a certificate of title for the vessel and the vessel is exempt from the requirements of section 462A.82, subsections 1 and 2, and section 462A.84.

4. Every owner of a vessel subject to titling under this chapter shall apply to the county recorder for issuance of a certificate of title for the vessel within thirty days after acquisition. The application shall be on forms the department prescribes, and accompanied by the required fee. The application shall be signed and shall include a certification signed in writing containing substantially the representation that statements made are true and correct to the best of the applicant's knowledge, information, and belief, under penalty of perjury. The application shall contain the date of sale and gross price of the vessel or the fair market value if no sale immediately preceded the transfer, and any additional information the department requires. If the application is made for a vessel last previously registered or titled in another state or foreign country, it shall contain this information and any other information the department requires.

5. If a dealer buys or acquires a used vessel for resale, the dealer may apply for and obtain

a certificate of title as provided in this chapter. If a dealer buys or acquires a new vessel for resale, the dealer may apply for a certificate of title in the dealer's name.

6. Every dealer transferring a vessel requiring titling under this chapter shall assign the title to the new owner, or in the case of a new vessel assign the certificate of origin. Within thirty days the dealer shall forward all moneys and applications to the county recorder.

7. The county recorder shall maintain an electronic record of each certificate of title issued by the county recorder under this chapter until the certificate of title has been inactive for five years.

8. A person shall not sell, assign, or transfer a vessel titled by the state without delivering to the purchaser or transferee a certificate of title with an assignment on it showing title in the purchaser or transferee. A person shall not purchase or otherwise acquire a vessel required to be titled by the state without obtaining a certificate of title for it in that person's name.

9. A person who owns a vessel which is not required to have a certificate of title may apply for and receive a certificate of title for the vessel and the vessel shall subsequently be subject to the requirements of this subchapter as though the vessel was required to be titled.

10. The buyer of a vessel sold pursuant to section 578A.7 shall present documentation that such sale was completed in compliance with that section.

87 Acts, ch 134, §4
CS87, §106.77
88 Acts, ch 1008, §2; 92 Acts, ch 1073, §1
C93, §462A.77
96 Acts, ch 1020, §1; 97 Acts, ch 23, §55; 2005 Acts, ch 137, §18; 2012 Acts, ch 1050, §44, 60; 2013 Acts, ch 140, §98; 2014 Acts, ch 1026, §143; 2014 Acts, ch 1092, §100; 2014 Acts, ch 1141, §72; 2019 Acts, ch 50, §16; 2019 Acts, ch 80, §8
Subsections 4 – 6 amended
NEW subsection 10

462A.78 Fees — surcharge — duplicates.

1. *a.* The county recorder shall charge a five dollar fee to issue a certificate of title, a transfer of title, a duplicate, or a corrected certificate of title.

b. In addition to the fee required under paragraph "*a*", and sections 462A.82 and 462A.84, a surcharge of five dollars shall be required.

2. If a certificate of title is lost, stolen, mutilated, destroyed, or becomes illegible, the first lienholder or, if there is none, the owner named in the certificate, as shown by the county recorder's records, shall within thirty days obtain a duplicate by applying with any county recorder. The applicant shall furnish information the department requires concerning the original certificate and the circumstances of its loss, mutilation, or destruction. Mutilated or illegible certificates shall be returned to the department with the application for a duplicate.

3. The duplicate certificate of title shall be marked plainly "duplicate" across its face, and mailed or delivered to the applicant.

4. If a lost or stolen original certificate of title for which a duplicate has been issued is recovered, the original shall be surrendered promptly to the department for cancellation.

5. The funds collected under subsection 1, paragraph "*a*", shall be placed in the general fund of the county and used for the expenses of the county conservation board if one exists in that county. Of each surcharge collected as required under subsection 1, paragraph "*b*", the county recorder shall remit five dollars to the department of revenue for deposit in the general fund of the state.

87 Acts, ch 134, §5
CS87, §106.78
91 Acts, ch 267, §606
C93, §462A.78
95 Acts, ch 219, §42; 2003 Acts, ch 145, §286; 2019 Acts, ch 80, §9
Subsection 2 amended

462A.79 Obtaining manufacturer's or importer's certificate of origin.

A manufacturer or dealer shall not transfer ownership of a new vessel required to be titled without supplying the transferee with the manufacturer's or importer's certificate of origin

signed by the manufacturer's or importer's authorized agent. The certificate shall contain information the department requires. The department may adopt rules providing for the issuance of a certificate of origin for a vessel by the department upon good cause shown by the owner.

87 Acts, ch 134, §6
CS87, §106.79
88 Acts, ch 1008, §3
C93, §462A.79

462A.80 Hull identification number of vessel.

1. Every vessel whose construction began after October 31, 1972, shall have a hull identification number assigned and affixed as required by the federal Boat Safety Act of 1971. The department shall determine the procedures for application and for issuance of the hull identification number for homebuilt boats.

2. A person shall not destroy, remove, alter, cover, or deface the manufacturer's hull identification number, the plate bearing it, or any hull identification number the department assigns to a vessel without the department's permission.

3. A person other than a manufacturer who constructs a vessel or uses an unconventional device as a vessel for navigation shall submit an affidavit which describes the vessel or device to the department. In cooperation with the county recorder, the department shall assign a hull identification number to the vessel or device. The applicant shall cause the number to be carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the vessel or device in such a way that alteration, removal, or replacement would be obvious and evident.

87 Acts, ch 134, §7
CS87, §106.80
C93, §462A.80

462A.81 Dealer's record of vessels bought, sold, or transferred.

Every dealer shall maintain for three years a record of any vessel bought, sold, exchanged, or received for sale or exchange. This record shall be open to inspection by department representatives during reasonable business hours.

87 Acts, ch 134, §8
CS87, §106.81
C93, §462A.81

462A.82 Transfer or repossession of vessel by operation of law — coast guard documentation of vessel.

1. If ownership of a vessel is transferred by operation of law, such as by inheritance, order in bankruptcy, insolvency, replevin, execution sale, or in compliance with section 578A.7, the transferee, within thirty days after acquiring the right to possession of the vessel by operation of law, shall mail or deliver to the county recorder satisfactory proof of ownership as the county recorder requires, together with an application for a new certificate of title, and the required fee. A title tax is not required on these transactions.

2. If a lienholder repossesses a vessel by operation of law and holds it for resale, the lienholder shall secure a new certificate of title and shall pay the required fee.

3. If a vessel is documented with the United States coast guard, the owner shall mail or deliver to the county recorder proof of the documentation and the owner's certificate of title issued pursuant to this chapter is canceled upon the delivery. A title tax is not required on these transactions.

87 Acts, ch 134, §9
CS87, §106.82
C93, §462A.82
96 Acts, ch 1020, §2; 2019 Acts, ch 50, §17
Referred to in §462A.77, 462A.78
Subsection 1 amended

462A.83 Security interest in vessels — exemptions.

This subchapter does not apply to or affect any of the following:

1. A lien given by statute or rule of law to a supplier of services or materials for a vessel.

2. A lien given by statute to the United States, this state, or any political subdivision of this state.

3. A security interest in a vessel created by a manufacturer or dealer who holds the vessel for sale, but a buyer in the ordinary course of trade from the manufacturer or dealer takes free of the security interest.

4. A lien arising out of an attachment of a vessel.

5. A security interest claimed on proceeds if the original security interest did not have to be noted on the certificate of title in order to be perfected.

6. A vessel for which a certificate of title is not required under this chapter.

7. A security interest perfected under chapter 554 before January 1, 1988.

87 Acts, ch 134, §10
CS87, §106.83
C93, §462A.83
2014 Acts, ch 1026, §143

462A.84 Perfection and titles — fee.

1. A security interest created in this state in a vessel required to have a certificate of title is not perfected until the security interest is noted on the certificate of title.

a. To perfect the security interest, an application for security interest must be presented along with the original title. The county recorder shall note the security interest on the face of the title and in the electronic record maintained by the recorder's office.

b. The application fee for a security interest is five dollars. The fees shall be credited to the county general fund.

2. The certificate of title shall be presented to the county recorder when the application for security interest or for assignment of the security interest is presented and a new or endorsed certificate of title shall be issued to the secured party with the name and address of the secured party upon it.

3. When a security interest is discharged, the secured party shall note the cancellation of the security interest on the face of the certificate of title and send the title by first class mail to the office of the county recorder where the title was issued, or the secured party shall send a notarized letter by first class mail to the county recorder where the title was issued notifying the county recorder of the cancellation of the security interest. The county recorder shall note the release of the security interest in the county records as evidence of the release of the security interest.

87 Acts, ch 134, §11
CS87, §106.84
88 Acts, ch 1008, §4
C93, §462A.84
2007 Acts, ch 28, §12; 2014 Acts, ch 1141, §73
Referred to in §462A.77, 462A.78

462A.85 Forms — investigations.

1. The department shall prescribe and provide suitable forms for applications, certificates of title, notices of security interests, and all other notices and forms necessary to carry out this subchapter.

2. The department may make necessary investigations to procure information required to carry out this subchapter.

87 Acts, ch 134, §12
CS87, §106.85
88 Acts, ch 1008, §5
C93, §462A.85
2014 Acts, ch 1026, §143

CHAPTER 462B

PROTECTED WATER AREA SYSTEM

Referred to in §455A.4, 455A.5, 456A.14, 456A.24, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 108A in Code 1993

462B.1 Definitions.
462B.2 State plan.
462B.3 Nomination of prospective protected water areas.
462B.4 Prospective designation.
462B.5 Prospective designation public hearing.
462B.6 Management plan.
462B.7 Management plan public hearing.
462B.8 Designation.
462B.9 Protection methods.
462B.10 Landowner cooperation.
462B.11 Judicial review.
462B.12 Local tax reimbursement.
462B.13 Interagency cooperation.
462B.14 Management cooperation with local government subdivisions.
462B.15 Part of a national system.
462B.16 Departmental rules.

462B.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.
2. *"Conservation easement"* means an easement as defined in section 457A.2.
3. *"Department"* means the department of natural resources.
4. *"Legislature"* means the Iowa general assembly.
5. *"Management plan"* means the document that states the goals and objectives of a specific protected water area which has been proposed for designation, the specific description of the area to be protected, land use agreements with property owners, the specific management programming considerations for the area, the in-depth project evaluations, analysis, justifications, and cost estimates, the proposed acquisition of fee title and conservation easements and other agreements, and the specific design and layout of facilities.
6. *"Prospective protected water area"* means a water area designated by the commission for which an in-depth study for permanent designation as an element of the protected water area system is conducted. Such areas shall possess outstanding cultural and natural resource values such as water conservation, scenic, fish, wetland, forest, prairie, mineral, geological, historic, archaeological, recreation, education, water quality, or flood protection values.
7. *"Protected water area"* means a water area permanently designated by the commission for inclusion in the protected water area system.
8. *"Protected water area system"* means a total comprehensive program that includes the goals and objectives, the state plan, the individual management plans, the prospective protected water areas, the protected water areas, the acquisition of fee title and conservation easements and other agreements, and the administration and management of such areas.
9. *"State plan"* means a long-range comprehensive document that states the goals and objectives of the protected water area system, establishes the procedure and criteria for prospective protected water area designation, provides the format for prospective area analysis, establishes a priority system for prospective area study, recommends potential areas for inclusion into the system, institutes interagency coordination, and outlines general administrative and management needs to develop and administer this system.
10. *"Water area"* means a river, lake, wetland, or other body of water and adjacent lands where the use of those lands affects the integrity of the water resource.

84 Acts, ch 1261, §2
C85, §108A.1
86 Acts, ch 1245, §1848, 1849
C93, §462B.1
Referred to in §462B.4

462B.2 State plan.

The commission shall maintain a state plan for the design and establishment of an administrative framework of a protected water area system and those adjacent lands needed to protect the integrity of that system.

84 Acts, ch 1261, §4
C85, §108A.2
C93, §462B.2

462B.3 Nomination of prospective protected water areas.

After basic resource and user data are gathered by or provided to the commission and the commission deems an area has merit for inclusion into a protected water area system, it may nominate the area for prospective protected water area designation. Other public agencies, interest groups, or citizens, may also recommend nomination of water areas for consideration of inclusion into the protected water area system by submitting to the commission a statement which includes at minimum a general description of the area being recommended for nomination, the resources needing protection, and the benefits to be derived from protecting the resources and a list of the individuals, organizations, and public agencies supporting the nomination.

84 Acts, ch 1261, §5
C85, §108A.3
C93, §462B.3

462B.4 Prospective designation.

The commission may designate all or part of any water area having any or all of the resource values cited in section 462B.1, subsection 6, as a prospective protected water area. The prospective designation shall be in effect for a period not to exceed two years during which a management plan is prepared for the protection and enhancement of those values cited in section 462B.1, subsection 6.

84 Acts, ch 1261, §6
C85, §108A.4
C93, §462B.4

462B.5 Prospective designation public hearing.

After the nomination of prospective protected water areas by the commission and prior to the designation as a prospective protected water area, the commission shall conduct a public hearing in the vicinity of the water area. Notice of the hearing shall be published at least twice, not less than seven days prior to the hearing, in a newspaper having general circulation in each county in which the proposed water area is located.

84 Acts, ch 1261, §7
C85, §108A.5
C93, §462B.5

462B.6 Management plan.

The commission shall prepare and maintain a management plan containing the recommendations for the establishment, development, management, use, and administration of each prospective protected water area designated by the commission. The management plan shall be completed during the two-year prospective designation period.

84 Acts, ch 1261, §8
C85, §108A.6
C93, §462B.6

462B.7 Management plan public hearing.

The commission shall hold a final public hearing on the completed management plan in the vicinity of the water area at least thirty days before permanent designation by the commission. Notice of the hearing shall be published at least twice, not less than seven days prior to the

hearing, in a newspaper having general circulation in each county in which the water area is located.

84 Acts, ch 1261, §9
C85, §108A.7
85 Acts, ch 67, §14
C93, §462B.7

462B.8 Designation.

The commission may adopt the management plan and may permanently designate the area into the protected water area system. Upon the commission adopting the management plan and permanently designating the area as a protected water area, the commission may submit the management plan to the legislature for funding consideration.

84 Acts, ch 1261, §10
C85, §108A.8
C93, §462B.8

462B.9 Protection methods.

The commission may use any one or a combination of the available methods, except condemnation, for managing and preserving a protected water area, including but not limited to fee and less than fee title acquisition techniques, such as easements, leasing agreements, covenants, and existing tax incentive programs.

84 Acts, ch 1261, §11
C85, §108A.9
C93, §462B.9

462B.10 Landowner cooperation.

Recognizing that most of the protected water areas may be within privately owned lands, the legislature encourages the commission to cooperate with the landowners within the designated areas in achieving the purposes of this chapter. Likewise, the landowners within the designated areas are encouraged to cooperate with the commission. Commission staff shall meet separately or in small groups with landowners within interim protected water areas during the preparation of the master plan to establish workable and acceptable agreements for the protection of the area and its accompanying resources in a manner consistent with the purposes of this chapter and the interest and concerns of the landowner.

84 Acts, ch 1261, §12
C85, §108A.10
C93, §462B.10

462B.11 Judicial review.

Judicial review of action of the commission may be sought in accordance with chapter 17A. Notwithstanding chapter 17A, petitions for judicial review may be filed in the district court of Polk county or of any county in which the property affected is located.

84 Acts, ch 1261, §13
C85, §108A.11
C93, §462B.11

462B.12 Local tax reimbursement.

The state of Iowa shall reimburse from the general fund of the state any political subdivision the amount of tax moneys lost due to any lower assessments of property resulting from lease agreements, and the acquisition of public lands and conservation easements stemming from designation of a protected water area.

84 Acts, ch 1261, §14
C85, §108A.12
C93, §462B.12

462B.13 Interagency cooperation.

All state and local agencies shall cooperate with the commission and coordinate their authorities, responsibilities, and program administration in a manner which will aid in the integrity of the protected water area system as outlined in the state plan, individual management plans, and commission administrative rules.

84 Acts, ch 1261, §15
C85, §108A.13
C93, §462B.13

462B.14 Management cooperation with local government subdivisions.

The commission may enter into written cooperative agreements with county boards of supervisors, county conservation boards, and municipal public agencies, for the management of a protected water area.

84 Acts, ch 1261, §16
C85, §108A.14
C93, §462B.14

462B.15 Part of a national system.

This chapter does not preclude a component of the protected water area system from being a part of the national wild and scenic river system under the federal Wild and Scenic Rivers Act, 16 U.S.C. §1271 – 1287. The commission may enter into a written cooperative agreement for joint federal-state administration of rivers which may be designated under that federal Act.

84 Acts, ch 1261, §17
C85, §108A.15
C93, §462B.15

462B.16 Departmental rules.

The commission shall adopt under chapter 17A and enforce the administrative rules it deems necessary to carry out this chapter.

84 Acts, ch 1261, §18
C85, §108A.16
C93, §462B.16

CHAPTER 463

RESERVED

CHAPTER 463A

UPPER MISSISSIPPI RIVERWAY COMPACT

Repealed by 2000 Acts, ch 1031, §1

CHAPTER 463B

MISSOURI RIVER PRESERVATION AND LAND USE AUTHORITY

Referred to in §456A.14, 456A.24, 461A.78, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 108B in Code 1993

463B.1 Legislative findings.
463B.2 Missouri river preservation and land use authority created — duties.
463B.3 Missouri river preservation and land use fund.

463B.1 Legislative findings.

The general assembly finds that the Missouri river is an important natural resource to the state of Iowa and that the creation of comprehensive plans which lead to the purchase, development, and preservation of land adjacent to the Missouri river will provide recreational and economic benefits to the state and to the counties and cities which border on the river. The general assembly further finds that current planning and purchase efforts relating to development of Missouri riverfront property have fallen short of the goal of developing a comprehensive plan for the recreational development of the Missouri river and that the creation of an authority which has the mission of engaging in these efforts will have a greater likelihood of reaching the desired goal.

91 Acts, ch 246, §1
CS91, §108B.1
C93, §463B.1

463B.2 Missouri river preservation and land use authority created — duties.

1. A Missouri river preservation and land use authority is created to engage in comprehensive planning for and the development and implementation of strategies designed to preserve and restore the natural beauty of the land adjacent to and the water of the Missouri river through state land acquisition. Planning and implementation activities shall be coordinated with plans and implementation activities of the department of natural resources for lands owned or acquired by the department. The authority shall be composed of a representative from each of the county conservation boards of the counties which border on the Missouri river, an elected official selected by the county board of supervisors of each of the counties which border on the Missouri river, six at-large public members, and four ex officio members. The board of supervisors of the counties which border on the Missouri river shall each appoint one of the at-large public members, who shall possess a demonstrated interest in or knowledge about natural resource conservation and protection and one of whom shall also be actively engaged in the business of farming. Interest or knowledge of an at-large member may be demonstrated by membership in an association or other organization which is involved in conservation, environmental protection, or related activities. The ex officio members of the authority shall be composed of a representative from the natural resource commission of the department of natural resources, a representative from the state department of transportation, a representative from the department of cultural affairs, and a representative from the office of attorney general. Members of the authority shall serve two-year terms. Members who are also members of a county conservation board or board of supervisors shall be reimbursed only for actual expenses incurred while performing duties of the authority. At-large members shall be reimbursed for actual expenses and shall receive a per diem as specified in section 7E.6 for their performance of duties for the authority.

2. The mission of the authority is to research, develop comprehensive plans, and implement strategies which emphasize the creation of multipurpose recreational areas that foster and accent the natural characteristics of the Missouri river and which provide for environmentally sound land and water use practices for land adjacent to the Missouri river; to designate and prioritize for purchase parcels of land which are located in areas critical for the environmental health of the Missouri river waterway; to develop plans for and to

acquire parcels of land to establish a public greenbelt along the banks of the Missouri river; to develop plans for public recreational use of lands adjacent to the Missouri river, including but not limited to a public bicycle trail; and to cooperate with county and city authorities, and federal and state authorities in order to fulfill the mission of the authority.

3. The authority shall develop plans and proposals and conduct public hearings relating to the conservation, preservation, and acquisition of land adjacent to the Missouri river. In developing plans and proposals the authority shall consult with any person or organization which has interests that would be affected by the acquisition and development of Missouri river property in accordance with the mission of the authority, including but not limited to utility companies, municipalities, agricultural organizations, the corps of engineers, rural water districts, soil and water conservation districts, private water suppliers, business and industry organizations, drainage and levee district associations, benefited recreational lake districts, and any soil conservation organizations. The authority shall include a copy of any plans and proposals and shall document the results and findings of those hearings in a report or series of reports. The authority shall submit an initial report, including an outline for a proposed ten-year plan and strategies for the attainment of the goals of this section, to the general assembly by the first day of the legislative session which commences in 1993. As part of the authority's planning and coordinating effort, the authority shall consult, at least annually, with the Iowa boundary commission and shall send copies of the minutes of all meetings of the authority to the commission. Within one year of July 1, 1991, the authority shall meet with the Iowa boundary commission. Meetings with the Iowa boundary commission shall be held at a time and a place agreed to between the commission and the authority.

4. The authority shall administer the Missouri river preservation and land use fund, under section 463B.3, and shall deposit and expend moneys in the fund for the development of plans for, development of, and purchase of lands adjacent to the Missouri river and for annual payment of property taxes on any land purchased. The county treasurer shall certify the amount of taxes due to the authority. The assessed value of the property held by the authority shall be that value determined under section 427.1, subsection 18, and the authority may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For purposes of chapter 257, the assessed value of any property which was acquired by the authority shall be included in the valuation base of the school district and the payments made by the authority shall be considered as property tax revenues and not as miscellaneous income. The expenditure of funds may include, but is not limited to, use of moneys from the Missouri river preservation and land use fund to match funds from state, federal, and private resources.

5. The title to all property purchased by the authority shall be taken in the name of the state, but no land shall be acquired through condemnation proceedings and all purchases shall be from willing sellers. The authority may transfer jurisdiction over any lands the authority acquires to the department of natural resources, or may enter into agreements with the department or the appropriate county conservation board, for the management of the lands. All lands purchased shall be for public use, and not for private commercial purposes, but the authority may permit the expenditure of private funds for the improvement of land or water adjacent to or purchased by the authority. All surveys and plats of lands purchased by the authority shall be filed in the manner provided in section 461A.22. Land purchased by the authority shall be managed and policed in the manner provided under agreements between the authority and the agency responsible for management of the property, except that, subject to the restrictions contained in chapter 455B, the authority shall not be required to obtain the prior permission of the natural resource commission when using private funds to establish land or water recreational areas, and any property purchased by the authority shall not be sold without the prior notification and consent of the authority.

91 Acts, ch 246, §2
CS91, §108B.2
C93, §463B.2
Referred to in §463B.3

463B.3 Missouri river preservation and land use fund.

A Missouri river preservation and land use fund is established in the office of treasurer of state, to be administered by and subject to the use of the Missouri river preservation and land use authority for the purposes established in section 463B.2. The Missouri river preservation and land use authority may accept gifts, grants, bequests, other moneys including but not limited to state or federal moneys, and in-kind contributions for deposit in the fund for the use of the authority to carry out the authority's mission. Gifts, grants, and bequests from public and private sources, state and federal moneys, and other moneys received by the authority shall be deposited in the fund and any interest earned on the fund shall be credited to the fund to be used for the purposes specified in section 463B.2. Notwithstanding section 8.33, any unexpended or unencumbered moneys remaining in the fund at the end of a fiscal year shall not revert to the general fund, but shall remain available for expenditure by the authority in succeeding fiscal years.

91 Acts, ch 246, §3
CS91, §108B.3
C93, §463B.3
Referred to in §463B.2

CHAPTER 463C

HONEY CREEK PARK DEVELOPMENT

Repealed by 2019 Acts, ch 46, §6
For provisions relating to competitive bidding for contracts involving or benefitting Honey creek resort state park, see §461A.3A

CHAPTER 464

RESERVED

CHAPTER 464A

DAMS AND SPILLWAYS

Referred to in §455A.4, 455A.5, 456A.24, 481A.1

This chapter not enacted as a part of this title; transferred from chapter 112 in Code 1993

464A.1 Resolution of necessity.
464A.1A Definitions.
464A.2 Expert plan.
464A.3 Hearing — damages.
464A.4 Adoption of plan.
464A.5 Appraisal of damages.
464A.6 Filing appraisement.
464A.7 Damages determined.
464A.8 Judicial review — bond.
464A.9 Final determination and costs.
464A.10 Tentative plan.
464A.11 Water trails and low head dam public hazard statewide plan.

464A.1 Resolution of necessity.

Whenever, in the opinion of the commission, it is necessary and desirable for it to erect a dam or spillway across a stream or at the outlet of a lake, or to alter or reconstruct an existing dam or spillway, so as to increase or decrease its permanent height, or to permanently affect the water level above the structure, it shall proceed with said project by first adopting

a resolution of necessity to be placed upon its records, in which it shall describe in a general way the work contemplated.

[C24, 27, 31, §1826; C35, §1828-e1; C39, §**1828.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.1]

86 Acts, ch 1245, §1877

C93, §464A.1

464A.1A 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.

86 Acts, ch 1245, §1875

C87, §112.1A

C93, §464A.1A

464A.2 Expert plan.

The commission, upon receipt of a report and plan prepared by a competent civil engineer, showing the work contemplated, the effect on the water level, and probable cost and such other facts and recommendations as may be deemed material, may approve said plan which shall be considered a tentative plan only, for the project.

[C24, 27, 31, §1826; C35, §1828-e2; C39, §**1828.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.2]

C93, §464A.2

464A.3 Hearing — damages.

After the approval the commission, if it wishes to proceed further with the project, shall, with the consent of the environmental protection commission, fix a date of hearing not less than two weeks from date of approval of the plan. Notice of the day, hour and place of hearing, relative to proposed work, shall be provided by publication at least once a week for two consecutive weeks in some newspaper of general circulation published in the county where the project is located, or in the counties where the water elevations are affected, under the tentative plan approved. The last publication shall not be less than five days prior to the day set for hearing. Any claim by any persons for damages which may be caused by the project shall be filed with the commission at or prior to the time of the hearing.

[C24, 27, 31, §1826; C35, §1828-e3; C39, §**1828.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.3; 82 Acts, ch 1199, §59, 96]

86 Acts, ch 1245, §1876

C93, §464A.3

464A.4 Adoption of plan.

If, at the time of the hearing, the commission shall find that the improvement would be conducive to the public convenience, welfare, benefit or utility, and the cost thereof is not excessive, and no claim shall have been filed for damages, it may adopt the tentative plan as final or may modify the plan, provided said modification will not, to any greater extent than the tentative plan, materially and adversely affect the interests of littoral or riparian owners.

[C24, 27, 31, §1826; C35, §1828-e4; C39, §**1828.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.4]

C93, §464A.4

464A.5 Appraisal of damages.

If, at the time of the hearing, the claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date and place of which shall be fixed at the time of adjournment and of which all interested parties shall take notice, and the commission shall have the damages appraised by three appraisers to be appointed by the chief justice of the supreme court. One of these appraisers shall be

a licensed civil engineer resident of the state and two shall be freeholders of the state, who shall not be interested in nor related to any person affected by the proposed project.

[C24, 27, 31, §1826; C35, §1828-e5; C39, §**1828.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.5]

C93, §464A.5

2007 Acts, ch 126, §83

464A.6 Filing appraisement.

The appraisers appointed to determine the damages caused by the proposed project shall view the premises and determine and fix the amount of damages to which each claimant is entitled and shall, at least three days before the date fixed by the commission to hear and determine the same, file with the secretary of the commission reports in writing showing the amount of damages sustained by each claimant. Should good cause for delay exist, the commission may postpone the time of final action on the project.

[C24, 27, 31, §1826; C35, §1828-e6; C39, §**1828.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.6]

C93, §464A.6

464A.7 Damages determined.

At the time fixed for hearing and after receipt of the report of the appraisers, the commission shall examine said report, both for and against each claim for damages and compensation and shall determine the amount of damages and compensation due each claimant and may affirm, increase or diminish the amount awarded by the appraisers. After such action, the commission may thereupon adopt a final plan for the project, and proceed with its construction, or it may dismiss the entire proceedings.

[C24, 27, 31, §1826; C35, §1828-e7; C39, §**1828.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.7]

C93, §464A.7

464A.8 Judicial review — bond.

Judicial review of the orders or actions of the commission fixing the amount of compensation awarded or damages sustained by any claimant may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A. The petition for review shall be accompanied by an appeal bond with sufficient sureties to be approved by the clerk of the district court conditioned to pay all costs adjudged against the petitioner.

[C24, 27, 31, §1826; C35, §1828-e8; C39, §**1828.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.8]

C93, §464A.8

2003 Acts, ch 44, §114

Referred to in §602.8102(26)

464A.9 Final determination and costs.

The amount of damages or compensation found by the court shall be entered of record. Unless the result of the judicial review proceeding is more favorable to the petitioner than the action of the commission, all costs of the judicial review proceeding shall be taxed to the petitioner, but if more favorable, the cost shall be taxed to the respondents. All damages assessed and all costs occasioned under this chapter shall be paid from the funds of the commission.

[C24, 27, 31, §1826; C35, §1828-e9; C39, §**1828.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.9]

C93, §464A.9

464A.10 Tentative plan.

If, at the time of hearing on the tentative plan, no objectors appear and no claim for damages or compensation shall have been filed, or if proper waivers giving consent to the

construction of the proposed improvement have been obtained from all parties affected then the commission may adopt the tentative plan as final and proceed with the work proposed.

[C24, 27, 31, §1826; C35, §1828-e10; C39, §**1828.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §112.10]

C93, §464A.10

464A.11 Water trails and low head dam public hazard statewide plan.

1. The department shall establish a water trails and low head dam public hazard program.

2. In administering the water trails and low head dam public hazard program, the department shall conduct a study of waterways for recreational purposes and develop a statewide plan by March 31, 2010. Elements of the plan shall include but not be limited to:

a. Compiling an inventory of low head dams, including a listing of those low head dams, for the purposes of publicizing hazards through maps and warning signage.

b. Seeking input from the public and experts in various fields, including fisheries, rescue professionals, water recreation, river management, public utilities conservation, and landscape architecture, to be used in the recreation and safety components of the plan.

c. Developing standard recommendations for local communities including signage system and placement guidelines, boating access type, placement and construction guidelines, and volunteer recommendations for communities.

d. Recommending design templates for low head dams to reduce incidents of drowning.

e. With input from stakeholders, developing criteria for prioritizing removal or modification of low head dams.

f. With input from stakeholders, developing criteria for prioritizing development of water trails.

3. The department may contract with a university or private consultant in order to assist with development of the plan.

2008 Acts, ch 1069, §1, 2; 2009 Acts, ch 144, §14

Appropriation of funds; 2008 Acts, ch 1178, §19; 2009 Acts, ch 184, §1, 4, 19, 28; 2013 Acts, ch 142, §45, 52

CHAPTER 464B

DAMS

Referred to in §455A.6

464B.1 through 464B.22	Reserved.	464B.24	Embankments — damages.
464B.23	Protection of banks.	464B.25	Right to utilize fall.

464B.1 through 464B.22 Reserved.

464B.23 Protection of banks.

Where the water backed up by any dam belonging to any mill or machinery is about to break through or over the banks of the stream or raceway, or to wash a channel, so as to turn the water of such stream or raceway, or any part thereof, out of its ordinary channel, whereby such mill or machinery will be materially injured or affected, the owner or occupant of such mill or machinery, if that person does not own such banks or the land lying contiguous thereto, may, if necessary, enter thereon and erect and keep in repair such embankments and other works as may be necessary to prevent such water from breaking through or over the banks, or washing a channel as aforesaid; such owner or occupier committing thereon no unnecessary waste or damage, and being liable to pay all damages which the owner of the lands may actually sustain by reason thereof.

[R60, §1275, 1276; C73, §1204; C97, §1936; C24, 27, 31, 35, 39, §**7789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.23]

C93, §464B.23

464B.24 Embankments — damages.

If any person shall injure, destroy, or remove any such embankment or other works, the owner or occupier of such mill or machinery may recover of such person all damages the owner or occupant may sustain by reason thereof.

[R60, §1277; C73, §1205; C97, §1937; C24, 27, 31, 35, 39, §**7790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.24]

C93, §464B.24

464B.25 Right to utilize fall.

Any person owning and using a water power for the purpose of propelling machinery shall have the right to acquire, maintain, and utilize the fall below such power for the purpose of improving the same, in like manner and to the same extent as provided in this chapter for the erection or heightening of milldams. After such right has been acquired, the fall shall be considered part and parcel of said water power or privilege, and the deepening or excavating of the stream, tail, or raceway, as herein contemplated, shall in no way affect any rights relating to such water power acquired by the owner thereof prior to such change.

[C73, §1206; C97, §1938; C24, 27, 31, 35, 39, §**7791;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469.25]

C93, §464B.25

CHAPTER 465

RESERVED

CHAPTER 465A

OPEN SPACE LANDS

Referred to in §306D.1, 456A.24, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 111E in Code 1993
Intent that highway scenic routes program
be coordinated with open space program, §306D.1(2)

465A.1 Statement of purpose — intent.
465A.2 Statewide open space acquisition and protection program — objectives and agency duties.
465A.3 Funding sources.
465A.4 Payment in lieu of property taxes.

465A.1 Statement of purpose — intent.

1. The general assembly finds that:

a. Iowa's most significant open space lands are essential to the well-being and quality of life for Iowans and to the economic viability of the state's recreation and tourism industry.

b. Many areas of high national significance in the state have not received adequate public protection to keep them free of visual blight, resource degradation, and negative impacts from inappropriate land use and surrounding development. Some of these areas include national park service and United States fish and wildlife service properties, national landmarks and trails, the Des Moines river greenbelt, the great river road, areas where interstate highways enter the state, cross major rivers, and pass by other areas of national significance, major state park and recreation areas, unique and protected water areas, and significant natural, geological, scenic, historic, and cultural properties of the state.

c. While state and federal funds are generally available for the acquisition and protection of fish and wildlife areas and habitats as well as boating access to public waters, funding

programs for public open space acquisition and protection have not been adequate to meet needs.

d. Relative to other midwestern states, Iowa ranks last in the proportion of land acquired and protected for public open space.

2. *a.* A program shall be established to:

(1) Educate the citizens of the state about the needs and urgency of protecting the state's open spaces.

(2) Plan for the protection of the state's significant open space areas.

(3) Acquire and protect those properties on a priority basis through a variety of appropriate means.

b. In addition to other goals for the program, it is intended that a minimum of ten percent of the state's land area be included under some form of public open space protection by the year 2000.

87 Acts, ch 174, §1
CS87, §111E.1
C93, §465A.1
2011 Acts, ch 25, §120
Referred to in §465A.2

465A.2 Statewide open space acquisition and protection program — objectives and agency duties.

1. The department of natural resources has the following duties in undertaking programs to meet the objectives stated in section 465A.1.

a. Prepare and conduct new education and awareness programs designed to create greater public understanding of the needs, issues, and opportunities for protecting the state's significant open spaces. The department shall incorporate the recommendations of other state agencies and private sector organizations which have interests in open space protection. The department may enter into contracts with other agencies and the private sector for preparing and conducting these programs.

b. Prepare a statewide, long-range plan for the acquisition and protection of significant open space lands throughout the state as identified in section 465A.1. The department of transportation, department of economic development, and department of cultural affairs, private organizations, county conservation boards, city park and recreation departments, and the federal agencies with lands in the state shall be directly involved in preparing the plan. The plan shall include, but is not limited to, the following elements:

(1) Specific acquisition and protection needs and priorities for open space areas based on the following sequence of priorities:

(a) National.

(b) Regional.

(c) Statewide.

(d) Local.

(2) Identification of open space acquisition and protection techniques available or needed to carry out the plan.

(3) Additional education and awareness programs which are needed to encourage the acquisition and protection of areas identified in the plan.

(4) Management needs including maintenance, rehabilitation, and improvements.

(5) Funding levels needed to accomplish the statewide open space programs.

(6) Recommendations as to how federal programs can be modified or developed to assist the state's open space programs.

c. Acquire and protect open space properties as identified by priority in the plan as funding is made available for this purpose. In acquiring and protecting open space, the department shall:

(1) Accept applications for funding assistance from federal agencies, other state agencies, regional organizations, county conservation boards, city park and recreation agencies, and private organizations with an interest in open spaces.

(2) Obtain the maximum efficiency of funds appropriated for this program through the

use of acquisition and protection techniques that provide the degree of protection required at the lowest cost.

(3) Encourage the provision of supporting or matching funds; however, the absence of these funds shall not prevent the approval of those projects of clear national importance.

2. The department may enter into contracts with private consultants for preparing all or part of the plan required under subsection 1, paragraph *"b"*. The plan shall be submitted to the general assembly by July 1, 1988. Prior to submission of the plan to the general assembly, the department shall request comments on the proposed plan from state and federal agencies and private organizations with interests in open space protection. The comments shall be submitted to the general assembly.

3. The department may initiate pilot acquisition and protection projects prior to completion of the open space plan if the pilot projects have high national significance as identified in section 1, subsection 2.

87 Acts, ch 174, §2
CS87, §111E.2
C93, §465A.2
2011 Acts, ch 118, §85, 89; 2012 Acts, ch 1021, §85
Duties of former department of economic development were assumed by economic development authority beginning July 1, 2011, pursuant to 2011 Acts, ch 118

465A.3 Funding sources.

1. To achieve the purposes of this chapter, the department, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

a. Appropriations by the general assembly.

b. Private grants and gifts.

c. Federal grants and loans intended for these purposes.

2. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the purposes of carrying out this natural open space program or specific elements of the program.

87 Acts, ch 174, §3
CS87, §111E.3
C93, §465A.3

465A.4 Payment in lieu of property taxes.

As a part of the budget proposal submitted to the general assembly under section 455A.4, subsection 1, paragraph *"c"*, the director of the department of natural resources shall submit a budget request to pay the property taxes for the next fiscal year on open space property acquired by the department which would otherwise be subject to the levy of property taxes. The assessed value of open space property acquired by the department shall be that determined under section 427.1, subsection 18, and the director may protest the assessed value in the manner provided by law for any property owner to protest an assessment. For the purposes of chapter 257, the assessed value of the open space property acquired by the department shall be included in the valuation base of the school district and the payments made pursuant to this section shall be considered as property tax revenues and not as miscellaneous income. The county treasurer shall certify taxes due to the department. The taxes shall be paid annually from the departmental fund or account from which the open space property acquisition was funded. If the departmental fund or account has no moneys or no longer exists, the taxes shall be paid from funds as otherwise provided by the general assembly. If the total amount of taxes due certified to the department exceeds the amount appropriated, the taxes due shall be reduced proportionately so that the total amount equals the amount appropriated. This section applies to open space property acquired by the department on or after January 1, 1987.

87 Acts, ch 174, §4; 89 Acts, ch 135, §52
CS87, §111E.4
C93, §465A.4
Referred to in §455A.19

CHAPTER 465B

RECREATION TRAILS

Referred to in §456A.24, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 111F in Code 1993

465B.1 Statement of purpose — intent.
465B.2 Statewide trails development program.
465B.3 Involvement of other agencies.
465B.4 Funding.

465B.1 Statement of purpose — intent.

The general assembly finds that recreation trails provide a significant benefit for the health and well-being of Iowans and state visitors. Iowa has a national reputation as a place for hiking, walking, and bicycling. The use of recreation trails has a significant influence on Iowa's economy. Iowa's scenic landscapes, many small communities, and existing natural and transportation corridors are ideally suited for new recreation trails to support recreation and tourism activities such as walking, biking, driving for pleasure, horseback riding, boating and canoeing, skiing, snowmobiling, and others.

The general assembly finds that a program shall be established to acquire, develop, promote, and manage existing and new recreation trails. The objective of a statewide trails program shall be for the state to acquire and develop two thousand miles of new recreation trails and completion of existing trail projects before the year 2000.

87 Acts, ch 173, §1
CS87, §111F.1
C93, §465B.1
Referred to in §465B.2

465B.2 Statewide trails development program.

1. The state department of transportation shall undertake the following actions to establish a program to meet the objective stated in section 465B.1:

a. Prepare a long-range plan for the acquisition, development, promotion, and management of recreation trails throughout the state. The plan shall identify needs and opportunities for recreation trails of different kinds having national, statewide, regional, and multicounty importance. Recommendations in the plan shall include but not be limited to:

(1) Specific acquisition needs and opportunities for different types of trails.

(2) Development needs including trail surfacing, restrooms, shelters, parking, and other needed facilities.

(3) Promotional programs which will encourage Iowans and state visitors to increase use of trails.

(4) Management activities including maintenance, enforcement of rules, and replacement needs.

(5) Funding levels needed to accomplish the statewide trails objectives.

(6) Ways in which trails can be more fully incorporated with parks, cultural sites, and natural resource sites.

b. Include, within the plan, recommendations for standards for establishing functional classifications for all types of recreation trails as well as a system for determining jurisdictional control over trails. Levels of jurisdiction may be vested in the state, counties, cities, and private organizations.

2. *a.* The state department of transportation may enter into contracts for the preparation of the trails plan. The department shall involve the department of natural resources, the Iowa department of economic development, and the department of cultural affairs in the preparation of the plan. The recommendations and comments of organizations representing different types of trail users and others with interests in this program shall also be incorporated in the preparation of the trails plan and shall be submitted with the plan to the general assembly. The plan shall be submitted to the general assembly no later than

January 15, 1988. Existing trail projects involving acquisition or development may receive funding prior to the completion of the trails plan.

b. The department shall give priority to funding the acquisition and development of trail portions which will complete segments of existing trails. The department shall give preference to the acquisition of trail routes which use existing or abandoned railroad right-of-ways, river valleys, and natural greenbelts. Multiple recreational use of routes for trails, other forms of transportation, utilities, and other uses compatible with trails shall be given priority.

c. The department may acquire property by negotiated purchase and hold title to property for development of trails. The department may enter into agreements with other state agencies, political subdivisions of the state, and private organizations for the planning, acquisition, development, promotion, management, operations, and maintenance of recreation trails.

3. The department may adopt rules under chapter 17A to carry out a trails program.

87 Acts, ch 173, §2
CS87, §111F.2
C93, §465B.2
2011 Acts, ch 34, §107

465B.3 Involvement of other agencies.

The department of natural resources, the economic development authority, and the department of cultural affairs shall assist the state department of transportation in developing the statewide plan for recreation trails, in acquiring property, and in the development, promotion, and management of recreation trails.

87 Acts, ch 173, §3
CS87, §111F.3
C93, §465B.3
2011 Acts, ch 118, §85, 89

465B.4 Funding.

To achieve the purposes of this chapter, the state department of transportation, other state agencies, political subdivisions of the state, and private organizations may use funds from the following sources:

1. Funds appropriated by the general assembly.
2. Private grants and gifts.
3. Federal grants and loans intended for these purposes.

87 Acts, ch 173, §4
CS87, §111F.4
C93, §465B.4

CHAPTER 465C

STATE PRESERVES

Referred to in §455A.4, 455A.5, 456A.14, 456A.24, 459.102, 481A.1

This chapter not enacted as a part of this title;
transferred from chapter 111B in Code 1993

465C.1 Definitions.
465C.2 Advisory board.
465C.3 Membership.
465C.4 Expenses.
465C.5 Organization.
465C.6 Advisors.
465C.7 Ecologist.
465C.8 Powers and duties.
465C.9 Articles of dedication.
465C.10 When dedicated as a preserve.
465C.11 Area held in trust.
465C.12 Agencies urged to dedicate preserves.
465C.13 Other purposes not affected.
465C.14 Confidentiality of ecologically sensitive sites and information.

465C.1 Definitions.

As used in this chapter:

1. *"Area"* means an area of land or water or both land and water.
2. *"Board"* means the state advisory board for preserves established by this chapter.
3. *"Commission"* means the natural resource commission.
4. *"Dedication"* means the allocation of an area as a preserve by a public agency or by a private owner by written stipulation in a form approved by the state advisory board for preserves.
5. *"Department"* means department of natural resources created under section 455A.2.
6. *"Director"* means director of the department.
7. *"Preserve"* means an area of land or water formally dedicated under this chapter for maintenance as nearly as possible in its natural condition though it need not be completely primeval in character at the time of dedication or an area which has unusual flora, fauna, geological, archaeological, scenic, or historical features of scientific or educational value.

[C66, 71, 73, 75, 77, 79, 81, §111B.1]
86 Acts, ch 1245, §1869
C93, §465C.1
2006 Acts, ch 1030, §48

465C.2 Advisory board.

There is hereby created a state system of preserves and a state advisory board for preserves.

[C66, 71, 73, 75, 77, 79, 81, §111B.2]
C93, §465C.2

465C.3 Membership.

1. *a.* The board shall be composed of seven members, six of which shall be appointed by the governor. The director of the department shall also serve as a member of the board.

b. The commission, the conservation committee of the Iowa academy of science, and the state historical society shall submit to the governor a list of possible appointments. Members shall be selected from persons with a demonstrated interest in the preservation of natural lands and waters, and historic sites.

2. Members shall serve until their successors are appointed and qualified. The director shall serve as long as the director is director. Any vacancies on the board shall be filled, for the remainder of the term vacated, by appointment by the governor provided by this chapter. As terms of members expire, their successors shall be appointed for terms to expire three years thereafter. Any member who has served two consecutive full terms will not be eligible for reappointment for a period of one year following the expiration of the member's second term.

[C66, 71, 73, 75, 77, 79, 81, §111B.3]

86 Acts, ch 1245, §1877
C93, §465C.3
2018 Acts, ch 1026, §143; 2019 Acts, ch 24, §64
Section amended

465C.4 Expenses.

The members of the board may be reimbursed for necessary expenses in connection with performance of their duties. Each member of the board may also be eligible to receive compensation as provided in section 7E.6.

[C66, 71, 73, 75, 77, 79, 81, §111B.4]
86 Acts, ch 1245, §1870
C93, §465C.4

465C.5 Organization.

The board shall organize annually by the election of a chairperson. The board shall meet annually and at such other times as it deems necessary. Meetings may be called by the chairperson, and shall be called by the chairperson on the request of three members of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.5]
C93, §465C.5

465C.6 Advisors.

Representatives of such agencies, institutions, and organizations as the board may determine may serve as advisors to the board. Such advisors shall receive no compensation for this function but at the discretion of the board may be reimbursed for necessary expenses in connection with the performance of their duties.

[C66, 71, 73, 75, 77, 79, 81, §111B.6]
C93, §465C.6

465C.7 Ecologist.

The director shall employ, upon recommendation by the board, at salaries fixed by the board, a trained ecologist and other personnel as necessary to carry out the powers and duties of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.7]
86 Acts, ch 1245, §1871
C93, §465C.7

465C.8 Powers and duties.

The board shall have the following powers and duties:

1. To approve an area as a preserve.
2. To make and publish all rules necessary to carrying out the purposes of this chapter.
3. To recommend dedication as preserves, of areas owned by the state under the jurisdiction of the department.
4. To recommend acquisition of areas for dedication as preserves subject to approval by the natural resource commission.
5. To recommend dedication as preserves, areas owned by other public agencies, private groups, and individuals.
6. To make surveys and maintain registries and records of preserves and other areas of educational or scientific value and of habitats for rare and endangered species of plants and animals in the state.
7. To promote research and investigations, carry on interpretive programs and publish and disseminate information pertaining to preserves and related areas of educational or scientific value.
8. To promote the establishment and protection of, and advise in the management of, wild parks and other areas of educational or scientific value and otherwise foster and aid in the preservation of natural conditions elsewhere than in preserves.

9. To authorize payment of travel and other necessary expenses of the members of the board and advisors to the board, and salaries, wages, compensations, travel, supplies, and equipment necessary to carry out the duties of the board, and to authorize any other expenditures as may be necessary to carry into effect the purposes of this chapter.

10. To design and control the use of official state preserve signs and recommend to the state department of transportation locations for state preserve signs.

11. To submit to the governor and the legislature a report before January 15, 1967, and every two years thereafter which shall account for each preserve in the system and make such other reports and recommendations as it may deem necessary.

12. To prepare and recommend a budget, for inclusion as a line item money request in the departmental budget, for appropriation from the state general fund.

[C66, 71, 73, 75, 77, 79, 81, §111B.8]
86 Acts, ch 1245, §1872
C93, §465C.8

465C.9 Articles of dedication.

1. The public agency or private owner shall complete articles of dedication on forms approved by the board. When the articles of dedication have been approved by the governor, the board shall record them with the county recorder for the county or counties in which the area is located.

2. The articles of dedication may contain restrictions on development, sale, transfer, method of management, public access, and commercial or other use, and may contain such other provisions as may be necessary to further the purposes of this chapter. They may define the respective jurisdictions of the owner or operating agency and the board. They may provide procedures to be applied in case of violation of the dedication. They may recognize reversionary rights. They may vary in provisions from one preserve to another in accordance with differences in relative conditions.

[C66, 71, 73, 75, 77, 79, 81, §111B.9]
C93, §465C.9
2006 Acts, ch 1030, §49; 2018 Acts, ch 1041, §127

465C.10 When dedicated as a preserve.

An area shall become a preserve when it has been approved by the board for dedication as a preserve, whether in public or private ownership, formally dedicated as a preserve within the system by a public agency or private owner and designated by the governor as a preserve.

[C66, 71, 73, 75, 77, 79, 81, §111B.10]
C93, §465C.10
2006 Acts, ch 1030, §50

465C.11 Area held in trust.

1. An area designated as a preserve within the system is hereby declared put to its highest, best, and most important use for public benefit. It shall be held in trust and shall not be alienated except to another public use upon a finding by the board of imperative and unavoidable public necessity and with the approval of the commission, the general assembly by concurrent resolution, and the governor. The board's interest or interests in any area designated as a preserve shall not be taken under the condemnation statutes of this state without such a finding of imperative and unavoidable public necessity by the board, and with the consent of the commission, the general assembly by concurrent resolution, and the governor.

2. The board, with the approval of the governor, may enter into amendments to any articles of dedication upon its finding that such amendment will not permit an impairment, disturbance, or development of the area inconsistent with the purposes of this chapter.

3. Before the board shall make a finding of imperative and unavoidable public necessity, or shall enter into any amendment to articles of dedication, the board shall provide notice of such proposal and opportunity for any person to be heard. Such notice shall be published at least once in a newspaper with a general circulation in the county or counties wherein the

area directly affected is situated, and mailed within ten days of such published notice to all persons who have requested notice of all such proposed actions. Each notice shall set forth the substance of the proposed action and describe, with or without legal description, the area affected, and shall set forth a place and time not less than sixty days thence for all persons desiring to be heard to have reasonable opportunity to be heard prior to the finding of the board.

[C66, 71, 73, 75, 77, 79, 81, §111B.11]
86 Acts, ch 1245, §1877
C93, §465C.11
2018 Acts, ch 1041, §97

465C.12 Agencies urged to dedicate preserves.

All departments, agencies, and instrumentalities of the state, including counties, municipalities, public corporations, boards, commissions, and universities shall be urged to dedicate as nature preserves within the system under the procedures outlined in this chapter, suitable areas or portions of areas within their jurisdiction.

[C66, 71, 73, 75, 77, 79, 81, §111B.12]
C93, §465C.12

465C.13 Other purposes not affected.

1. Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge, or other area or the proper management and development thereof except that any agency administering any area designated as a nature preserve under the system shall be responsible for preserving the natural character of the area in accordance with the articles of dedication.

2. Designation of an area as a preserve within the system shall not void or replace any protected status under law which the area would have were it not so designated.

[C66, 71, 73, 75, 77, 79, 81, §111B.13]
C93, §465C.13
2018 Acts, ch 1041, §127

465C.14 Confidentiality of ecologically sensitive sites and information.

The director of the department of natural resources and the state ecologist shall comply with the requirements of section 22.7, subsection 21, regarding information pertaining to the nature and location of ecologically sensitive resources or sites. The director of the department of natural resources, in consultation with the state ecologist, shall consult with other public officers serving as lawful custodians of ecologically sensitive information to determine whether the information should be confidential or be released.

86 Acts, ch 1228, §3
C87, §111B.14
C93, §465C.14

CHAPTER 466

IMPROVEMENT OF WATERSHED ATTRIBUTES

Referred to in §461.33

466.1 Short title.
466.2 Legislative goal.
466.3 Iowa clean water award.
466.4 Conservation buffer strip program.
466.5 Conservation reserve enhancement program.
466.6 Water quality monitoring.
466.7 Water quality protection program.
466.8 On-site wastewater systems assistance program.
466.9 On-site wastewater systems assistance fund.

466.1 Short title.

This chapter shall be known and may be cited as *"Initiative on Improving Our Watershed Attributes (I on IOWA)"*.

2000 Acts, ch 1068, §1

466.2 Legislative goal.

The goal of this chapter is to develop a comprehensive water quality program that will result in water quality improvements while reducing proposed regulatory impacts. The program shall use information, education, monitoring, technical assistance, data gathering and evaluation, incentives, and more efficient issuance of permits. The program is expected to have a menu of initiatives and approaches to appeal to a broad audience of participants and shall be coordinated so that individual initiatives work toward the objective of improved water quality. The departments of agriculture and land stewardship and natural resources shall work cooperatively with federal agencies to obtain waivers and changes in rules and procedures at national and state levels to improve the federal programs' environmental and economic performance for Iowans. State agencies shall collaborate with other state agencies to attain the overall goal of improved water quality. The state department of transportation and the department of natural resources shall collaborate to provide for the preservation of topsoil, erosion control, water impoundment during highway construction and reconstruction, and restoration and management of roadside right-of-way for prairie restoration, wildlife habitat, and erosion control.

2000 Acts, ch 1068, §2

466.3 Iowa clean water award.

An Iowa clean water award is created. The governor and the general assembly shall give the award annually to a city or other political subdivision which has met criteria established by the department of natural resources and the department of agriculture and land stewardship identifying exemplary efforts to improve water quality within its jurisdiction.

2000 Acts, ch 1068, §3

466.4 Conservation buffer strip program.

1. As used in this section, *"conservation buffer strip"* means a riparian buffer, filter strip, waterway, contour buffer strip, shallow water area for wildlife, field border, or any vegetative barrier on private land that meets the criteria established by the United States department of agriculture, natural resources conservation service.

2. *a.* The department of agriculture and land stewardship, in consultation with the department of natural resources, shall establish a program to accelerate the United States department of agriculture's program to install conservation buffer strips in this state.

b. The department of agriculture and land stewardship shall request waivers from the United States department of agriculture to initiate projects that reward landowners maintaining current conservation practices. The goal of the projects is to discourage the destruction of existing conservation buffer strips and to monetarily reward landowners who maintain quality conservation practices. If the waivers are granted, up to twenty-five percent of the program resources shall be committed to establishing projects.

c. The department of agriculture and land stewardship shall request a waiver from the United States department of agriculture for the purpose of establishing that a person who is subject to a twenty-five percent reduction in conservation buffer strip payments due to grazing shall be allowed ninety days to graze animals.

d. The department of natural resources shall establish a prairie seed harvest program to assist in the restoration of prairies and provide for private land stewardship and public resource management through assistance with the implementation of buffer and filter strip practices, and public or private habitat development and management. The department shall carry out these efforts through landowner contacts and cooperation with private and public organizations.

e. The five-year goal of the conservation buffer strip program shall be to meet the objective of water quality improvement by enrolling an additional four hundred seven thousand five hundred acres.

2000 Acts, ch 1068, §4
Referred to in §461.34

466.5 Conservation reserve enhancement program.

1. A conservation reserve enhancement program is established within the department of agriculture and land stewardship to restore or construct wetlands for the purposes of intercepting tile line runoff, reducing nutrient loss, improving water quality, and enhancing agricultural production practices. The program shall be directed primarily, but not exclusively, toward the tile-drained areas of the state.

2. The department of agriculture and land stewardship shall request the assistance of and consult with the United States department of agriculture's natural resources conservation service and farm service agency to implement the conservation reserve enhancement program. The department shall also consult with county boards of supervisors, county conservation boards, drainage district representatives, department of natural resources, and soil and water conservation districts affected by the implementation of the conservation reserve enhancement program. The department shall also collaborate with other public agencies and private organizations to develop wetland habitat and related projects to improve water quality.

3. The department of agriculture and land stewardship shall maintain a record of all wetlands established pursuant to the conservation reserve enhancement program including any conditions that may apply to the landowner's right to remove the wetland after the provisions of the conservation reserve enhancement program contract or easement are concluded.

4. When establishing a wetland under this section, the department of agriculture and land stewardship shall be governed by the following requirements:

a. Wetland construction or restoration shall not damage the value of property in any public or private drainage system without the property owner's consent.

b. Wetland construction or restoration shall improve water quality and provide aesthetic and habitat benefits.

c. Wetland construction or restoration under this section may be used to mitigate wetland removal by the landowner if it meets the requirements of federal agencies with wetland jurisdictional authorities. Where practicable, priority shall be given to mitigating wetland removal within the same United States geological survey hydrologic unit code 8 watershed, but a watershed confines shall not limit the use of duly authorized wetland mitigation banks.

5. The five-year goal of the conservation reserve enhancement program is the establishment of thirty-two thousand five hundred acres of wetlands.

2000 Acts, ch 1068, §5; 2000 Acts, ch 1232, §75; 2003 Acts, ch 108, §88
Referred to in §461.34

466.6 Water quality monitoring.

The department of natural resources shall operate water quality monitoring stations for the purpose of gathering information and data to establish benchmarks for water quality in this state.

2000 Acts, ch 1068, §6

466.7 Water quality protection program.

1. The department of agriculture and land stewardship shall implement, in conjunction with the federal government and other entities, a program that provides multiobjective resource protections for flood control, water quality, erosion control, and natural resource conservation.

2. The department of agriculture and land stewardship shall implement a statewide, voluntary farm management demonstration program to demonstrate the effectiveness and adaptability of emerging practices in agronomy that protect water resources and provide other environmental benefits. A demonstration program under this subsection may complement, but shall not duplicate, projects conducted by Iowa state university extension service. The demonstration program shall be designed to concentrate on management techniques in both the livestock and crop genres and shall be offered to farm operators through an educational setting and demonstration projects. The demonstration program shall be offered in conjunction with the community colleges, Iowa state university, and private farmer demonstrations. Continuing education units shall be offered. The educational program shall be offered at no cost to farm operators who file a schedule F with the internal revenue service and do not have permitted livestock facilities or are certified under a manure management plan.

3. The department of agriculture and land stewardship shall provide financial assistance for the establishment of permanent soil and water conservation practices.

4. The department of natural resources shall provide local watershed managers with geographic information system data for their use in developing, monitoring, and displaying results of their watershed work. The local watershed data shall be considered public records and are accessible to the public pursuant to chapter 22.

5. The department of natural resources shall develop a program that provides support to local volunteer management efforts to the different programs concerned with water quality. The department shall assist in coordinating and tracking of the volunteer component of these programs to increase efficiency and avoid duplication of efforts in water quality monitoring and watershed improvement.

6. The department of natural resources shall provide for activities supporting the analysis of water quality monitoring data for trends and for the preparation and presentation of data to the public.

7. The department of natural resources shall contract to assist its staff with the review of national pollutant discharge elimination system permits.

8. The department of natural resources shall expand floodplain protection education to better inform local officials that make decisions with regard to floodplain management.

9. The department of natural resources shall continue the establishment of an effective and efficient method of developing a total maximum daily load program, based on information gathered on other states' programs and investigation into alternative methods for satisfying the requirements.

2000 Acts, ch 1068, §7; 2001 Acts, ch 37, §1, 4

466.8 On-site wastewater systems assistance program.

1. The department of natural resources shall establish an on-site wastewater systems assistance program for the purpose of providing low-interest loans to homeowners for improving on-site wastewater disposal systems.

2. The environmental protection commission shall adopt rules for carrying out the program including but not limited to criteria for homeowner participation, the methods used to provide loans, and financing terms and limits.

3. The department may make and execute agreements with public or private entities,

including lending institutions as defined in section 12.32, as required to administer the program.

4. Assistance provided to homeowners shall not be used to pay the nonfederal share of the cost of any wastewater system projects receiving grants under the federal Clean Water Act, 33 U.S.C. §1381 – 1387.

2001 Acts, ch 37, §2, 4; 2001 Acts, ch 176, §69, 70; 2013 Acts, ch 59, §4
Referred to in §466.9

466.9 On-site wastewater systems assistance fund.

1. An on-site wastewater systems assistance fund is established as a separate fund in the state treasury under the control of the department of natural resources. Moneys in the fund are appropriated to the department of natural resources for the exclusive purpose of supporting and administering the on-site wastewater systems assistance program as established in section 466.8.

2. The fund shall consist of all of the following:

a. Moneys appropriated to the department by the general assembly for deposit in the fund or to carry out the purposes of the on-site wastewater systems assistance program.

b. Moneys provided to the department by the federal government to carry out the purpose of administering the programs, policies, and undertakings authorized in the federal Clean Water Act, 33 U.S.C. §1381 – 1387.

c. Moneys collected by the department pursuant to loan agreements from homeowners receiving loans under the on-site wastewater systems assistance program.

d. Any other moneys obtained or accepted by the department for deposit in the fund.

3. *a.* The fund shall consist of the following accounts:

(1) The financing account which shall be used for the exclusive purpose of providing financing to homeowners for improving on-site wastewater systems under the on-site wastewater systems assistance program.

(2) The administration account which shall be used by the department to defray expenses associated with carrying out the on-site wastewater systems assistance program.

b. Of all moneys deposited into the fund each year, the department shall credit at least ninety-six percent of the moneys to the financing account and any remaining moneys to the administration account.

4. The moneys in the fund are not considered part of the general fund of the state, and in determining a general fund balance shall not be included in the general fund of the state. The moneys in the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys deposited in the fund shall be credited to the fund.

2001 Acts, ch 37, §3, 4; 2013 Acts, ch 59, §5; 2014 Acts, ch 1092, §101, 102

CHAPTER 466A

WATERSHED IMPROVEMENT GRANTS

Repealed by 2017 Acts, ch 168, §24, 25

CHAPTER 466B

SURFACE WATER PROTECTION, FLOOD MITIGATION, AND WATERSHED MANAGEMENT

Referred to in §461.34

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SUBCHAPTER I

SURFACE WATER PROTECTION AND FLOOD MITIGATION

466B.1 Short title.

This chapter shall be known and may be cited as the *"Surface Water Protection and Flood Mitigation Act"*.

2008 Acts, ch 1034, §1; 2009 Acts, ch 146, §7

466B.2 Definitions.

For the purposes of this chapter, unless the context otherwise requires:

1. *"Council"* means the water resources coordinating council created in section 466B.3.
2. *"Department"* means the department of natural resources.
3. *"Iowa nutrient reduction strategy"* means the same as defined in section 455B.171.
4. *"Political subdivision"* means any of the following:

a. A city.

b. A county.

c. A soil and water conservation district described in section 161A.5.

d. A benefited recreational lake district or a water quality district or a combined district incorporated as a public entity and organized pursuant to chapter 357E.

e. A rural improvement zone established pursuant to chapter 357H.

5. *"Regional watershed"* means a watershed of hydrologic unit code scale 8.

6. *"Subwatershed"* means a watershed of hydrologic unit code scale 12 or smaller.

7. *"Watershed"* means a geographic area in which surface water is drained by rivers, streams, or other bodies of water.

2008 Acts, ch 1034, §2; 2013 Acts, ch 132, §57; 2016 Acts, ch 1020, §1; 2018 Acts, ch 1152, §9, 10

466B.3 Water resources coordinating council.

1. *Council established.* A water resources coordinating council is established within the department of agriculture and land stewardship.

2. *Purpose.* The purpose of the council shall be to preserve and protect Iowa's water resources, and to coordinate the management of those resources in a sustainable and fiscally responsible manner. In the pursuit of this purpose, the council shall use an integrated approach to water resource management, recognizing that insufficiencies exist in current approaches and practices, as well as in funding sources and the utilization of funds. The integrated approach used by the council shall attempt to overcome old categories, labels, and obstacles with the primary goal of managing the state's water resources comprehensively rather than compartmentally.

3. *Accountability.* The success of the council's efforts shall ultimately be measured by the following outcomes:

a. Whether the citizens of Iowa can more easily organize local watershed projects.

b. Whether the citizens of Iowa can more easily access available funds and water quality program resources.

c. Whether the funds, programs, and regulatory efforts coordinated by the council eventually result in a long-term improvement to the quality of surface water in Iowa. To evaluate the progress achieved over time toward the goals of the Iowa nutrient reduction strategy and the United States environmental protection agency gulf hypoxia action plan, the baseline condition shall be calculated for the time period from 1980 to 1996.

d. Whether the potential for flood damage in each watershed in the state has been reduced.

4. *Membership.* The council shall consist of the following members:

a. The director of the department of natural resources or the director's designee.

b. The director of the division of soil conservation and water quality within the department of agriculture and land stewardship or the director's designee.

c. The director of the department of public health or the director's designee.

d. The director of the department of homeland security and emergency management or the director's designee.

e. The dean of the college of agriculture and life sciences at Iowa state university or the dean's designee.

f. The dean of the college of public health at the university of Iowa or the dean's designee.

g. The dean of the college of natural sciences at the university of northern Iowa or the dean's designee.

h. The director of transportation or the director's designee.

i. The director of the economic development authority or the director's designee.

j. The executive director of the Iowa finance authority or the executive director's designee.

k. The secretary of agriculture, who shall be the chairperson, or the secretary's designee. As the chairperson, and in order to further the coordination efforts of the council, the secretary may invite representatives from any other public agency, private organization, business, citizen group, or nonprofit entity to give public input at council meetings, provided the entity has an interest in the coordinated management of land resources, soil conservation, flood mitigation, or water quality. The secretary shall also invite and solicit advice from the following:

(1) The director of the Iowa water science center of the United States geological survey or the director's designee.

(2) The state conservationist from the Iowa office of the United States department of agriculture's natural resources conservation service or the state conservationist's designee.

(3) The executive director for Iowa from the United States department of agriculture's farm services agency or the executive director's designee.

(4) The state director for Iowa from the United States department of agriculture's office of rural development or the state director's designee.

(5) The director of region seven of the United States environmental protection agency or the director's designee.

(6) The corps commander from the United States army corps of engineers' Rock Island district or the commander's designee.

l. The dean of the college of engineering at the university of Iowa or the dean's designee.

5. *Meetings and quorum.*

a. The council shall be convened by the secretary of agriculture at least quarterly.

b. A majority of the members fixed by statute shall constitute a quorum, and any action taken by the council must be adopted by a majority of the voting membership.

6. *Duties and powers.*

a. The council shall engage in the regular coordination of water resource-related functions, including protection strategies, planning, assessment, prioritization, review, concurrence, advocacy, and education.

b. In coordinating water resource-related functions, the council may do all of the following:

(1) Consider the steps necessary to address the planning, management, and implementation of water resource improvement.

(2) Identify ways to facilitate communication and participation among all water resource stakeholders, including owners of land in Iowa whether they are residents or not.

(3) Identify inefficiencies in current programs and recommend ways to eliminate duplicative services.

(4) Improve the availability and management of water resource information.

(5) Provide incentives for, and recognition of, environmental excellence.

(6) Regularly assess and identify measurable improvements in water quality.

(7) Oversee the complete, statewide regional watershed assessment, prioritization, and planning process described in section 466B.5, including a short-term interim program and a long-term comprehensive state water quality and quantity plan updated every five years as provided in sections 466B.5 and 466B.6.

(8) Develop a protocol which identifies high-priority watersheds, including local and community-based subwatersheds, and which appropriately directs resources to those watersheds.

(9) Review best available technologies on a regular basis, so that investments of time and program resources can be prioritized and directed to projects that will best and most effectively improve water quality and reduce flood damage within regional and community subwatersheds.

(10) Review voluntary, performance-based standards for water resource management, land management, and soil conservation.

(11) Develop a protocol for assigning multiagency teams to regional watersheds and local subwatersheds and guide those teams in the coordination of citizen and agency activities within those watersheds.

(12) Engage in dialogue with, and pursue efforts to make cooperative agreements with, other states when a watershed extends beyond borders of this state.

(13) Enter into agreements and make contracts with third parties for the performance of duties imposed by this chapter.

(14) Prepare a memorandum of understanding identifying the roles and responsibilities of council members in the coordination of the implementation of community-based subwatershed improvement plans. The memorandum shall be a commitment by the agencies participating in council meetings to reach consensus regarding communications with subwatershed planning units.

c. The council shall develop recommendations for policies and funding promoting a watershed management approach to reduce the adverse impact of future flooding on this state's residents, businesses, communities, and soil and water quality. The council

shall consider policies and funding options for various strategies to reduce the impact of flooding including but not limited to additional floodplain regulation; wetland protection, restoration, and construction; the promulgation and implementation of statewide storm water management standards; conservation easements and other land management; perennial ground cover and other agricultural conservation practices; pervious pavement, bioswales, and other urban conservation practices; and permanent or temporary water retention structures. In developing recommendations, the council shall consult with hydrological and land use experts, representatives of cities, counties, drainage and levee districts, agricultural interests, and soil and water conservation districts, and other urban and regional planning experts.

2008 Acts, ch 1034, §3; 2009 Acts, ch 41, §139; 2009 Acts, ch 146, §8 – 12; 2010 Acts, ch 1061, §62; 2011 Acts, ch 118, §85, 89; 2011 Acts, ch 119, §1 – 5; 2012 Acts, ch 1021, §86; 2012 Acts, ch 1023, §65; 2013 Acts, ch 29, §58; 2015 Acts, ch 29, §114; 2015 Acts, ch 103, §52; 2018 Acts, ch 1001, §21; 2018 Acts, ch 1152, §11

Referred to in §466B.2

466B.4 Legislative findings and marketing campaign.

1. *Findings.* The general assembly finds all of the following:

a. Most Iowans desire to have improved water quality throughout the state, but many Iowans do not understand the problems with local water quality.

b. Most Iowans believe that the protection of fish and wildlife benefits all Iowans.

c. The benefits of improving water quality could far outweigh the costs of implementing mechanisms to improve it.

d. Most Iowans look to some level of government for the protection of water resources rather than to themselves and their own actions. However, it is not possible or desirable for state government to take complete control and responsibility for water quality.

e. In addition to the use of Iowa land for agriculture and economic development, the land in watersheds and floodplains should be managed to reduce flooding, reduce flood damage, ameliorate the effects of drought, improve water quality, improve habitat and the natural environment, increase renewable energy production, and enhance recreational opportunities.

2. *Marketing campaign.* The water resources coordinating council shall develop a marketing campaign to educate Iowans about the need to take personal responsibility for the quality and quantity of water in their local watersheds. The emphasis of the campaign shall be that not only is everyone responsible for clean water, but that everyone benefits from it as well, and that everyone is responsible for and benefits from reducing the risk for flooding and mitigating possible future flood damage. The goals of the campaign shall be to convince Iowans to take personal responsibility for clean water and reducing the risk of flooding and to equip them with the tools necessary to effect change through local water quality improvement projects and better floodplain management and flood risk programs.

3. *Contingent on funding.* The duties imposed in subsection 2 are contingent upon the receipt of funding sufficient to cover the costs associated with the marketing campaign.

2008 Acts, ch 1034, §4; 2009 Acts, ch 146, §13; 2010 Acts, ch 1193, §127

466B.5 Regional watershed assessment, planning, and prioritization.

1. *Regional watershed assessment program.* The department of natural resources shall create a regional watershed assessment program. The program shall assess all the regional watersheds in the state.

a. The statewide assessment shall be conducted at the rate of approximately one-fifth of the watersheds per year, and an initial full assessment shall be completed within five years. Thereafter, the department of natural resources shall review and update the assessments on a regular basis.

b. Each regional watershed assessment shall provide a summary of the overall condition of the watershed. The information provided in the summary may include land use patterns, soil types, slopes, management practices, stream conditions, and both point and nonpoint source impairments.

c. In conducting a regional watershed assessment, the department of natural resources may provide opportunities for local data collection and input into the assessment process.

2. *Planning and prioritization.* In conducting the regional watershed assessment program, the department of natural resources shall provide hydrological and geological information sufficient for the water resources coordinating council to prioritize watersheds statewide and for the various communities in those watersheds to plan remedial efforts in their local communities and subwatersheds.

3. *Report to council.* Upon completion of the statewide assessment, and upon updating the assessments, the department of natural resources shall report the results of the assessment to the council and the general assembly, and shall make the report publicly available.

2008 Acts, ch 1034, §5; 2011 Acts, ch 119, §6
Referred to in §466B.3, 466B.9

466B.6 Community-based subwatershed improvement plans.

1. *Facilitation of community-based subwatershed plans.* After the department of natural resources' completion of the initial regional watershed assessment, and after the council's prioritization of the regional watersheds, the council shall designate one or more of the agencies represented on the council to facilitate the development and implementation of local, community-based subwatershed improvement plans.

2. *Assessment, planning, prioritization, and implementation.* In facilitating the development of community-based subwatershed improvement plans, the agency or agencies designated by the council shall, based on the results of the regional watershed assessment program, identify critical subwatersheds within priority regional watersheds and recruit communities, citizen groups, local governmental entities, or other stakeholders to engage in the assessment, planning, prioritization, and implementation of a local community-based subwatershed improvement plan. The agency or agencies designated by the council may assist in the formation of a group of initial local community-based subwatershed improvement plans that can be implemented as pilot projects, in order to develop an effective process that can be replicated across the state.

2008 Acts, ch 1034, §6; 2011 Acts, ch 119, §7
Referred to in §466B.3

466B.7 Community-based subwatershed monitoring.

1. *Monitoring assistance.* After completion of the statewide regional watershed assessment and prioritization, and throughout the implementation of local community-based subwatershed improvement plans, the department of natural resources shall assist communities with the monitoring and measurement of local subwatersheds. The monitoring and measurement shall be designed for the particular needs of individual communities.

2. *Data collection and use.* Local communities in which the department of natural resources conducts subwatershed monitoring shall use the information to support subwatershed planning activities, do local data collection, and identify priority areas needing additional resources. Local communities shall also collect data over time and use the data to evaluate the impacts of their management efforts.

2008 Acts, ch 1034, §7; 2011 Acts, ch 119, §8

466B.8 Wastewater and storm water infrastructure assessment.

The department of natural resources shall assess and prioritize communities within a watershed presenting the greatest level of risk to water quality and the health of residents. This prioritization shall include both sewered and unsewered communities.

2008 Acts, ch 1034, §8; 2011 Acts, ch 119, §9

466B.9 Rulemaking authority.

The department of natural resources and the department of agriculture and land stewardship shall have the power and authority reasonably necessary to carry out the duties imposed by this chapter. As to the department of natural resources, this includes rulemaking authority to carry out the regional watershed assessment program described in section

466B.5. As to the department of agriculture and land stewardship, this includes rulemaking authority to assist in the implementation of community-based subwatershed improvement plans.

2008 Acts, ch 1034, §9; 2011 Acts, ch 119, §10

466B.10 Floodplain managers.

The council shall encourage and support the formation of a chapter of the association of state floodplain managers in Iowa that would provide a vehicle for local floodplain managers and floodplain planners to further pursue professional educational opportunities.

2010 Acts, ch 1193, §128

466B.11 Flood education.

The Iowa state university agricultural extension service, the council, and agency members of the council shall, to the extent feasible, work with floodplain and hydrology experts to educate the general public about floodplains, flood risks, and basic floodplain management principles. This educational effort shall include developing educational materials and programs in consultation with floodplain experts.

2010 Acts, ch 1193, §129

466B.12 through 466B.20 Reserved.

SUBCHAPTER II

WATERSHED MANAGEMENT AUTHORITIES

466B.21 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Authority"* means a watershed management authority created pursuant to a chapter 28E agreement as provided in this subchapter.
2. *"Board"* means a board of directors of a watershed management authority.

2010 Acts, ch 1116, §3; 2013 Acts, ch 132, §58

466B.22 Watershed management authorities created.

1. Two or more political subdivisions may create, by chapter 28E agreement, a watershed management authority pursuant to this subchapter. The participating political subdivisions must be located in the same United States geological survey hydrologic unit code 8 watershed. All political subdivisions within a watershed must be notified within thirty days prior to organization of any watershed management authority within the watershed, and provided the opportunity to participate.
2. The chapter 28E agreement shall include a map showing the area and boundaries of the authority.
3. A political subdivision may participate in more than one authority created pursuant to this subchapter.
4. A political subdivision is not required to participate in a watershed management authority or be a party to a chapter 28E agreement under this subchapter.
5. If a portion of a United States geological survey hydrologic unit code 8 watershed is located outside of this state, any political subdivision in such a watershed may participate in any watershed management authority which includes the county in which the political subdivision is located.

2010 Acts, ch 1116, §4; 2019 Acts, ch 89, §42
NEW subsection 5

466B.23 Duties.

A watershed management authority may perform all of the following duties:

1. Assess the flood risks in the watershed.
2. Assess the water quality in the watershed.

3. Assess options for reducing flood risk and improving water quality in the watershed.
4. Monitor federal flood risk planning and activities.
5. Educate residents of the watershed area regarding water quality and flood risks.
6. Allocate moneys made available to the authority for purposes of water quality and flood mitigation.
7. Make and enter into contracts and agreements and execute all instruments necessary or incidental to the performance of the duties of the authority. A watershed management authority shall not acquire property by eminent domain.

2010 Acts, ch 1116, §5

466B.24 Board of directors.

1. An authority shall be governed by a board of directors. Members of a board of directors of an authority shall be divided among the political subdivisions comprising the authority and shall be appointed by the respective political subdivision's elected legislative body.
2. A board of directors shall consist of one representative of each participating political subdivision. This subsection shall not apply if a chapter 28E agreement under this subchapter provides an alternative board composition method.
3. The directors shall serve staggered terms of four years. The initial board shall determine, by lot, the initial terms to be shortened and lengthened, as necessary, to achieve staggered terms. A person appointed to fill a vacancy shall be appointed in the same manner as the original appointment for the duration of the unexpired term. A director is eligible for reappointment. This subsection shall not apply if a chapter 28E agreement under this subchapter provides an alternative for the length of term, appointment, and reappointment of directors.
4. A board may provide procedures for the removal of a director who fails to attend three consecutive regular meetings of the board. If a director is so removed, a successor shall be appointed for the duration of the unexpired term of the removed director in the same manner as the original appointment. The appointing body may at any time remove a director appointed by it for misfeasance, nonfeasance, or malfeasance in office.
5. A board shall adopt bylaws and shall elect one director as chairperson and one director as vice chairperson, each for a term of two years, and shall appoint a secretary who need not be a director.
6. A majority of the membership of a board of directors shall constitute a quorum for the purpose of holding a meeting of the board. The affirmative vote of a majority of a quorum shall be necessary for any action taken by an authority unless the authority's bylaws specify those particular actions of the authority requiring a greater number of affirmative votes. A vacancy in the membership of the board shall not impair the rights of a quorum to exercise all the rights and perform all the duties of the authority.

2010 Acts, ch 1116, §6

466B.25 Activities coordination.

In all activities of a watershed management authority, the authority may coordinate its activities with the department of natural resources, the department of agriculture and land stewardship, councils of governments, public drinking water utilities, and soil and water conservation districts.

2010 Acts, ch 1116, §7

466B.26 through 466B.30 Reserved.

SUBCHAPTER III

WATERSHED PLANNING ACTIVITIES

466B.31 Watershed planning advisory council.

1. A watershed planning advisory council is established for purposes of assembling a

diverse group of stakeholders to review research and make recommendations to various state entities regarding methods to protect water resources in the state, assure an adequate supply of water, mitigate and prevent floods, and coordinate the management of those resources in a sustainable, fiscally responsible, and environmentally responsible manner. The advisory council may seek input from councils of governments or other organizations in the development of its recommendations. The advisory council shall meet once a year and at other times as deemed necessary to meet the requirements of this section. The advisory council may appoint a task force to assist the advisory council in completing its duties.

2. The watershed planning advisory council shall consist of all of the following members:

a. The voting members of the advisory council shall include all of the following:

(1) One member selected by the Iowa association of municipal utilities.

(2) One member selected by the Iowa league of cities.

(3) One member selected by the Iowa association of business and industry.

(4) One member selected by the Iowa water pollution control association.

(5) One member selected by the Iowa rural water association.

(6) One member selected by growing green communities.

(7) One member selected by the Iowa environmental council.

(8) One member selected by the Iowa farm bureau federation.

(9) One member selected by the Iowa corn growers association.

(10) One member selected by the Iowa soybean association.

(11) One member selected by the Iowa pork producers council.

(12) One member selected by the soil and water conservation districts of Iowa.

(13) One person representing the department of agriculture and land stewardship selected by the secretary of agriculture.

(14) One person representing the department of natural resources selected by the director.

(15) Two members selected by the Iowa conservation alliance.

(16) One member selected by the Iowa drainage district association.

(17) One member selected by the agribusiness association of Iowa.

(18) One member selected by the Iowa floodplain and stormwater management association.

(19) One member selected by Iowa rivers revival.

b. The nonvoting members of the advisory council shall include all of the following:

(1) Two members of the senate. One senator shall be appointed by the majority leader of the senate and one senator shall be appointed by the minority leader of the senate.

(2) Two members of the house of representatives. One member shall be appointed by the speaker of the house of representatives and one member shall be appointed by the minority leader of the house of representatives.

3. By December 1 of each year, the watershed planning advisory council shall submit a report to the governor, the general assembly, the department of agriculture and land stewardship, the department of natural resources, and the water resources coordinating council. The report shall include recommendations regarding all of the following:

a. Improving water quality and optimizing the costs of voluntarily achieving and maintaining water quality standards.

b. Creating economic incentives for voluntary nonpoint source load reductions, point source discharge reductions beyond those required by the federal Water Pollution Control Act, implementation of pollution prevention programs, wetland restoration and creation, and the development of emerging pollution control technologies.

c. Facilitating the implementation of total maximum daily loads, urban storm water control programs, and nonpoint source management practices required or authorized under the federal Water Pollution Control Act. This paragraph shall not be construed to obviate the requirement to develop a total maximum daily load for waters that do not meet water quality standards as required by section 303(d) of the federal Water Pollution Control Act or to delay implementation of a total maximum daily load that has been approved by the department of natural resources and the director.

d. Providing incentives, methods, and practices for the development of new and more accurate and reliable pollution control quantification protocols and procedures, including but

not limited to development of policy based on information and data that is publicly available and that can be verified and evaluated.

e. Providing greater flexibility for broader public involvement through community-based, nonregulatory, and performance-driven watershed management planning.

f. Assigning responsibility for monitoring flood risk, flood mitigation, and coordination with federal agencies.

g. Involving cities, counties, and other local and regional public and private entities in watershed improvement including but not limited to incentives for participation in a watershed management authority created under this chapter.

4. Each year, the voting members of the advisory council shall designate one voting member as chairperson.

2010 Acts, ch 1116, §1; 2011 Acts, ch 131, §98, 158; 2018 Acts, ch 1026, §144

466B.32 Watershed demonstration pilot projects. Repealed by 2019 Acts, ch 128, §10.

466B.33 through 466B.40 Reserved.

SUBCHAPTER IV

WATER QUALITY INITIATIVE — NUTRIENTS

466B.41 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Center"* means the Iowa nutrient research center established pursuant to section 466B.47.

2. *"Council"* means the Iowa nutrient research center advisory council established pursuant to section 466B.48.

3. *"Division"* means the division of soil conservation and water quality created within the department of agriculture and land stewardship pursuant to section 159.5.

4. *"Fund"* means the water quality initiative fund created in section 466B.45.

5. *"Nutrient"* includes nitrogen and phosphorus.

2013 Acts, ch 132, §59; 2015 Acts, ch 103, §53

466B.42 Water quality initiative.

The division shall establish a water quality initiative in order to assess and reduce nutrients in this state's watersheds, including subwatersheds and regional watersheds, and for implementing its responsibilities under the Iowa nutrient reduction strategy. The division shall establish and administer projects to reduce nutrients in surface waters from nonpoint sources in a scientific, reasonable, and cost-effective manner. The division shall utilize a pragmatic, strategic, and coordinated approach with the goal of accomplishing reductions over time. To evaluate the progress achieved over time toward the goals of the Iowa nutrient reduction strategy and the United States environmental protection agency gulf hypoxia action plan, the baseline condition shall be calculated for the time period from 1980 to 1996.

2013 Acts, ch 132, §60; 2018 Acts, ch 1001, §22; 2018 Acts, ch 1152, §12

Referred to in §466B.43, 466B.44

466B.43 Water quality agriculture infrastructure programs.

1. As part of the water quality initiative established pursuant to section 466B.42, the division shall administer water quality agriculture infrastructure programs created in this section.

2. The purpose of the programs is to support projects for the installation of infrastructure, including conservation structures, practices, or other measures that reduce contributing nutrient loads, associated sediment, or contaminants from sources to surface waters including but not limited to surface waters on the impaired waters list of the state that are used as a drinking water supply. The programs shall be administered in a manner that is consistent with the Iowa nutrient reduction strategy.

3. An edge-of-field infrastructure program is created. The program shall support projects located on agricultural land, which may include demonstration projects, that capture or filter nutrients entering into a surface water. The program's projects shall be limited to infrastructure designed and installed for use over multiple years, including but not limited to wetlands, bioreactor systems, saturated buffers, or land use changes. The program shall be financed on a cost-share basis.

4. An in-field infrastructure program is created. The program shall support projects located on agricultural land, which may include demonstration projects, that decrease erosion and precipitation-induced surface runoff, increase water infiltration rates, and increase soil sustainability. The program's projects shall be limited to infrastructure designed and installed for use over multiple years, including but not limited to structures, terraces, and waterways located on cropland or pastureland, and including but not limited to soil conservation or erosion control structures or managed drainage systems. The program shall be financed on a cost-share basis.

5. Any state moneys used to finance a project under a water quality agriculture infrastructure program shall be administered according to an agreement entered into by the division and the owner of the land where the infrastructure is to be installed. The agreement shall include standard terms and conditions for the receipt of program moneys and any other terms and conditions the division deems necessary or convenient for the efficient administration of the project or program. The division may support multiple installations of infrastructure on a single parcel of land. The division may also combine programs if cost effective. The division may annually use an amount of not more than four percent of the moneys used to support each program for administrative purposes.

6. By October 1, 2019, and each October 1, thereafter, the division shall submit a report to the governor and the general assembly itemizing expenditures, by hydrologic unit code 8 watershed, under the programs during the previous fiscal year, if any.

7. Any information obtained by the division identifying a person holding a legal interest in agricultural land or specific agricultural land shall be a confidential record under section 22.7.

2018 Acts, ch 1001, §23; 2018 Acts, ch 1152, §13, 14
Referred to in §8.57B

466B.44 Water quality urban infrastructure program.

1. As part of the water quality initiative established pursuant to section 466B.42, the division shall administer a water quality urban infrastructure program.

2. The purpose of the program is to support watershed projects and advance implementation of the Iowa nutrient reduction strategy, which program support may include demonstration projects that decrease erosion, precipitation-induced surface runoff, and storm water discharges and that increase water infiltration rates. The program's projects shall be based on Iowa's storm water management manual published by the department of natural resources.

3. The program shall be financed on a cost-share basis or through cooperative agreements with watershed projects funded through section 455B.199 whose project activities fall outside the territorial boundaries of a city.

4. Any state moneys used to finance a project under a water quality urban infrastructure program shall be administered according to an agreement entered into by the division and the owner of the land where the infrastructure is to be installed. The agreement shall include standard terms and conditions for the receipt of program moneys and any other terms and conditions the division deems necessary or convenient for the efficient administration of the project or program. The division may support multiple installations of infrastructure on a single parcel of land. The division may annually use an amount of not more than four percent of the moneys used to support the program for administrative purposes.

5. Notwithstanding any other provision in this section to the contrary, beginning on July 1, 2018, the division may use any amount available to support the water quality urban infrastructure program to instead extend and support the three-year data collection of in-field agricultural practices project as enacted in 2015 Iowa Acts, ch. 132, §18.

6. Notwithstanding any other provision of this section to the contrary, the division may use any amount available to support the water quality urban infrastructure program to develop and maintain an online resource displaying measurable indicators of desirable change in water quality within the state's watersheds. These measurable indicators may include but are not limited to public and private funding inputs, involvement in water quality projects, and improvements, land use, practice adoption, calculated load reduction, and measured loads at existing monitoring stations.

7. By October 1, 2019, and by October 1 of each year thereafter, the division shall submit a report to the governor and the general assembly itemizing expenditures under the program, if any, during the previous fiscal year.

8. Any information obtained by the division identifying a person holding a legal interest in land or specific land shall be a confidential record under section 22.7.

2018 Acts, ch 1001, §24; 2018 Acts, ch 1152, §15
Referred to in §16.134A

466B.45 Water quality initiative fund.

1. A water quality initiative fund is created in the state treasury under the management and control of the division.

2. The fund shall include moneys appropriated by the general assembly. The fund may include other moneys available to and obtained or accepted by the division, including moneys from public or private sources.

3. Moneys in the fund are appropriated to the division and shall be used exclusively to carry out the provisions of this subchapter as determined by the division, and shall not require further special authorization by the general assembly.

4. *a.* Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

b. Notwithstanding section 8.33, moneys appropriated or otherwise credited to the fund for a fiscal year shall not revert to the fund from which appropriated at the close of the fiscal year for which the appropriation was made but shall remain available for expenditure for the purposes designated until the close of the fiscal year that begins three years from the beginning date of the fiscal year for which the appropriation was made.

2013 Acts, ch 132, §61
Referred to in §466B.41

466B.46 Iowa nutrient research fund — creation and purpose.

1. An Iowa nutrient research fund is created in the state treasury under the management and control of the center.

2. The fund shall include all of the following:

a. Moneys appropriated by the general assembly.

b. Moneys appropriated from the agriculture management account of the groundwater protection fund pursuant to section 455E.11, subsection 2, paragraph "*b*", subparagraph (3), subparagraph division (a).

c. Moneys assessed and collected by or on behalf of the department of natural resources to be credited to the fund as provided in sections 455B.109, 459.602, 459.603, 459.604, 459A.502, and 459B.402.

d. Moneys accepted by the center from public or private sources.

3. Moneys in the fund are appropriated to the center and shall be used exclusively by the center to carry out its purpose as described in section 466B.47.

4. *a.* Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

b. The moneys credited to the fund are not subject to section 8.33 and shall not be transferred, used, obligated, appropriated, or otherwise encumbered except as provided in this section.

2016 Acts, ch 1134, §33, 34; 2017 Acts, ch 168, §32
Referred to in §455B.109, 455E.11, 459.602, 459.603, 459.604, 459A.502, 459B.402

466B.47 Iowa nutrient research center — establishment and purpose.

1. The state board of regents shall establish and maintain in Ames as part of Iowa state university of science and technology an Iowa nutrient research center.

2. The purpose of the center shall be to pursue a science-based approach to nutrient management research that may include but is not limited to evaluating the performance of current and emerging nutrient management practices, and using an adaptive management framework for providing recommendations for the implementation of nutrient management practices and the development of new nutrient management practices.

3. The center shall be administered by a director who shall be appointed by the dean of the college of agriculture and life sciences of Iowa state university of science and technology.

4. The center shall facilitate collaboration among appropriate institutions of higher education governed by the state board of regents, including but not limited to institutes, departments, and centers.

5. Any information collected or received by the center that identifies a person holding a legal interest in agricultural land or specific agricultural land shall be a confidential record under section 22.7.

2013 Acts, ch 132, §62

Referred to in §466B.41, 466B.46, 466B.48

466B.48 Iowa nutrient research center advisory council — establishment and purpose.

1. The state board of regents shall establish and maintain in Ames as part of Iowa state university of science and technology an Iowa nutrient research center advisory council.

2. The council shall consist of the following members:

a. The dean of the college of agriculture and life sciences of Iowa state university of science and technology, or the dean's designee.

b. The director of the Iowa state university of science and technology extension service, or the director's designee.

c. A representative of the IIHR — hydroscience and engineering within the college of engineering of the university of Iowa who shall be appointed by the president of the university.

d. A person knowledgeable in an area related to nutrient research who shall be appointed by the president of the university of northern Iowa.

e. A person knowledgeable in an area related to nutrient research who shall be appointed by the state association of private colleges and universities.

f. The secretary of agriculture or the secretary's designee.

g. The director of the division or the director's designee.

h. The director of the department of natural resources, or the director's designee.

3. *a.* An appointed or designated member of the council shall serve at the pleasure of the person making the appointment or designation.

b. A majority of the members of the council as provided in subsection 2 constitutes a quorum. Any action taken by the council must be adopted by the affirmative vote of a majority of its members present, except that a lesser number may adjourn a meeting. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose.

c. The council shall elect a chairperson and any other officers from the membership of the council as the council determines necessary. An officer shall serve for a term required by rules adopted by the council. A vacancy in the membership does not impair the right of a quorum to exercise all rights and perform all duties of the council.

d. The council shall adopt rules that it determines are necessary for the conduct of business.

e. Only the member appointed by the state association of private colleges and universities is eligible for reimbursement of actual expenses as provided in section 7E.6. However, no member is eligible for a payment of a per diem.

4. The council shall function on a continuing basis for the study and recommendation of

solutions for consideration by the Iowa nutrient research center in carrying out its purpose as provided in section 466B.47.

2013 Acts, ch 132, §63; 2015 Acts, ch 103, §54

Referred to in §466B.41

466B.49 Confidentiality.

Any information received, collected, or held under this subchapter is a confidential record, and is exempted from public access as provided in section 22.7, if all of the following apply:

1. The information is received, collected, or held by a nonprofit organization that conducts nutrient management research, including but not limited to conducting evaluations, assessments, or validations.

2. The information identifies any of the following:

a. A person who holds a legal interest in agricultural land or who has previously held a legal interest in agricultural land.

b. A person who is involved or who has previously been involved in managing the agricultural land or producing crops or livestock on the agricultural land.

c. The identifiable location of the agricultural land.

2014 Acts, ch 1139, §28, 29

CHAPTER 466C

IOWA FLOOD CENTER

466C.1 Iowa flood center.

466C.1 Iowa flood center.

1. The state board of regents shall establish and maintain in Iowa City as a part of the state university of Iowa an Iowa flood center. In conducting the activities of this chapter, the center shall work cooperatively with the department of natural resources, the department of agriculture and land stewardship, the water resources coordinating council, and other state and federal agencies.

2. The Iowa flood center shall have all of the following purposes:

a. To develop hydrologic models for physically-based flood frequency estimation and real-time forecasting of floods, including hydraulic models of floodplain inundation mapping.

b. To establish community-based programs to improve flood monitoring and prediction along Iowa's major waterways and to support ongoing flood research.

c. To share resources and expertise of the Iowa flood center.

d. To assist in the development of a workforce in the state knowledgeable regarding flood research, prediction, and mitigation strategies.

2009 Acts, ch 184, §15

Referred to in §418.8

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SUBCHAPTER I

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Referred to in §331.382, 468.393, 468.397, 468.405

PART 1

GENERAL

Referred to in §331.502, 331.552, 350.4, 358.23, 461A.76, 468.3, 468.10, 468.41, 468.49, 468.59, 468.65, 468.67, 468.96, 468.115, 468.119, 468.126, 468.140, 468.152, 468.188, 468.207, 468.211, 468.240, 468.269, 468.273, 468.283, 468.284, 468.288, 468.292, 468.297, 468.308, 468.335, 468.345, 468.529

468.1 Jurisdiction to establish.

The board of supervisors of any county shall have jurisdiction, power, and authority at any regular, special, or adjourned session, to establish a drainage district or districts, and to locate and establish levees, and cause to be constructed as hereinafter provided any levee, ditch, drain, or watercourse, or settling basins in connection therewith, or to straighten, widen,

deepen, or change any natural watercourse, in such county, whenever the same will be of public utility or conducive to the public health, convenience or welfare.

[C73, §1207; C97, §1939; S13, §1989-a1; C24, 27, 31, 35, 39, §**7421;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.1]

89 Acts, ch 126, §2

CS89, §468.1

468.2 Presumption and construction of laws.

1. The drainage of surface waters from agricultural lands and all other lands, including state-owned lakes and wetlands, or the protection of such lands from overflow shall be presumed to be a public benefit and conducive to the public health, convenience, and welfare.

2. The provisions of this subchapter and all other laws for the drainage and protection from overflow of agricultural or overflow lands shall be liberally construed to promote leveeing, ditching, draining, and reclamation of wet, swampy, and overflow lands.

[S13, §1989-a1, -a46; C24, 27, 31, 35, 39, §**7422, 7594;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.2, 455.182]

89 Acts, ch 126, §2

CS89, §468.2

2011 Acts, ch 59, §1, 4

468.3 Definitions.

1. As used in this chapter, unless the context otherwise requires, the term *"adjusted competitive bid threshold"* means the same as the adjusted competitive bid threshold for vertical infrastructure applicable to counties as established by the state department of transportation pursuant to section 314.1B.

2. The term *"appraisers"* shall mean the persons appointed and qualified to ascertain the value of all land taken and the amount of damage arising from the construction of levee or drainage improvements.

3. Within the meaning of this subchapter, parts 1 through 5 and 7, and subchapter II, part 1, the term *"board"* shall embrace the board of supervisors, the joint boards of supervisors in case of intercounty levee or drainage districts, and the board of trustees in case of a district under trustee management.

4. As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

5. The term *"commissioners"* shall mean the persons appointed and qualified to classify lands, fix percentages of benefits, apportion and assess costs and expenses in any levee or drainage district, unless otherwise specifically indicated by law.

6. The term *"cost of improvements"* means the costs of any improvement which is subject to special assessment including, but not limited to, the costs of engineering, preliminary reports, property valuations, estimates, plans, specifications, notices, acquisition of land, easements, rights-of-way, construction, repair, supervision, inspection, testing, notices and publication, interest during construction and for a reasonable period following the completion of construction, and may include the default fund which shall amount to not more than ten percent of the total cost of an improvement assessed against benefited property.

7. The term *"engineer"* or *"civil engineer"*, within the meaning of this subchapter, parts 1 through 5 and 7, subchapter II, parts 1, 4, 5, and 6, and subchapter V, shall mean a person licensed as a professional engineer under the provisions of chapter 542B.

8. The term *"land surveyor"* shall mean a person licensed as a professional land surveyor under the provisions of chapter 542B.

9. For the purpose of this subchapter, parts 1 through 5 and 7, and with reference to improvements along or adjacent to the Missouri river, the word *"levee"* shall be construed to include, in addition to its ordinary and accepted meaning, embankments, revetments, retards, or any other approved system of construction which may be deemed necessary to adequately

protect the banks of any river or stream, within or adjacent to any county, from wash, cutting, or erosion.

[C24, 27, 31, 35, 39, §**7423, 7424;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.3, 455.4]

88 Acts, ch 1070, §1; 89 Acts, ch 126, §2

CS89, §468.3

2000 Acts, ch 1148, §1; 2007 Acts, ch 126, §84; 2012 Acts, ch 1009, §8; 2014 Acts, ch 1075, §11; 2015 Acts, ch 30, §143; 2015 Acts, ch 51, §3, 4

Referred to in §21.2, 22.1, 468.130

Further definitions, see §161F.6

468.4 General rule for location.

The levees, ditches, or drains herein provided for shall, so far as practicable, be surveyed and located along the general course of the natural streams and watercourses or in the general course of natural drainage of the lands of said district; but where it will be more economical or practicable such ditch or drain need not follow the course of such natural streams, watercourses, or course of natural drainage, but may straighten, shorten, or change the course of any natural stream, watercourse, or general course of drainage.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7425;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.5]

89 Acts, ch 126, §2

CS89, §468.4

468.5 Location across railroad.

When any such ditch or drain crosses any railroad right-of-way, it shall when practicable be located at the place of the natural waterway across such right-of-way, unless said railroad company shall have provided another place in the construction of the roadbed for the flow of the water; and if located at the place provided by the railroad company, such company shall be estopped from afterwards objecting to such location on the ground that it is not at the place of the natural waterway.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7426;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.6]

89 Acts, ch 126, §2

CS89, §468.5

468.6 Number of petitioners required.

Two or more owners of lands named in the petition described in section 468.8, may file in the office of the county auditor a petition for the establishment of a levee or drainage district, including a district which involves only the straightening of a creek or river. If the district described in the petition is a subdistrict, one or more owners of land affected by the proposed improvement may petition for such district.

[S13, §1989-a2, -a23; C24, 27, 31, 35, 39, §**7427, 7428;** C46, §455.7, 455.8; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.7]

89 Acts, ch 126, §2

CS89, §468.6

468.7 Request by nonpetitioners.

In the event two or more landowners included in the proposed district other than the petitioners request a classification prior to the establishment of said district, they shall file in writing their request and execute a bond as required in section 468.9 to cover the expense of such classification if the district is not established. Such written request and the bond shall be filed before the board establishes a district.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §455.8]

89 Acts, ch 126, §2

CS89, §468.7

468.8 Petition.

The petition shall set forth:

1. An intelligible description, by congressional subdivision or otherwise, of the lands suggested for inclusion in the district.

2. That said lands are subject to overflow or are too wet for cultivation or subject to erosion or flood danger.

3. That the public benefit, utility, health, convenience, or welfare will be promoted by the suggested improvements.

4. The suggested starting point, route, terminus and lateral branches of the proposed improvements.

5. In the event the petitioners request a classification before the establishment of the district, the petition shall include a request that the district be classified as provided in sections 468.38 through 468.44 after the board has approved the report of the engineer as a tentative plan but before the district is finally established.

[S13, §1989-a2, -a23; C24, 27, 31, 35, 39, §**7429;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.9]

89 Acts, ch 126, §2

CS89, §468.8

Referred to in §468.6

468.9 Bond.

1. There shall be filed with the petition a bond in an amount fixed and with sureties approved by the auditor, conditioned for the payment of all costs and expenses incurred in the proceedings in case the district is not finally established.

2. No preliminary expense shall be incurred before the establishment of such proposed improvement district by the board in excess of the amount of bond filed by the petitioners. In case it is necessary to incur any expense in addition to the amount of such bond, the board of supervisors shall require the filing of an additional bond by the petitioners and shall not proceed with the preliminary survey or authorize any additional expense until the additional bond is filed in a sufficient amount to cover such expense.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7430, 7431;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.10, 455.11]

89 Acts, ch 126, §2

CS89, §468.9

Referred to in §357.1A, 468.7

468.10 Engineer.

1. The board shall at its first session thereafter, regular, special, or adjourned, examine the petition and if it be found sufficient in form and substance, shall appoint a disinterested and competent civil engineer who shall give bond to the county for the use of the proposed levee or drainage district, if it be established, and if not established, for the use of the petitioners, in amount and with sureties to be approved by the auditor, and conditioned for the faithful and competent performance of the engineer's duties.

2. Any engineer employed under the provisions of this subchapter, parts 1 through 5 shall receive such compensation per diem as shall be fixed and determined by the board of supervisors.

3. The board may at any time terminate the contract with, and discharge the engineer.

4. The engineer shall keep an accurate record of the kind of work done by the engineer, the place where done, and the time engaged therein, and shall file an itemized statement thereof with the auditor. No expenses shall be incurred by the engineer except upon authority of the board, and vouchers shall be filed with the claims therefor.

[S13, §1989-a2, -a41, -a42; SS15, §1527-s21b; C24, 27, 31, 35, 39, §**7432 – 7436;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.12 – 455.16]

89 Acts, ch 126, §2

CS89, §468.10

94 Acts, ch 1051, §1

468.11 Survey.

1. The engineer shall examine the lands described in the petition and any other lands

which would be benefited by said improvement or necessary in carrying out the purposes of the petition.

2. The engineer shall locate and survey such ditches, drains, levees, settling basins, pumping stations, and other improvements as will be necessary, practicable, and feasible in carrying out the purposes of the petition and which will be of public benefit or utility, or conducive to public health, convenience, or welfare.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7437;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.17]

89 Acts, ch 126, §2

CS89, §468.11

2019 Acts, ch 59, §150

Referred to in §468.13, 468.22, 468.27, 468.339

Section amended

468.12 Report.

1. The engineer shall make full written report to the county auditor, setting forth:

a. The starting point, route, and terminus of each ditch, drain, and levee and the character and location of all other improvements.

b. A plat and profile, showing all ditches, drains, levees, settling basins, and other improvements, the course, length, and depth of each ditch, the length, size, and depth of each drain, and the length, width, and height of each levee, through each tract of land, and the particular descriptions and acreage of the land required from each forty-acre tract or fraction thereof as right-of-way, or for settling basin or basins, together with the congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor. Said plat shall describe the width of the right-of-way to be taken from each forty-acre tract or fraction thereof.

c. The boundary of the proposed district, including therein by color or other designation other lands that will be benefited or otherwise affected by the proposed improvements, together with the location, size, and elevation of all lakes, ponds, and deep depressions therein.

d. Plans for the most practicable and economic place and method for passing machinery, equipment, and material required in the construction of said improvements across any highways, railroads, and other utilities within the proposed district.

e. The probable cost of the proposed improvements, together with such other facts and recommendations as the engineer shall deem material.

2. Where the proposed district contemplates as its object flood control or soil conservance the engineer shall include in the report data describing any soil conservance or flood control improvements, the nature of the improvements, and other data as prescribed by the department of natural resources.

[S13, §1989-a2; C24, 27, 31, 35, 39, §**7438;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.18; 82 Acts, ch 1199, §70, 96]

89 Acts, ch 126, §2

CS89, §468.12

2011 Acts, ch 25, §143

Referred to in §468.13, 468.22, 468.27, 468.339

468.13 Procedure on report — classification.

1. Upon the filing of the report of the engineer recommending the establishment of the levee or drainage district, the board shall at its first regular, adjourned, or special meeting examine and consider the same, and, if the plan is not approved the board may employ the same engineer or another disinterested engineer to report another plan or make additional examination and surveys and file an additional report covering such matters as the board may direct. Additional surveys and reports must be made in accordance with the provisions of sections 468.11 and 468.12. At any time prior to the final adoption of the plans they may be amended, and as finally adopted by the board shall be conclusive unless the action of the board in finally adopting them shall be appealed from as provided in this subchapter.

2. If the petition or other landowners requested a classification of the district prior to

establishment, the board shall order a classification as provided by sections 468.38 through 468.44 after they have approved the report of the engineer as a tentative plan. The notice of hearing provided by section 468.14 shall also include the requirements of the notice of hearing provided in section 468.45 as to this classification, and the hearing on the petition provided in section 468.21 shall also include the matters to be heard as provided in section 468.46.

3. If the board establishes the district as provided in section 468.22, the classification which is finally approved at the hearing by the board shall remain the basis of all future assessments for the purposes of said district as provided in section 468.49. The landowners shall have the same right of appeal from this classification as they would have if the petition had not requested a classification prior to establishment and the classification had been made after establishment.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7439;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.19]

89 Acts, ch 126, §2

CS89, §468.13

2016 Acts, ch 1011, §81; 2017 Acts, ch 29, §132

468.14 Notice of hearing.

When any plan and report of the engineer has been approved by the board, such approval shall be entered of record in its proceedings as a tentative plan only for the establishment of said improvement. Thereupon it shall enter an order fixing a date for the hearing upon the petition not less than forty days from the date of the order of approval, and directing the auditor immediately to cause notice to be given to the owner of each tract of land or lot within the proposed levee or drainage district as shown by the transfer books of the auditor's office, including railway companies having right-of-way in the proposed district and to all lienholders or encumbrancers of any land within the proposed district without naming them, and also to all other persons whom it may concern, and without naming individuals all actual occupants of the land in the proposed district, of the pendency and prayer of the said petition, the favorable report thereon by the engineer, and that such report may be amended before final action, the approval thereof by the board as a tentative plan, and the day and the hour set for hearing on said petition and report, and that all claims for damages except claims for land required for right-of-way, and all objections to the establishment of said district for any reason must be made in writing and filed in the office of the auditor at or before the time set for such hearing.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7440;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.20]

89 Acts, ch 126, §2

CS89, §468.14

Referred to in §468.13, 468.15, 468.65, 468.126, 468.132, 468.134, 468.265

468.15 Service by publication — copy mailed — proof.

The notice provided in section 468.14 shall be served by publication as provided in section 331.305 before the hearing except that the notice shall be published at least twenty days before the hearing date. Proof of the service shall be made by affidavit of the publisher. Copy of the notice shall also be sent by ordinary mail to each person and to the clerk or recorder of each city named in the notice at that person's last known mailing address unless there is on file an affidavit of the auditor, or of a person designated by the board to make the necessary investigation, stating that no mailing address is known and that diligent inquiry has been made to ascertain it. The copy of notice shall be mailed not less than twenty days before

the day set for hearing and proof of the service shall be by affidavit of the auditor. Proofs of service required by this section shall be on file at the time the hearing begins.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7441;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.21]

87 Acts, ch 43, §14; 88 Acts, ch 1035, §1; 89 Acts, ch 126, §2

CS89, §468.15

Referred to in §468.48, 468.65, 468.74, 468.126, 468.132, 468.134, 468.207, 468.265, 468.284, 468.602

468.16 Service on agent.

1. If any person, corporation, or company owning or having interest in any land or other property affected by any proposed improvement under this chapter files an instrument in writing with the auditor designating the name and post office address of the agent of the person, corporation, or company upon whom service of notice of the proceeding shall be made, the auditor shall, not less than twenty days prior to the date set for hearing upon the petition, send a copy of the notice by certified mail addressed to the agent so designated. Proof of service shall be made by affidavit of the auditor filed in the proceeding at or before the date of the hearing upon the petition, and such service shall be in lieu of all other service of notice to such persons, corporations, or companies.

2. This designation when filed shall be in force for a period of five years thereafter and shall apply to all proceedings under this chapter during such period. The person, company, or corporation making such designation shall have the right to change the agent appointed in the designation or to amend the designation in any other particular.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7442;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.22]

89 Acts, ch 126, §2

CS89, §468.16

2019 Acts, ch 59, §151

Referred to in §468.48, 468.65, 468.126, 468.132, 468.134, 468.207, 468.257, 468.265

Section amended

468.17 Personal service.

In lieu of publication, personal service of said notice may be made upon any owner of land in the proposed district, or upon any lienholder or other person interested in the proposed improvement, in the manner and for the time required for service of original notices in the district court. Proof of such service shall be on file with the auditor on the date of said hearing.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7443;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.23]

89 Acts, ch 126, §2

CS89, §468.17

Referred to in §468.65, 468.126, 468.132, 468.134, 468.207, 468.265

Time and manner of service, R.C.P. 1.302 – 1.315

468.18 Waiver of notice.

No service of notice shall be required upon any person who shall file with the auditor a statement in writing, signed by the person, waiving notice, or who enters an appearance in the proceedings. The filing of a claim for damages or objections to the establishment of said district or other pleading shall be deemed an appearance.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7444;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.24]

89 Acts, ch 126, §2

CS89, §468.18

Referred to in §468.65, 468.126, 468.132, 468.134, 468.207, 468.265

468.19 Waiver of objections and damages.

Any person, company, or corporation failing to file any claim for damages or objections to the establishment of the district at or before the time fixed for said hearing, except claims for

land required for right-of-way, or for settling basins, shall be held to have waived all objections and claims for damages.

[S13, §1989-a4; C24, 27, 31, 35, 39, §**7445;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.25]

89 Acts, ch 126, §2

CS89, §468.19

Referred to in §468.207

468.20 Adjournment for service — jurisdiction retained.

If at the date set for hearing, it shall appear that any person entitled to notice has not been properly served with notice, the board may postpone said hearing and set another time for the same not less than thirty days from said date, and notice of such hearing as hereinbefore provided shall be served on such omitted parties. By fixing such new date for hearing and the adjournment of said proceeding to said date, the board shall not lose jurisdiction of the subject matter of said proceeding nor of any parties already served with notice.

[S13, §1989-a3; C24, 27, 31, 35, 39, §**7446;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.26]

89 Acts, ch 126, §2

CS89, §468.20

Referred to in §468.207

468.21 Hearing of petition — dismissal.

The petition may be amended at any time before final action on the petition. At the time set for hearing on the petition, the board shall hear and determine the sufficiency of the petition in form and substance and all objections filed against the establishment of such district, and the board may view the premises included in the said district. If the board finds that the construction of the proposed improvement will not materially benefit said lands or would not be for the public benefit or utility nor conducive to the public health, convenience, or welfare, or that the cost thereof is excessive, the board shall dismiss the proceedings.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7447;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.27]

89 Acts, ch 126, §2

CS89, §468.21

2013 Acts, ch 90, §140

Referred to in §468.13

468.22 Establishment — further investigation.

If the board shall find that such petition complies with the requirements of law in form and substance, and that such improvement would be conducive to the public health, convenience, welfare, benefit, or utility, and that the cost thereof is not excessive, and no claim shall have been filed for damages, it may locate and establish the said district in accordance with the recommendation of the engineer and the report and plans on file; or it may refuse to establish the proposed district if it deem best, or it may direct the engineer or another one employed for that purpose to make further examinations, surveys, plats, profiles, and reports for the modification of said plans, or for new plans in accordance with sections 468.11 and 468.12, and continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing; but any new parties rendered necessary by any modification or change of plans shall be served with notice as for the original establishment of a district. The county auditor shall appoint three appraisers as provided for in section 468.24 to assess the value of the right-of-way required for open ditches or other improvements.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7448;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.28]

89 Acts, ch 126, §2

CS89, §468.22

Referred to in §468.13

468.23 Settling basins — purchase or lease of lands.

If a settling basin or basins are provided as a part of a drainage improvement, the board of supervisors may buy or lease the necessary lands in lieu of condemning said lands. The board may by purchase acquire the necessary lands required for right-of-way for open ditches or other improvements in lieu of condemning said lands.

[C27, 31, 35, §7448-a1; C39, §**7448.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.29]

89 Acts, ch 126, §2

CS89, §468.23

468.24 Appraisers.

If the board shall find that such improvement will materially benefit said lands, will be conducive to the public health, convenience, welfare, benefit, or utility, and that the law has been complied with as to form and substance of the petition, the service of notice, and the survey and report of the engineer, and that said improvement should be made, then if any claims for damages shall have been filed, further proceedings shall be continued to an adjourned, regular, or special session, the date of which shall be fixed at the time of adjournment, and of which all interested parties shall take notice, and the auditor shall appoint three appraisers to assess damages, one of whom shall be an engineer, and two freeholders of the county who shall not be interested in nor related to any person interested in the proposed improvement, and the said appraisers shall take and subscribe an oath to examine the said premises, ascertain and impartially assess all damages according to their best judgment, skill, and ability.

[S13, §1989-a5; C24, 27, 31, 35, 39, §**7449;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.30]

89 Acts, ch 126, §2

CS89, §468.24

Referred to in §468.22, 468.210

468.25 Assessment — report — adjournment — other appraisers.

The appraisers appointed to assess damages shall view the premises and determine and fix the amount of damages to which each claimant is entitled, and shall place a separate valuation upon the acreage of each owner taken for right-of-way for open ditches or for settling basins, as shown by plat of engineer, and shall, at least five days before the date fixed by the board to hear and determine the same, file with the county auditor reports in writing, showing the amount of damage sustained by each claimant. Should the report not be filed in time, or should any good cause for delay exist, the board may postpone the time of final action on the subject, and, if necessary, the auditor may appoint other appraisers.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7450;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.31]

89 Acts, ch 126, §2

CS89, §468.25

468.26 Award by board.

At the time fixed for hearing and after the filing of the report of the appraisers, the board shall examine said report, and may hear evidence thereon, both for and against each claim for damages and compensation, and shall determine the amount of damages and compensation due each claimant, and may affirm, increase, or diminish the amount awarded by the appraisers.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7451;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.32]

89 Acts, ch 126, §2

CS89, §468.26

Referred to in §468.210

468.27 Dismissal or establishment — permanent easement.

1. The board shall at the meeting, or at an adjourned session of the meeting, consider the costs of construction of the improvement as shown by the reports of the engineer and the

amount of damages and compensation awarded to all claimants. If, in the board's opinion, the costs of construction and amount of damages awarded create a greater burden than should justly be borne by the lands benefited by the improvement, the board shall then dismiss the petition and assess the costs and expenses to the petitioners and their sureties. However, if the board finds that the cost and expense is not a greater burden than should be justly borne by the land benefited by the improvement, then the board shall finally and permanently locate and establish the district and improvement.

2. Following the establishment of the district, the drainage district is deemed to have acquired by permanent easement all rights-of-way for drainage district ditches, tile lines, settling basins and other improvements, unless the rights-of-way are acquired by fee simple, in the dimensions shown on the survey and report made in compliance with sections 468.11 and 468.12 or as shown on the permanent survey, plat, and profile, if one is made. Upon the establishment of the district, the petitioners shall file with the county auditor the survey and report or permanent survey, plat, and profile, as set forth in sections 468.172 and 468.173. This filing constitutes constructive notice to all persons of the rights conferred by this section. The permanent easement includes the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement, and inspection. The owner or lessee shall be reimbursed for any crop damages incurred in the maintenance, repair, improvement, and inspection except within the right-of-way of the drainage district.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7452;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.33]

85 Acts, ch 163, §1; 87 Acts, ch 42, §1; 89 Acts, ch 126, §2

CS89, §468.27

91 Acts, ch 80, §1; 91 Acts, ch 191, §121; 92 Acts, ch 1163, §96; 2019 Acts, ch 59, §152

Section amended

468.28 Dismissal on remonstrance.

If, at or before the time set for final hearing as to the establishment of a proposed levee, drainage, or improvement district, except subdrainage district, there shall have been filed with the county auditor, or auditors, in case the district extends into more than one county, a remonstrance signed by a majority of the landowners in the district, and these remonstrants must in the aggregate own seventy percent or more of the lands to be assessed for benefits or taxed for said improvements, remonstrating against the establishment of said levee, drainage, or improvement district, setting forth the reasons therefor, the board or boards as the case may be, shall assess to the petitioners and their sureties or apportion the costs among them as the board or boards may deem just or as said parties may agree upon. When all such costs have been paid, the board or boards of supervisors shall dismiss said proceedings and cause to be filed with the county auditor all surveys, plats, reports, and records in relation to the proposed district.

[C24, 27, 31, 35, 39, §**7453;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.34]

89 Acts, ch 126, §2

CS89, §468.28

Referred to in §468.119

468.29 Dissolution.

When for a period of two years from and after the date of the establishment of a drainage district, or when an appeal is taken or litigation brought against said district within two years from the date such appeal or litigation is finally determined, no contract shall have been let or work done or drainage certificates or bonds issued for the construction of the improvements in such district, a petition may be filed in the office of the auditor, addressed to the board of supervisors, signed by a majority of the persons owning land in such district and who, in the aggregate, own sixty percent or more of all the land embraced in said district, setting forth the above facts and reciting that provision has been made by the petitioners for the payment of all costs and expenses incurred on account of such district. The board shall examine such petition at its next meeting after the filing thereof, and if found to comply with the above requirements, shall dissolve and vacate said district by resolution entered upon its records,

to become effective upon the payment of all the costs and expenses incurred in relation to said district. In case of such vacation and dissolution and upon payment of all costs as herein provided, the auditor shall note the same on the drainage record, showing the date when such dissolution became effective.

[C24, 27, 31, 35, 39, §**7454;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.35]
89 Acts, ch 126, §2
CS89, §468.29

468.30 Permanent survey, plat, and profile.

When the improvement has been finally located and established, the board may if necessary appoint the said engineer or a new one to make a permanent survey of said improvement as so located, showing the levels and elevations of each forty-acre tract of land and file a report of the same with the county auditor together with a plat and profile thereof.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7455;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.36]
89 Acts, ch 126, §2
CS89, §468.30
Referred to in §468.62

468.31 Paying or securing damages.

The amount of damages or compensation finally determined in favor of any claimant shall be paid in the first instance by the parties benefited by the said improvement, or secured by bond in the amount of such damages and compensation with sureties approved by the auditor.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7456;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.37]
89 Acts, ch 126, §2
CS89, §468.31

468.32 Division of improvement.

After the damages as finally fixed, shall have been paid or secured, the board may divide said improvement into suitable sections, having regard to the kind of work to be done, numbering the same consecutively from outlets to the beginning, and prescribing the time within which the improvement shall be completed. A settling basin, if provided for, may be embraced in a section by itself.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7457;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.38]
89 Acts, ch 126, §2
CS89, §468.32

468.33 Supervising engineer — bond.

Upon the payment or securing of damages, the board shall appoint a competent engineer to have charge of the work of construction thereof, who shall be required before entering upon the work to give a bond to the county for the use and benefit of the levee or drainage district, to be approved by the auditor in such sum as the board may fix, conditioned for the faithful discharge of the engineer's duties.

[S13, §1989-a7; C24, 27, 31, 35, 39, §**7458;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.39]
89 Acts, ch 126, §2
CS89, §468.33

468.34 Advertisement for bids.

The board shall publish notice once each week for two consecutive weeks in a newspaper published in the county where the improvement is located, and publish additional advertisement and publication elsewhere as the board may direct. The notice shall state the time and place of letting the work of construction of the improvement, specifying the approximate amount of work to be done in each numbered section of the district, the time

fixed for the commencement, and the time of the completion of the work, that bids will be received on the entire work and in sections or divisions of it, and that a bidder will be required to deposit a bid security with the county auditor as provided in section 468.35. All notices shall set the date that bids will be received and upon which the work will be let. However, when the estimated cost of the improvement is less than the adjusted competitive bid threshold, the board may let the contract for the construction without taking bids and without publishing notice.

[C73, §1212; C97, §1944; S13, §1944; SS15, §1989-a8; C24, 27, 31, 35, 39, §**7459;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.40]

84 Acts, ch 1055, §10; 84 Acts, ch 1189, §1; 89 Acts, ch 126, §2

CS89, §468.34

94 Acts, ch 1051, §2; 2006 Acts, ch 1056, §1; 2010 Acts, ch 1091, §1, 4; 2014 Acts, ch 1075, §12; 2015 Acts, ch 51, §5

468.35 Bids — letting of work.

1. The board shall award a contract or contracts for each section of the work to the lowest responsible bidder or bidders therefor, bids to be submitted, received, and acted upon separately as to the main drain and each of the laterals, and each settling basin, if any, exercising their own discretion as to letting such work as to the main drain as a whole, or as to each lateral as a whole, or by sections as to both main drain and laterals, and reserving the right to reject any and all bids and readvertise the letting of the work.

2. A bid shall be in writing, specifying the portion of the work upon which the bid is made, and filed with the auditor. The bid shall be accompanied with a bid security. The bid security shall be in the form of a deposit of cash, a certified check on and certified by a bank in Iowa, a certified share draft drawn on a credit union in Iowa, or a bid bond with a corporate surety satisfactory to the board as provided in section 73A.20. The bid security must be payable to the auditor or the auditor's order at the auditor's office in a sum equal to five percent of the amount of the bid. However, if the maximum limit on a bid security would cause a denial of funds or services from the federal government which would otherwise be available, or if the maximum limit would otherwise be inconsistent with the requirements of federal law, the maximum limit may be suspended to the extent necessary to prevent denial of federal funds or services or to eliminate the inconsistency with federal requirements. The cash, check, or share draft of an unsuccessful bidder shall be returned, and the bid bond of an unsuccessful bidder shall be canceled. The bid security of a successful bidder shall be maintained as a guarantee that the bidder will enter into a contract in accordance with the bids.

2015 Acts, ch 51, §6; 2016 Acts, ch 1011, §82

Referred to in §468.34

468.36 Performance bond — return of deposit.

A successful bidder is required to execute a bond with sureties approved by the auditor in favor of the county for the use and benefit of the levee or drainage district and all persons entitled to liens for labor or material in an amount not less than seventy-five percent of the contract price of the work to be done, conditioned for the timely, efficient, and complete performance of the contract, and the payment, as they become due, of all just claims for labor performed and material used in carrying out the contract. When a contract is executed and bond approved by the board, the cash, certified check, or certified share draft deposited with the bid shall be returned to the bidder.

2015 Acts, ch 51, §7

468.37 Contracts.

All agreements and contracts for work or materials in constructing the improvements of such district shall be in writing, signed by the chairperson of the board of supervisors for and on behalf of the district and the parties who are to perform the work or furnish the materials specified in such contract. Such contract shall specify the particular work to be done or materials to be furnished, the time when it shall begin and when it shall be completed, the

amount to be paid and the times of payment, with such other terms and conditions as to details necessary to a clear understanding of the terms thereof.

[C24, 27, 31, 35, 39, §**7463;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.44]

89 Acts, ch 126, §2

CS89, §468.37

468.38 Commissioners to classify and assess.

When a levee or drainage district has been located and finally established or, unless otherwise provided by law, when the required proceedings have been taken to enlarge, deepen, widen, change, or extend any of the ditches, laterals, settling basins, or drains of a district, or the required proceedings have been taken to annex additional lands to a district, or a plan of the United States government for original construction of the improvements in a district has been adopted by the district under sections 468.201 through 468.216, the board shall appoint three commissioners to assess benefits and classify the lands affected by the improvement. One of the commissioners shall be a competent civil engineer and two of them shall be resident freeholders of the county in which the district is located, but not living within, nor interested in, any lands included in the district, nor related to any party whose land is affected by the district. The commissioners shall take and subscribe an oath of their qualifications and to perform the duties of classification of the lands, to fix the percentages of benefits, apportion and assess the costs and expenses of constructing the improvement, divide and rename original improvements, and, if included in the board's resolution, adopt special common outlet classifications to be maintained independent of the district's regular assessment schedules, according to law and their best judgment, skill, and ability. If the commissioners or any of them fail or neglect to act or perform the duties in the time and as required of them by law, the board shall appoint others with like qualifications to take their places and perform the duties.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7464;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.45]

89 Acts, ch 126, §2

CS89, §468.38

91 Acts, ch 80, §2

Referred to in §468.8, 468.13, 468.49, 468.65, 468.126, 468.184

See §468.67

468.39 Duties — time for performance — scale of benefits.

At the time of appointing said commissioners, the board shall fix the time within which said assessment, classification, and apportionment shall be made, which may be extended for good cause shown. Within twenty days after their appointment, they shall begin to inspect and classify all the lands within said district, or any change, extension, enlargement, or relocation thereof in tracts of forty acres or less according to the legal or recognized subdivisions, in a graduated scale of benefits to be numbered according to the benefit to be received by each of such tracts from such improvement, and pursue said work continuously until completed and, when completed, shall make a full, accurate, and detailed report thereof and file the same with the auditor. The lands receiving the greatest benefit shall be marked on a scale of one hundred, and those benefited in a less degree with such percentage of one hundred as the benefits received bear in proportion thereto. They shall also make an equitable apportionment of the costs, expenses, fees, and damages computed on the basis of the percentages fixed.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7465;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.46]

89 Acts, ch 126, §2

CS89, §468.39

Referred to in §468.8, 468.13, 468.184

468.40 Rules of classification.

1. The report of the commissioners shall specify each tract of land by proper description, and the ownership thereof, as the same appears on the transfer books in the auditor's office.

2. In estimating the benefits as to the lands not traversed by said improvement, the commissioners shall not consider what benefits such land shall receive after some other improvements shall have been constructed, but only the benefits which will be received by reason of the construction of the improvement in question as it affords an outlet to the drainage of such lands, brings an outlet nearer to said lands, or relieves the lands from overflow and relieves and protects the lands from damage by erosion.

3. When the land is a state-owned lake or state-owned wetland, the commissioners shall ascertain the benefits realized from removing excess water and shall not consider any benefit realized if the state-owned lake or state-owned wetland were drained or converted to another land use.

[S13, §1989-a13; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7467;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.47]

89 Acts, ch 126, §2

CS89, §468.40

2011 Acts, ch 59, §2, 4; 2017 Acts, ch 29, §133

Referred to in §468.8, 468.13, 468.43, 468.184

468.41 Assessment for lateral ditches — reclassification of benefited lands.

1. In fixing the percentages and assessments of benefits and apportionment of costs of construction to lands benefited by lateral ditches and drains as a part of the entire improvement to be made in a drainage district, the commissioners shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches on the same basis and in the same manner as if said lateral was, with its sublaterals, being constructed as a subdistrict as provided in this subchapter, parts 1 through 5, reporting separately:

a. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of the main ditch, drain, or watercourse including pumping plant, if any.

b. The percentage of benefits and amount accruing to each forty-acre tract or less on account of the construction of such lateral improvement.

2. When there has been a repair or improvement to a lateral ditch or drain as provided in section 468.126 and the lands benefited by the lateral have not been classified as provided in this section, the board may order a classification of the lands and the commission shall ascertain and fix the percentage of benefits and apportionment of costs to the lands benefited by such lateral ditches or drains on the same basis and in the same manner as if the lateral was with its sublaterals being constructed as a subdistrict as provided in this subchapter, parts 1 through 5. When this procedure is followed for the classification of any lateral ditch or drain in a given district, the board shall follow the same procedure for all other lateral ditches or drains in the district which have not been classified as prescribed in this section.

[S13, §1989-a23; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7468;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.48]

83 Acts, ch 30, §1; 89 Acts, ch 126, §2

CS89, §468.41

Referred to in §468.8, 468.13, 468.131, 468.184

468.42 Railroad property — collection.

The commissioners to assess benefits and make apportionment of costs and expenses shall determine and assess the benefits to the property of any railroad company extending into or through the levee or drainage district, and make return thereof showing the benefit and the apportionment of costs and expenses of construction. Such assessment when finally fixed by the board shall constitute a debt due from the railroad company to the district, and unless paid it may be collected by ordinary proceedings for the district in the name of the county in any court having jurisdiction. All other proceedings in relation to railroads, except as otherwise

provided, shall be the same as provided for individual property owners within the levee or drainage district.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7469;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.49]

89 Acts, ch 126, §2

CS89, §468.42

Referred to in §468.8, 468.13, 468.65, 468.184

468.43 Public highways and state-owned lands.

1. When any public highway or other public land extends into or through a levee or drainage district, the commissioners to assess benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to such highway or other public land, and the board of supervisors shall assess the same against such highway and land.

2. Such assessments against primary highways and other state-owned lands under the jurisdiction of the state department of transportation shall be paid by the state department from the primary road fund on due certification of the amount by the county treasurer to the department, and against all secondary roads and other county owned lands under the jurisdiction of the board of supervisors, from county funds.

3. When state-owned land under the jurisdiction of the department of natural resources is situated within a levee or drainage district, the commissioners assessing benefits shall ascertain and return in their report the amount of benefits and the apportionment of costs and expenses to the land, and the board of supervisors shall assess the amount against the land. In estimating benefits to land which is a state-owned lake or state-owned wetland, the commissioners shall ascertain benefits as provided in section 468.40.

4. The assessments against lands under the jurisdiction of the department of natural resources shall be paid as an expense from the appropriations addressed in section 7D.29, if authorized by the executive council upon certification of the amount by the county treasurer.

[S13, §1989-a19, -a26; C24, 27, 31, 35, 39, §**7470;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.50]

83 Acts, ch 123, §183, 209; 85 Acts, ch 267, §3; 86 Acts, ch 1008, §1; 89 Acts, ch 126, §2

CS89, §468.43

97 Acts, ch 194, §1; 2011 Acts, ch 59, §3, 4; 2011 Acts, ch 131, §36, 158

Referred to in §331.429, 468.8, 468.13, 468.65, 468.184

468.44 Report of commissioners.

The commissioners, within the time fixed or as extended, shall make and file in the auditor's office a written verified report in tabulated form as to each forty-acre tract, and each tract of less than forty acres, setting forth:

1. The names of the owners thereof as shown by the transfer books of the auditor's office or the reports of the engineer on file, showing said entire classification of lands in said district.

2. The amount of benefits to highway and railroad property and the percentage of benefits to each of said other tracts and the apportionment and amount of assessment of cost and expense, or estimated costs or expense, against each:

a. For main ditches, and settling basins.

b. For laterals.

c. For levees and pumping station.

d. For erosion protection and control or flood control.

3. The aggregate amount of all assessments.

4. Any specific benefits other than those derived from the drainage of agricultural lands shall be separately stated.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7471;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.51]

89 Acts, ch 126, §2

CS89, §468.44

Referred to in §468.8, 468.13, 468.184

See §468.67

468.45 Notice of hearing.

The board shall fix a time for a hearing upon the report of the commissioners, and the auditor shall cause notice to be served upon each person whose name appears as owner, naming the person, and also upon the person or persons in actual occupancy of any tract of land without naming the person or persons, of the day and hour of such hearing, which notice shall be for the same time and served in the same manner as is provided for the establishment of a levee or drainage district, and shall state the amount of assessment of costs and expenses of construction apportioned to each owner upon each forty-acre tract or less, and that all objections thereto must be in writing and filed with the auditor at or before the time set for such hearing.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7472;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.52]

89 Acts, ch 126, §2

CS89, §468.45

Referred to in §468.13

468.46 Hearing and determination.

At the time fixed or at an adjourned hearing, the board shall hear and determine all objections filed to said report and shall fully consider the said report, and may affirm, increase, or diminish the percentage of benefits or the apportionment of costs and expenses made in said report against any body or tract of land in said district as may appear to the board to be just and equitable.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7473;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.53]

89 Acts, ch 126, §2

CS89, §468.46

Referred to in §468.13

468.47 Evidence — conclusive presumption.

At such hearing, the board may hear evidence both for and against the approval of said report or any portion thereof, but it shall not be competent to show that any of the lands in said district assessed for benefits or against which an apportionment of costs and expenses has been made will not be benefited by such improvement in some degree. Any interested party may be heard in argument in person or by counsel.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7474;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.54]

89 Acts, ch 126, §2

CS89, §468.47

468.48 Notice of increased assessment.

The board shall cause notice to be served upon the owner of any tract of land or easement against which it is proposed to increase the assessment, requiring the owner to appear at a fixed date and show cause why such assessment should not be so increased. Such notice shall be served for the time and in the manner prescribed in section 468.15 or section 468.16, as the case may be, except that personal service in the same manner as an original notice may be made in lieu of the other methods.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7475;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.55]

89 Acts, ch 126, §2

CS89, §468.48

Service of notice, R.C.P. 1.302 – 1.315

468.49 Classification as basis for future assessments.

1. A classification of land for drainage, erosion or flood control purposes, when finally adopted, shall remain the basis of all future assessments for the purpose of the district unless revised by the board in the manner provided for reclassification. However, where land included in said classification has been destroyed, in whole or in part, by the erosion of

a river, or where additional right-of-way has been subsequently taken for drainage purposes, the land which has been so eroded and carried away by the action of a river or which has been taken for additional right-of-way, may be removed by the board from the district as classified, without any reclassification, and no assessment shall thereafter be made on the land so removed. Any deficiency in assessment existing as the result of said action of the board shall be spread by it over the balance of lands remaining in said district in the same ratio as was fixed in the classification of the lands, payable at the next taxpaying period.

2. Except districts established by mutual agreement in accordance with section 468.142 in the event any forty-acre tract or less, or any lot, tract, or parcel, as set forth in the existing classification or reclassification of any drainage district now or hereafter established, is divided into two or more tracts, whether such division is by sale or condemnation or platted as a subdivision, the classification of the original tract shall be apportioned to the resulting parcels, regardless of use, except for land taken for additional drainage right-of-way. The classification of the original tract may be apportioned between the resulting parcels by agreement between the parties to such division. The parties shall file with the county auditor a written agreement setting forth the original description and the description of the tracts as subdivided and the percentage of the original classification apportioned to each. This agreement shall bear the signature of all of the parties to the subdivision. The agreement contemplated herein may be contained in the deed or other instrument effecting the division of the land, which agreement shall be binding upon the grantee or grantees by their acceptance of such instrument and their signatures shall not be necessary. The auditor shall enter this agreement in the drainage record and amend the current classification of the district in accordance with the agreement.

3. In the event the parties to the subdivision cannot agree as to the apportionment of the percentage classification, the board of supervisors shall, upon application of either party, appoint a commission having the qualifications of commissioners, in accordance with section 468.38. The commissioners shall inspect the lands involved and apportion the existing classification of the original tract equitably and fairly to each of the several tracts as subdivided. The board shall make a full, accurate, and detailed report thereof and file the report with the county auditor within the time set by the board. The report of the commissioners shall set forth the names of the owners thereof, the description of each of the tracts and the percentage of the original classification that each such tract shall bear for main ditches and settling basins, for laterals, for levees and pumping station. Thereafter all the proceedings in relation thereto as to notice of hearing and fixing of percentage benefits shall be as in this subchapter, parts 1 through 5 and 7, provided in relation to original classification and assessments, and at such hearing, the board may affirm, increase or diminish the percentage of benefits so as to make them just and equitable, and cause the record of the existing classification, percentage of benefits or assessments, or both, to be modified accordingly. In the event the parties neither agree as to the apportionment of classification nor make application for the appointment of commissioners, then the auditor of the county in which the land is situated shall make such apportionment upon an equitable basis and enter the same of record as herein provided. No tract of land included within the boundary of any drainage district shall be exempt from drainage assessments or reassessments, except as herein provided.

[SS15, §1989-a12; C24, 27, §7466, 7476; C31, 35, 39, §**7476;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.56]

89 Acts, ch 126, §2

CS89, §468.49

2015 Acts, ch 30, §144

Referred to in §468.13, 468.188, 468.269

468.50 Levy — interest.

When the board has finally determined the matter of assessments of benefits and apportionment, the board shall levy the assessments as fixed by it upon the lands within the district, but an assessment on a tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars. All assessments shall be levied

at that time as a tax and shall bear interest at a rate determined by the board notwithstanding chapter 74A from that date, payable annually, except as provided as to payments within a specified time.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7477;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.57]

83 Acts, ch 101, §93; 89 Acts, ch 126, §2

CS89, §468.50

94 Acts, ch 1035, §1; 94 Acts, ch 1051, §4; 2014 Acts, ch 1110, §6

Referred to in §460.207, 468.269

468.51 Lien of tax.

Such taxes shall be a lien upon all premises against which they are assessed as fully as taxes levied for state and county purposes.

[S13, §1989-a45; C24, 27, 31, 35, 39, §**7478;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.58]

89 Acts, ch 126, §2

CS89, §468.51

468.52 Levy for deficiency.

If the first assessment made by the board for the original cost or for repairs of any improvement is insufficient, the board shall make an additional assessment and levy in the same ratio as the first for either purpose, but an assessment on any tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars. All assessments shall be levied at that time as a tax and, notwithstanding chapter 74A, shall bear interest at a rate determined by the board from that date, payable annually, except as provided as to cash payments within a specified time.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7479;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.59]

89 Acts, ch 126, §2

CS89, §468.52

94 Acts, ch 1051, §5; 2001 Acts, ch 107, §1

468.53 Record of drainage taxes.

All drainage or levee tax assessments shall be entered in the drainage record of the district to which they apply, and also upon the tax records of each county.

[C24, 27, 31, 35, 39, §**7480;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.60]

89 Acts, ch 126, §2

CS89, §468.53

468.54 Funds — disbursement — interest.

The taxes when collected shall be kept in a separate fund known as the county drainage or levee fund and shall be paid out only for purposes properly connected with and growing out of the county drainage and levee districts on order of the board. The auditor shall continue to keep a record of each of the drainage and levee district's funds so as to accurately reflect the financial condition of each district account. The county treasurer, on order of the board of supervisors, shall invest such funds not immediately needed for current operating expenses in United States government bonds, in time certificates of deposit, in savings accounts in banks as the board shall approve, in the interest-bearing obligations of the drainage and levee districts of the county, or as provided by chapter 12C. Interest collected by the treasurer on the funds invested shall be deposited in the county drainage or levee fund, and on July 1 of each year the auditor shall apportion and credit the interest to each drainage or levee district account in the proportion which the average credit balance of each district bears to the average balance of the county drainage or levee fund. The averages to be ascertained shall be the averages of the balances existing on the first of each month during the fiscal year immediately preceding. Interest collected on drainage or levee district taxes shall be credited to the district for which the taxes are being collected. This section does not permit

expenditures in behalf of any district in excess of its share of the county drainage or levee fund. This section does not apply to drainage and levee districts under trustee management unless the trustees consent to its application, and in the absence of such consent, section 468.528 applies.

[S13, §1989-a13; C24, 27, 31, 35, 39, §**7481;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.61]

89 Acts, ch 126, §2

CS89, §468.54

92 Acts, ch 1016, §35

468.55 Assessments — maturity and collection.

If a landowner selects an option provided in section 468.57, all drainage or levee tax assessments become due and payable with the first half of ordinary taxes, and shall be collected in the same manner with the same interest for delinquency and the same manner of enforcing collection by tax sales. As an alternative, the landowner may pay the annual installment in two equal payments, one-half with the September payment of ordinary taxes and one-half payable with the March payment of ordinary taxes. All drainage or levee tax assessments not optioned for installment payments by the landowner shall become due and payable within thirty days after the levy of assessments.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7482;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.62]

89 Acts, ch 126, §2

CS89, §468.55

92 Acts, ch 1016, §36; 92 Acts, ch 1177, §1; 2001 Acts, ch 107, §2; 2006 Acts, ch 1158, §64

Collection of taxes, chapter 445

468.56 Payment of assessments.

All assessments for benefits, as corrected and approved by the board, shall be levied at one time against the property benefited, and when levied and certified by the board, are payable at the office of the county treasurer. A person may pay the person's assessment in full without interest within thirty days after the levy of assessments, and before any improvement certificates or drainage bonds are issued for the assessment, and may pay a certificate at any time after issue, with accrued interest.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7483;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.63]

84 Acts, ch 1028, §1; 84 Acts, ch 1189, §2; 88 Acts, ch 1039, §1; 89 Acts, ch 126, §2

CS89, §468.56

468.57 Installment payments — waiver.

1. If the owner of any land against which a levy exceeding five hundred dollars has been made and certified shall, within thirty days from the date of such levy, agree in writing endorsed upon any improvement certificate referred to in section 468.70, or in a separate agreement, that in consideration of having a right to pay the owner's assessment in installments, the owner will not make any objection as to the legality of the assessment for benefit, or the levy of the taxes against the property, then such owner shall have the following options:

a. To pay one-third of the amount of the assessment at the time of filing the agreement; one-third within twenty days after the engineer in charge certifies to the auditor that the improvement is one-half completed; and the remaining one-third within twenty days after the improvement has been completed and accepted by the board. All installments shall be without interest if paid at said times, otherwise the assessments shall bear interest from the date of the levy at a rate determined by the board notwithstanding chapter 74A, payable annually, and be collected as other taxes on real estate, with like interest for delinquency.

b. To pay the assessments in not less than ten nor more than twenty equal installments, with the number of payments and interest rate determined by the board, notwithstanding chapter 74A. The first installment of each assessment, or the total amount if five hundred

dollars or less, is due and payable on July 1 next succeeding the date of the levy, unless the assessment is filed with the county treasurer after May 31 in any year. The first installment shall bear interest on the whole unpaid assessment from the date of the levy as set by the board to the first day of December following the due date. The succeeding annual installments, with interest on the whole unpaid amount, to the first day of December following the due date, are respectively due on July 1 annually, and must be paid at the same time and in the same manner as the first semiannual payment of ordinary taxes. All future installments of an assessment may be paid on any date by payment of the then outstanding balance plus interest to the next December 1, or additional annual installments may be paid after the current installment has been paid before December 1 without interest. A payment must be for the full amount of the next installment. If installments remain to be paid, the next annual installment with interest added to December 1 will be due. After December 1, if a drainage assessment is not delinquent, a property owner may pay one-half or all of the next annual installment of principal and interest of a drainage assessment prior to the delinquency date of the installment. When the next installment has been paid in full, successive principal installments may be prepaid. The county treasurer shall accept the payments of the drainage assessment, and shall credit the next annual installment or future installments of the drainage assessment to the extent of the payment or payments, and shall remit the payments to the drainage fund. If a property owner elects to pay one or more principal installments in advance, the pay schedule shall be advanced by the number of principal installments prepaid. Each installment of an assessment with interest on the unpaid balance is delinquent from October 1 after its due date. However, when the last day of September is a Saturday or Sunday, that amount shall be delinquent from the second business day of October. Taxes assessed pursuant to this chapter which become delinquent shall bear the same delinquent interest as ordinary taxes. When collected, the interest must be credited to the same drainage fund as the drainage special assessment.

2. The provisions of this section and of sections 468.58 through 468.61 may within the discretion of the board, also be made applicable to repairs and improvements made under the provisions of section 468.126.

[S13, §1989-a26, -a27; SS15, §1989-a12; C24, 27, 31, 35, 39, §**7484;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.64]

85 Acts, ch 163, §2; 86 Acts, ch 1099, §1; 89 Acts, ch 126, §2

CS89, §468.57

92 Acts, ch 1016, §37; 94 Acts, ch 1035, §2; 95 Acts, ch 57, §24; 97 Acts, ch 121, §26; 2011 Acts, ch 25, §143; 2011 Acts, ch 109, §4; 2012 Acts, ch 1138, §107

Referred to in §468.55, 468.59, 468.127

468.58 Installment payments after appeal.

When an owner takes an appeal from the assessment against any of the owner's land, the option to pay in installments whatever assessment is finally established against such land in said appeal shall continue, if within twenty days after the final determination of said appeal the owner shall file in the office of the auditor the owner's written election to pay in installments, and within said period pay such installments as would have matured prior to that time if no appeal had been taken, together with all accrued interest on said assessment to the last preceding interest-paying date.

[C24, 27, 31, 35, 39, §**7486;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.65]

89 Acts, ch 126, §2

CS89, §468.58

Referred to in §468.57, 468.127

468.59 Notice of half and full completion.

Within two days after the engineer has filed a certificate that the work is half completed and within two days after the board of supervisors has accepted the completed improvement as in this subchapter, parts 1 through 5, provided, the county auditor shall notify the owner of each lot or parcel of land who has signed an agreement of waiver as provided in section 468.57,

of such fact. Such notice shall be given by certified mail sent to such owners, respectively, at the addresses filed with the auditor at the time of making such agreement of waiver.

[C24, 27, 31, 35, 39, §**7487;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.66]

89 Acts, ch 126, §2

CS89, §468.59

Referred to in §468.57, 468.127

468.60 Lien of deferred installments.

No deferred installment of the amount assessed as between vendor and vendee, mortgagor and mortgagee shall become a lien upon the property against which it is assessed and levied until June 30 of the preceding fiscal year in which it is due and payable.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7488;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.67]

89 Acts, ch 126, §2

CS89, §468.60

Referred to in §468.57, 468.127

468.61 Surplus funds — application of.

When one-half or more of all assessments for a drainage or levee district have been paid and it is ascertained that there will be a surplus in the district fund after all assessments have been paid, the board may refund to the owner of each tract of land, not more than fifty percent of the owner's proportionate part of such surplus. When all construction work has been completed and all cost paid, and all assessments have been paid in full, the board may refund, to the owner of each tract of land, the owner's proportionate part of any surplus funds except such portion of the surplus as the board considers should be retained for a sinking fund to pay future maintenance and repair costs.

[C24, 27, 31, §7489; C35, §7488-e1, 7489; C39, §**7488.1, 7489;** C46, §455.68, 455.69; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.68]

89 Acts, ch 126, §2

CS89, §468.61

Referred to in §468.57, 468.127

468.62 Change of conditions — modification of plan.

If, after the improvement has been finally located and before construction thereof has been completed, there has been a change of conditions of such nature that the plan of improvement as adopted should be modified or amended, the board may direct the engineer appointed under section 468.30 or another engineer, to make a report showing such changes or modifications of the plan of improvement as may be necessary to meet the change of conditions. Upon the filing of such report, the board shall have jurisdiction to adopt said modified or amended plan of improvement or may further modify or amend and adopt the same by following the procedure provided in sections 468.201 and 468.205 through 468.209 so far as same are applicable, except that awards for damages shall not be canceled where there has been no change made in the improvement which would increase or decrease the damages awarded. However, modifications and changes may be made in the plan on which hearing was held without further notice or hearing, provided the same do not increase or decrease the estimated cost to the district by more than twenty-five percent.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.69]

89 Acts, ch 126, §2

CS89, §468.62

Referred to in §468.66

468.63 Drainage subdistrict.

After the establishment of a drainage district, a person owning land within the district which has been assessed for benefits, but which is separated from the main ditch, drain, or watercourse for which it has been so assessed, by the land of others, who desires a ditch or drain constructed from the person's land across the land of the others in order to connect with the main ditch, drain, or watercourse, and is unable to agree with the intervening owners

on the terms and conditions on which the person may enter upon their lands and cause to be constructed the connecting drain or ditch, may file a petition for the establishment of a subdistrict. After the petition is filed, the proceedings shall be the same as provided for the establishment of an original district.

[S13, §1989-a23; C24, 27, 31, 35, 39, §**7490;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.70]

86 Acts, ch 1050, §1; 88 Acts, ch 1069, §1; 89 Acts, ch 126, §2

CS89, §468.63

97 Acts, ch 163, §1

Referred to in §468.141

468.64 Presumption — jurisdiction.

Such connecting ditch or drain which a person shall cause to be constructed shall be presumed conducive to the public health, welfare, convenience, and utility the same as if it had been so constructed as a part of the original improvement of said district. When such subdistrict has been established and constructed it shall become and be a part of the improvement of such drainage district as a whole and be under the control and supervision of the board to the same extent and in every way as if it had been a part of the original improvement of such district.

[S13, §1989-a23; C24, 27, 31, 35, 39, §**7491;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.71]

89 Acts, ch 126, §2

CS89, §468.64

468.65 Reclassification.

1. When, after a drainage or levee district has been established, except districts established by mutual agreement in accordance with section 468.142, and the improvements thereof constructed and put in operation, there has been a material change as to lands occupied by highway or railroad right-of-way or in the character of the lands benefited by the improvement, or when a repair, improvement, or extension has become necessary, the board may consider whether the existing assessments are equitable as a basis for payment of the expense of maintaining the district and of making the repair, improvement or extension. If they find the same to be inequitable in any particular, they shall by resolution express such finding, appoint three commissioners possessing the qualifications prescribed in section 468.38 and order a reclassification as follows:

a. If they find the assessments to be generally inequitable they shall order a reclassification of all property subject to assessment, such as lands, highways, and railroads in said district.

b. If the inequity ascertained by the board is limited to the proportion paid by highways or railroads, a general reclassification of all lands shall not be necessary but the commissioners may evaluate and determine the fair proportion to be paid by such highways or railroads or both as provided in sections 468.42 and 468.43.

c. Any benefits of a character for which levee or drainage districts may be established and which are attributable to or enhanced by the improvement or by the repair, improvement, or extension thereof, shall be a proper subject of consideration in a reclassification notwithstanding the district may have been originally established for a limited purpose.

d. (1) If after a district has been reclassified, the board in its judgment concludes there were errors in the reclassification or there is an inequitable assessment of benefits, the board may on its own motion, after notice to the landowners involved as provided in sections 468.14 through 468.18 and by resolution, order the district or any portion of the district to again be reclassified as prescribed in this section and in section 468.67.

(2) The board may include in its resolution an order to the commissioners that they prepare special common outlet classifications, if needed, in conjunction with the reclassification of the district.

2. Such reclassification when finally adopted shall remain the basis for all future assessments unless revised as provided in this subchapter, parts 1 through 5.

[C24, 27, 31, 35, 39, §**7492;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.72]
89 Acts, ch 126, §2
CS89, §468.65
91 Acts, ch 80, §3; 2011 Acts, ch 25, §121
Referred to in §468.184

468.66 Bids required.

If the board determines that a change described in section 468.62 increases the cost of the improvement in excess of the adjusted competitive bid threshold, the work shall be let by bids in the same manner as is provided for the original construction of such improvements.

[C24, 27, 31, 35, 39, §**7493;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.73]
89 Acts, ch 126, §2
CS89, §468.66
94 Acts, ch 1051, §6; 2006 Acts, ch 1056, §2; 2010 Acts, ch 1091, §3, 4; 2014 Acts, ch 1075, §13; 2015 Acts, ch 51, §8

468.67 Procedure governing reclassification.

The proceedings for such reclassification shall in all particulars be governed by the same rules as for original classification. The commissioners shall fix the percentage of actual benefits and make an equitable apportionment of the costs and expenses of such repairs, improvements or extensions and file a report thereof with the auditor in the same form and manner as for original classification. Thereafter, all the proceedings in relation thereto as to notice, hearing, and fixing of percentage of benefits and amount of assessments shall be as in this subchapter, parts 1 through 5, provided in relation to original classification and assessments, and at such hearing the board may affirm, increase, or diminish the percentage and assessment of benefits and apportionment of costs and expenses so as to make them just and equitable, and cause the record of the original classification, percentage of benefits, and assessments to be modified accordingly.

[C24, 27, 31, 35, 39, §**7494;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.74]
89 Acts, ch 126, §2
CS89, §468.67
Referred to in §468.65
Classification procedures, see §468.38 – 468.44

468.68 Drainage warrants received for assessments.

Warrants drawn upon the construction or maintenance funds of any district for which an assessment has been or must be levied, shall be transferable by endorsement, and may be acquired by any taxpayer of such district and applied at their accrued face value upon the assessment levied to create the fund against which the warrant was drawn; when the amount of the warrant exceeds the amount of the assessment, the treasurer shall cancel the warrant, and give the holder thereof a certificate for the amount of such excess, which certificate shall be filed with the auditor, who shall issue a warrant for the amount of such excess, and charge the treasurer therewith. Such certificate is transferable by endorsement, and will entitle the holder to the new warrant, made payable to the holder's order, and bearing the original number, preceded by the following words:

Issued as unpaid balance due on warrant number .....

[S13, §1989-a13; C24, 27, 31, 35, 39, §**7495;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.75]
89 Acts, ch 126, §2
CS89, §468.68
2018 Acts, ch 1041, §98

468.69 Bonds received for assessments.

Bonds issued for the cost of construction, maintenance, or repair of any drainage or levee district improvements, or for the refunding of any obligation of such district may be acquired by any taxpayer or group of taxpayers of such district and applied at their face value in the order of their priority, if any priority exists between bonds of the same issue, upon the payment of the delinquent or future assessments levied against the property of such taxpayers to pay off the bonds so acquired. The interest coupons attached to such bonds may likewise be applied at their face value to the payment of assessments for interest accounts, delinquent or future.

[C35, §7495-e1; C39, §**7495.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.76]

89 Acts, ch 126, §2

CS89, §468.69

2014 Acts, ch 1092, §103; 2017 Acts, ch 29, §134

See §74.1 et seq.

468.70 Installment assessments — interest-bearing warrants — improvement certificates.

1. The board may provide by resolution for the payment of assessments in not more than twenty annual installments with interest at a rate determined by the board, notwithstanding chapter 74A. The board may issue warrants bearing interest at the same rate, which warrants shall be numbered and state a maturity date, in which event the warrants shall bear interest from the date of issuance without being presented for payment and marked unpaid for want of funds. The warrants may be sold by the board for cash in an amount not less than their face value, together with any accrued interest.

2. The board may provide by resolution for the issuance of improvement certificates payable to bearer or to the contractors, naming them, who have constructed the improvement or completed any part of the improvement, in payment or part payment of such work.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7499;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.77]

89 Acts, ch 126, §2

CS89, §468.70

94 Acts, ch 1035, §3; 2019 Acts, ch 59, §153

Referred to in §468.57, 468.74

Section amended

468.71 Form, negotiability, and effect.

Each of such certificates shall state the amount of one or more drainage assessments or part thereof made against the property, designating it and the owner thereof liable for the payment of such assessments. Said certificates shall be negotiable and transfer to the bearer all right and interest in and to the tax in every such assessment or part thereof described in such certificates, and shall authorize such bearer to collect and receive every assessment embraced in said certificate by or through any of the methods provided by law for their collection as the same mature.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7500;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.78]

89 Acts, ch 126, §2

CS89, §468.71

Referred to in §468.74

468.72 Interest — place of payment.

Such certificates shall bear interest at a rate determined by the board, payable annually, and shall be paid by the taxpayer to the county treasurer, who shall receipt for the same and cause the amount to be credited on the certificates issued therefor.

[S13, §1989-a26; C24, 27, 31, 35, 39, §**7501;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.79]

89 Acts, ch 126, §2

CS89, §468.72
94 Acts, ch 1035, §4
Referred to in §468.74

468.73 Sale at par — right to pay.

Any person shall have the right to pay the amount of the person's assessment represented by any outstanding improvement certificate, with the interest thereon to the date of such payment, at any time. No improvement certificate shall be issued or negotiated for the use of the drainage district for less than par value with accrued interest up to the delivery or transfer thereof. Every such certificate, when paid, shall be delivered to the treasurer and by the treasurer surrendered to the party to whose assessment it relates.

[S13, §1989-a26, -a27; C24, 27, 31, 35, 39, §**7502;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.80]
89 Acts, ch 126, §2
CS89, §468.73
Referred to in §468.74

468.74 Drainage bonds.

1. When a drainage district has been established or the making of any subsequent repair or improvement determined upon, if the board of supervisors shall find that the cost of such improvement will create assessments against the land included in the district that are greater than should be levied in a single year upon the lands benefited by the improvement, then, instead of issuing improvement certificates, as provided in sections 468.70 through 468.73, the board may fix the amount that shall be levied and collected each year until such cost and expenses are paid, and may issue drainage bonds of the county covering all assessments exclusive of assessments of one hundred dollars and less.

2. Before drainage bonds shall be issued, the governing body of the district shall cause an action for declaratory judgment to be brought in the district court of the county in which the bonds are to be issued, asking that their legality be confirmed. The court shall fix a date for hearing on the legality of the bonds and notice of hearing shall be given to the owners of each lot or tract of land within the district, which shall be affected by an assessment to pay the proposed bonds, as shown by the transfer books in the auditor's office. Notice shall also be given to the holders of liens of record upon the affected lands and to all persons to whom it may concern without naming them specifically. The notice shall be given by publication and by mailing for the same time in advance of hearing and in the same manner prescribed in section 468.15. After the entry of the declaratory judgment adjudicating the validity of such bonds, the approval of the district court shall be endorsed on the bonds before issuance.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7503;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.81]
89 Acts, ch 126, §2
CS89, §468.74
2019 Acts, ch 59, §154
Section amended

468.75 Form.

Each of such bonds shall be numbered and have printed upon its face that it is a "Drainage Bond", stating the county and number of the district for which it is issued, the date and maturity thereof, that it is in pursuance of a resolution of the board of supervisors, that it is to be paid only from taxes for levee and drainage improvement purposes levied and collected on the lands assessed for benefits within the district for which the bond is issued.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7504;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.82]
89 Acts, ch 126, §2
CS89, §468.75

468.76 Amount — interest — maturity.

In no case shall the aggregate amount of all bonds issued exceed the benefits assessed. The bonds shall not be issued for a greater amount than the aggregate amount of assessments for the payment of which they are issued, nor for a longer period of maturity than twenty years. The bonds shall bear interest at a rate determined by the board, notwithstanding chapter 74A, payable semiannually, on June 1 and December 1 of each year. The interest on unpaid assessments shall be at a rate determined by the board.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7505;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.83]

89 Acts, ch 126, §2

CS89, §468.76

94 Acts, ch 1035, §5

Referred to in §357.21

468.77 Maturity — interest — highway benefits.

The board shall fix the amount, maturity, and interest of all bonds to be issued. It shall determine the amount of assessments to highways for benefits within the district to be covered by each bond issue. The taxes levied for benefits to highways and other public lands within any drainage or levee district shall be paid at the same times and in the same proportion as assessments against the lands of private owners.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7506;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.84]

89 Acts, ch 126, §2

CS89, §468.77

468.78 Sale or application at par — premium.

Such bonds may be applied at par with accrued interest to the payment of work as it progresses upon the improvements of the district, or, the board may sell, through the county treasurer, said bonds at not less than par with accrued interest and devote the proceeds to such payment. Any premium derived from the sale of said bonds shall be credited to the drainage fund of the district.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7508;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.86]

89 Acts, ch 126, §2

CS89, §468.78

Referred to in §357.21

468.79 Deficiency levy — additional bonds.

If any levy of assessments is not sufficient to meet the interest and principal of outstanding bonds, or if default shall occur by reason of nonpayment of assessments, additional assessments may be made on the same classification as the previous ones. Additional bond issues may be made when necessary to complete full payment for improvements, by the same proceedings as previous issues.

[C97, §1953; S13, §1989-a27; C24, 27, 31, 35, 39, §**7509;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.87]

89 Acts, ch 126, §2

CS89, §468.79

468.80 Funding or refunding indebtedness.

Drainage districts may settle, adjust, renew, or extend the time of payment of the legal indebtedness they may have, or any part thereof, in the sum of one thousand dollars or upwards, whether evidenced by bonds, warrants, certificates, or judgments, and may fund or refund the same and issue bonds therefor in the manner provided in section 468.367.

[C27, 31, 35, §7509-a1; C39, §**7509.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.88]

89 Acts, ch 126, §2

CS89, §468.80

Additional provisions, subchapter IV, part 1

468.81 Record of bonds.

A record of the numbers, amounts, and maturities of all such bonds shall be kept by the auditor showing specifically the lands embraced in the district upon which the tax has not been previously paid in full.

[S13, §1989-a27; C24, 27, 31, 35, 39, §**7510;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.89]

89 Acts, ch 126, §2

CS89, §468.81

468.82 Payment.

The board, at the time of making the levy, shall fix a time within which all assessments in excess of one hundred dollars may be paid, and before any bonds are issued, publish notice in an official newspaper in the county where the district is located, of such time. After the expiration of such time, no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issue of the bonds.

[C24, 27, 31, 35, 39, §**7511, 7512;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.90, 455.91]

89 Acts, ch 126, §2

CS89, §468.82

2014 Acts, ch 1110, §7, 8

468.83 Appeals.

1. Any person aggrieved may appeal from any final action of the board in relation to any matter involving the person's rights, to the district court of the county in which the proceeding was held.

2. In districts extending into two or more counties, appeals from final orders resulting from the joint action of the several boards or the board of trustees of such district may be taken to the district court of any county into which the district extends.

[S13, §1989-a6, -a11, -a14, -a35; C24, 27, 31, 35, 39, §**7513, 7514;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.92, 455.93]

89 Acts, ch 126, §2

CS89, §468.83

Referred to in §468.126, 468.135

468.84 Time and manner.

All appeals shall be taken within twenty days after the date of final action or order of the board from which such appeal is taken by filing with the auditor a notice of appeal, designating the court to which the appeal is taken and the order or action appealed from, and stating that the appeal will come on for hearing thirty days following perfection of the appeal with allowances of additional time for good cause shown. This notice shall be accompanied by an appeal bond with sureties to be approved by the auditor conditioned to pay all costs adjudged against the appellant and to abide the orders of the court.

[S13, §1989-a6, -a14, -a35; C24, 27, 31, 35, 39, §**7515;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.94]

89 Acts, ch 126, §2

CS89, §468.84

Referred to in §357.33, 468.85, 468.126, 468.135, 468.547

Presumption of approval of bond, §636.10

468.85 Transcript.

When notice of any appeal with the bond as required by section 468.84 shall be filed with the auditor, the auditor shall forthwith make and certify a transcript of the notice of appeal and appeal bond, and file the same with the clerk.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7516;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.95]

89 Acts, ch 126, §2

CS89, §468.85

Referred to in §357.33, 468.126, 468.135

468.86 Petition — docket fee — waiver — dismissal.

Within twenty days after perfection of the appeal the appellant shall file a petition setting forth the order or final action of the board appealed from and the grounds of the appellant's objections and the appellant's complaint, with a copy of the appellant's claim for damages or objections filed with the auditor. The appellant shall pay to the clerk the filing fee as provided by law in other cases. A failure to pay the filing fee or to file such petition shall be deemed a waiver of the appeal and in such case the court shall dismiss the same.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7517;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.96]

89 Acts, ch 126, §2

CS89, §468.86

Referred to in §357.33, 468.126, 468.135, 602.8102(65)

468.87 Pleadings on appeal.

It shall not be necessary for the appellees to file an answer to the petition unless some affirmative defense is made thereto, but they may do so.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7518;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.97]

89 Acts, ch 126, §2

CS89, §468.87

Referred to in §357.33, 468.126, 468.135, 602.8102(65)

468.88 Proper parties — employment of counsel.

In all actions or appeals affecting the district, the board of supervisors shall be a proper party for the purpose of representing the district and all interested parties therein, other than the adversary parties, and the employment of counsel by the board shall be for the purpose of protecting the rights of the district and interested parties therein other than the adversary parties.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7519;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.98]

89 Acts, ch 126, §2

CS89, §468.88

Referred to in §357.33, 468.126, 468.135, 602.8102(65)

468.89 Plaintiffs and defendants.

In all appeals or actions adversary to the district, the appellant or complaining party shall be entitled the plaintiff, and the board of supervisors and drainage district it represents, the defendants.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7520;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.99]

89 Acts, ch 126, §2

CS89, §468.89

Referred to in §357.33, 468.126, 602.8102(65)

468.90 Right of board and district to sue.

In all appeals or actions for or in behalf of the district, the board and the drainage district it represents may sue as the plaintiffs.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7521;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.100]

89 Acts, ch 126, §2

CS89, §468.90

Referred to in §357.33, 468.126, 602.8102(65)

468.91 Trial on appeal — consolidation.

Appeals from orders or actions of the board fixing the amount of compensation for lands taken for right-of-way or the amount of damages to which any claimant is entitled shall be tried as ordinary proceedings. All other appeals shall be triable in equity. The court may, in its discretion, order the consolidation for trial of two or more of such equitable cases.

[S13, §1989-a6, -a14, -a35; C24, 27, 31, 35, 39, §**7522;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.101]

89 Acts, ch 126, §2

CS89, §468.91

Referred to in §357.33, 468.126, 602.8102(65)

468.92 Conclusive presumption on appeal.

1. On the trial of an appeal from the action of the board in fixing and assessing the amount of benefits to any land within the district as established, it shall not be competent to show that any lands assessed for benefits within said district as established are not benefited in some degree by the construction of the said improvement.

2. An exception to the conclusiveness of an assessment under this section shall be in those cases where it has been determined under section 468.188 that land has later been deprived of benefits received by a division of the district by some other improvement.

[SS15, §1989-a12; C24, 27, 31, 35, 39, §**7523;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.102]

89 Acts, ch 126, §2

CS89, §468.92

2019 Acts, ch 24, §104

Referred to in §357.33, 468.126, 602.8102(65)

Code editor directive applied

468.93 Order as to damages — duty of clerk.

If the appeal is from the action of the board as to the amount of damages or compensation awarded, the amount found by the court shall be entered of record, but no judgment shall be rendered therefor. The amount thus ascertained shall be certified by the clerk of said court to the board of supervisors who shall thereafter proceed as if such amount had been by it allowed to the claimant.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7524;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.103]

89 Acts, ch 126, §2

CS89, §468.93

Referred to in §357.33, 468.126, 602.8102(65)

468.94 Costs.

Unless the result on the appeal is more favorable to the appellant than to the action of the board, all costs of the appeal shall be taxed to the appellant. If the result is more favorable to the appellant, the cost shall be taxed to the appellees.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7525;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.104]

89 Acts, ch 126, §2

CS89, §468.94

2017 Acts, ch 29, §135

Referred to in §357.33, 468.126, 602.8102(65)

468.95 Decree as to establishing district or including lands.

On appeal from the action of the board in establishing or refusing to establish said district, or in including land within the district, the court may enter such order or decree as may be equitable and just in the premises, and the clerk of said court shall certify the decree or order to the board of supervisors which shall proceed thereafter in said matter as if such order had been made by the board. The taxation of costs among the litigants shall be in the discretion of the court.

[S13, §1989-a6; C24, 27, 31, 35, 39, §**7526;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.105]

89 Acts, ch 126, §2

CS89, §468.95

Referred to in §357.33, 468.126, 602.8102(65)

468.96 Appeal as exclusive remedy — nonappellants.

Upon appeal the decision of the court shall in no manner affect the rights or liabilities of any person who did not appeal. The remedy by appeal provided for in this subchapter, parts 1 through 5, shall be exclusive of all other remedies.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7527;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.106]

89 Acts, ch 126, §2

CS89, §468.96

Referred to in §357.33, 468.126

468.97 Reversal by court — rescission by board.

In any case where the decree has been entered setting aside the establishment of a drainage district for errors in the proceedings, and such decree becomes final, the board shall rescind its order establishing the drainage district, assessing benefits, and levying the tax based thereon, and shall also cancel any contract made for construction work or material, and shall refund any and all assessments paid.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7528;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.107]

89 Acts, ch 126, §2

CS89, §468.97

Referred to in §357.33, 468.126

468.98 Setting aside establishment — procedure.

After the court on appeal has entered a decree revising or modifying the action of the board, the board shall fix a new date for hearing, and proceed in all particulars in the manner provided for the original establishment of the district, avoiding the errors and irregularities for which the original establishment was set aside, and after a valid establishment thereof, proceed in all particulars as provided by law in relation to the original establishment of such districts.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7529;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.108]

89 Acts, ch 126, §2

CS89, §468.98

Referred to in §357.33, 468.126

468.99 Reassessment to cure illegality.

Whenever any special assessment upon any lands within any drainage district shall have been adjudged to be void for any jurisdictional defect or for any illegality or uncertainty as to the terms of any contract and the improvement shall have been wholly completed, the board or boards of supervisors shall have power to remedy such illegality or uncertainty as to the terms of any such contract with the consent of the person with whom such contract shall have been entered into and make certain the terms of such contract and shall then cause a reassessment of such land to be made on an equitable basis with the other land in the district by taking the steps required by law in the making of an original assessment and relevying the

tax in accordance with such assessment, and such tax shall have the same force and effect as though the board or boards of supervisors had jurisdiction in the first instance and no illegality or uncertainty existed in the contract.

[C24, 27, 31, 35, 39, §**7530;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.109]
89 Acts, ch 126, §2
CS89, §468.99

468.100 Monthly estimate — payment.

1. The supervising engineer shall, on or before the tenth day of each calendar month, furnish the contractor and file with the auditor estimates for work done during the preceding calendar month under the contract on each section, and the auditor shall at once draw warrants in favor of such contractor on the drainage funds of the district or give the contractor an order directing the county treasurer to deliver to the contractor or contractors improvement certificates, or drainage bonds as the case may be, for ninety percent of the estimate on work done. Such monthly estimates shall remain on file in the office of the auditor as a part of the permanent records of the district to which they relate. Drainage warrants, bonds, or improvement certificates when so issued shall be in such amounts as the auditor determines, not however, in amounts in excess of five thousand dollars.

2. All of the provisions of this section shall, when applicable, apply to repair work and improvement work in the same force and effect as to original construction.

[C97, §1944; S13, §1944, 1989-a9; C24, 27, 31, 35, 39, §**7531;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.110]
89 Acts, ch 126, §2
CS89, §468.100
2014 Acts, ch 1022, §1

468.101 Completion of work — report — notice.

When the work to be done under a contract is completed to the satisfaction of the engineer in charge of construction, the engineer shall report and certify that the contract is completed to the board. Upon receipt of the report, the board shall set a day to consider the report and shall give notice of the time and purpose of the meeting by ordinary mail to the owners of the land on which the work was done, and to the owners of each tract of land or lot within the district by publication in a newspaper of general circulation in the county. The publication is not required to name the owners of any tract of land or lot within the district. The date for considering the report by the board shall be not less than ten days after the date of mailing, or publication, whichever is later.

[S13, §1989-a9; C24, 27, 31, 35, 39, §**7532;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.111]
85 Acts, ch 163, §3; 86 Acts, ch 1099, §2; 89 Acts, ch 126, §2
CS89, §468.101
95 Acts, ch 47, §1
Referred to in §357.18

468.102 Objections.

Any party interested in the said district or the improvement thereof may file objections to said report and submit any evidence tending to show said report should not be accepted. Any interested party having a claim for damages arising out of the construction of the improvement or repair shall file said claim with the board at or before the time fixed for hearing on the completion of the contract, which claim shall not include any claim for land taken for right-of-way or for severance of land.

[C24, 27, 31, 35, 39, §**7533;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.112]
89 Acts, ch 126, §2
CS89, §468.102
Referred to in §357.18, 468.103

468.103 Final settlement — claims for damages.

1. If the board finds the work under any contract has been completed and accepted,

the board shall compute the balance due, and if there are no liens on file against such balance, it shall enter of record an order directing the auditor to draw a warrant in favor of the contractor upon the levee or drainage fund of the district or give the contractor an order directing the county treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, for such balance found to be due, but such warrants, improvement certificates or bonds shall not be delivered to the contractor until the expiration of thirty days after the acceptance of the work.

2. If any claims for damages have been filed as provided in section 468.102, the board shall review and determine the claims. If the determination by the board on any claim for damages results in a finding by the board that the damages resulting to the claimant were due to the negligence of the contractor, then the board shall provide for payment of the claim out of the remaining funds owing to the contractor. If the determination by the board results in a finding that the damages resulting to the claimant were not due to the negligence of the contractor, but resulted from unavoidable necessity in the performance of the contract, then the board shall allow for payment of the claim in the amount fixed by the board out of the funds in the drainage district.

[C73, §1212; C97, §1944; S13, §1944, 1989-a9; C24, 27, 31, 35, 39, §**7534;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.113]

89 Acts, ch 126, §2

CS89, §468.103

2016 Acts, ch 1011, §83

Filing of claims, §573.10

468.104 Abandonment of work.

In case any contractor abandons or fails to proceed diligently and properly with the work before completion, or in case the contractor fails to complete the same in the time and according to the terms of the contract, the board shall make written demand on the contractor and the contractor's surety to proceed with the work within ten days. Service of said demand may be personal, or by certified mail addressed to the contractor and the surety, respectively, at their places of residence or business, as shown by the records in the auditor's office.

[S13, §1944, 1989-a10; C24, 27, 31, 35, 39, §**7535;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.114]

89 Acts, ch 126, §2

CS89, §468.104

Referred to in §357.17

468.105 New contract — suit on bond.

Unless the contractor or the surety on the contractor's bond shall appear and in good faith proceed to comply with the demand, and resume work under the contract within the time fixed, the board shall proceed to let contracts for the unfinished work in the same manner as original contracts, and apply all funds not paid to the original contractor toward the completion of the work, and if not sufficient for such purpose, may cause suit to be brought upon the bond of the defaulting contractor for the benefit of the district, and the amount of recovery thereon shall be credited to the district.

[C73, §1212; C97, §1944; S13, §1944, 1989-a10; C24, 27, 31, 35, 39, §**7536;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.115]

89 Acts, ch 126, §2

CS89, §468.105

Referred to in §357.17

468.106 Construction on or along highway.

When a levee or drainage district shall have been established by the board and it shall become necessary or desirable that the levee, ditch, drain, or improvement shall be located

and constructed within the limits of any public highway, it shall be so built as not materially to interfere with the public travel thereon.

[S13, §1989-a20; C24, 27, 31, 35, 39, §**7537;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.116]

89 Acts, ch 126, §2

CS89, §468.106

468.107 Establishment of highways.

The board shall have power to establish public highways along and upon any levee or embankment along any such ditch or drain, but when so established the same shall be worked and maintained as other highways and so as not to obstruct or impair the levee, ditch, or drain.

[S13, §1989-a20; C24, 27, 31, 35, 39, §**7538;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.117]

89 Acts, ch 126, §2

CS89, §468.107

468.108 Bridges.

1. When a levee, ditch, drain, or change of any natural watercourse crosses a public highway, necessitating moving or building or rebuilding any secondary road bridge upon or ditch or drain crossing the road, the board of supervisors shall move, build, or rebuild the bridge, ditch, or drain, paying the costs and expenses, including construction, maintenance, repair and improvement costs, from county funds.

2. If the bridge or crossing is upon or across a primary or interstate road, the moving, building, or rebuilding work shall be done by the state department of transportation and paid for out of the primary road fund.

[S13, §1989-a19; C24, 27, 31, 35, 39, §**7539;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.118]

83 Acts, ch 123, §184, 209; 89 Acts, ch 126, §2

CS89, §468.108

2019 Acts, ch 59, §155

Referred to in §331.429

Section amended

468.109 Construction across railroad.

Whenever the board of supervisors shall have established any levee, or drainage district, or change of any natural watercourse and the levee, ditch, drain, or watercourse as surveyed and located crosses the right-of-way of any railroad company, the county auditor shall immediately cause to be served upon such railroad company, in the manner provided for the service of original notices, a notice in writing stating the nature of the improvement to be constructed, the place where it will cross the right-of-way of such company, and the full requirements for its complete construction across such right-of-way as shown by the plans, specifications, plat, and profile of the engineer appointed by the board, and directing such company to construct such improvement according to said plans and specifications at the place designated, across its right-of-way, and to build and construct or rebuild and reconstruct the necessary culvert or bridge where any ditch, drain, or watercourse crosses its right-of-way, so as not to obstruct, impede, or interfere with the free flow of the water therein, within thirty days from the time of the service of such notice upon it.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7540;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.119]

89 Acts, ch 126, §2

CS89, §468.109

Referred to in §468.110, 468.112

Manner of service, R.C.P. 1.302 – 1.315

468.110 Duty to construct.

Upon receiving the notice provided in section 468.109, such railroad company shall construct the improvement across its right-of-way according to the plans and specifications

prepared by the engineer for said district, and build or rebuild the necessary culvert or bridge and complete the same within the time specified.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7541;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.120]

89 Acts, ch 126, §2

CS89, §468.110

468.111 Bridges at natural waterway — costs.

The cost of building, rebuilding, constructing, reconstructing, changing, or repairing, as the case may be, any culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be borne by such railroad company without reimbursement therefor.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7542;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.121]

89 Acts, ch 126, §2

CS89, §468.111

468.112 Construction when company refuses.

If a railroad company does not comply with a notice provided in section 468.109, the board shall provide for the construction of the improvement under the supervision of the engineer in charge of the improvement. The railroad company shall be liable for the cost of the construction which shall be collected by the county on behalf of the district in any court having jurisdiction. The court may award a prevailing county reasonable attorney fees incurred by the county, to be paid by the railroad company and taxed as part of the costs of the action.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7543;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.122]

89 Acts, ch 126, §2

CS89, §468.112

99 Acts, ch 184, §1

468.113 Cost of construction across railway.

The cost of constructing the improvement across the right-of-way of such company, not including the cost of building or rebuilding and constructing or reconstructing any necessary culvert or bridge, when such improvement is located at the place of the natural waterway or place provided by the railroad company for the flow of the water, shall be considered as an element of such company's damages by the appraiser to appraise damages.

[S13, §1989-a18; C24, 27, 31, 35, 39, §**7544;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.123]

89 Acts, ch 126, §2

CS89, §468.113

468.114 Passing drainage equipment across railway.

It shall be the duty of any steam or electric railway company to furnish the contractor unrestricted passage across its right-of-way, telegraph, telephone, and signal lines for the contractor's machines and equipment, whenever recommended by the engineer and approved by the board of supervisors, and the cost thereof shall be considered as an element of such company's damages by the appraisers thereof; provided that if such company shall fail to do so within thirty days after written notice from the auditor, the engineer shall cause the same to be done under the engineer's direction and the company shall be liable for the cost thereof to be collected by the county in any court having jurisdiction. Provided, further, that the railway company shall have the right to designate the day and hours thereof within said period of thirty days above mentioned when such crossing shall be made.

[C24, 27, 31, 35, 39, §**7545;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.124]

89 Acts, ch 126, §2

CS89, §468.114

468.115 Passage across other public utilities.

The owner or operator of a public utility, whether operated publicly or privately other than steam and electric railways shall afford the contractor of any drainage project under this subchapter, parts 1 through 5, unrestricted passage for the contractor's machines and equipment across the right-of-way lines or other equipment of such utility whenever recommended by the engineer and approved by the board of supervisors.

[C24, 27, 31, 35, 39, §**7546;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.125]
89 Acts, ch 126, §2
CS89, §468.115

468.116 Failure to comply.

If the owner or operator of the utility fails to afford such passage within fifteen days after written notice from the drainage engineer so to do, the contractor, under the supervision of the engineer, may proceed to do the necessary work to afford such passage and to place said utility in the same condition as before said passage; but the owner or operator shall have the right to designate the hours of the day when such crossing or passage shall be made.

[C24, 27, 31, 35, 39, §**7547;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.126]
89 Acts, ch 126, §2
CS89, §468.116

468.117 Expenses attending passage.

The work necessary to afford such passage shall be deemed to be covered by and included in the contract with the district under which the contractor is operating, and if the work is done by the owner or operator of such utility the reasonable expense thereof shall be paid out of the drainage funds of the district and charged to the account of the contractor.

[C24, 27, 31, 35, 39, §**7548;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.127]
89 Acts, ch 126, §2
CS89, §468.117

468.118 Abandoned right-of-way.

1. If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use the right-of-way for a purpose other than for which it was originally acquired, the prior right or privilege of the drainage district to pass through the right-of-way of the railroad or utility shall become a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress through adjacent property and the right of access for maintenance, repair, improvement and inspection. The permanent easement has the same dimensions as originally specified in the engineer's report and survey, or as acquired by use or as subsequently acquired.

2. If a railroad or other utility has abandoned the use of its right-of-way for the purpose it was originally acquired or has sold its right-of-way to a person who will use the right-of-way for a purpose other than for which it was originally acquired in segments, each segment shall be assessed for benefits in the same proportion as the area of the segment bears to the area of the right-of-way through the forty-acre tract.

85 Acts, ch 163, §4
CS85, §455.127A
89 Acts, ch 126, §2
CS89, §468.118
2019 Acts, ch 59, §156
Section amended

468.119 Annexation of additional lands.

1. After the establishment of a levee or drainage district, if the board becomes convinced that additional lands contiguous to the district, and without regard to county boundaries, are benefited by the improvement or that the same are then receiving benefit or will be benefited by a repair or improvement to said district as contemplated in section 468.126, it may

adopt, with or without a petition from owners of the proposed annexed lands, a resolution of necessity for the annexation of such additional land and appoint an engineer with the qualifications provided in this subchapter, parts 1 through 5, to examine such additional lands, to make a survey and plat thereof showing their relation, elevation, and condition of drainage with reference to such established district, and to make and file with the auditor a report as in this subchapter, parts 1 through 5, provided for the original establishment of such district, said report to specify the character of the benefits received.

2. In the event the additional lands are a part of an existing drainage district, as an alternative procedure to that established by subsection 1, the lands may be annexed in either of the following methods:

a. (1) A petition, proposing that the lands be included in a contiguous drainage district and signed by at least twenty percent of the landowners of those lands to be annexed, shall be filed with the governing board of each affected district.

(2) The board of the district in which the lands are presently included may, at its next regular meeting or at a special meeting called for that purpose, adopt a resolution approving and consenting to the annexation.

b. Whenever the owners of all of the land proposed to be annexed file a petition with the governing boards of the affected districts, the consent of the board in which the lands are then located shall not be required to consent to the annexation, and the board of the annexing district may proceed as provided in this section.

3. If either method of annexation provided for in subsection 2 is completed, the board of the district to which the lands are to be annexed may adopt a resolution of necessity for the annexation of the additional lands, as provided in this section.

4. The right of remonstrance, as provided under section 468.28, does not apply to the owners of lands being involuntarily annexed to an established district.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7549;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.128]

85 Acts, ch 163, §5; 89 Acts, ch 126, §2

CS89, §468.119

2009 Acts, ch 41, §140

Referred to in §468.121, 468.263, 468.269

468.120 Proceedings on report.

If the report recommends the annexation of the lands or any portion of them, the board shall consider the report, plats, and profiles and if satisfied that any of the lands are materially benefited by the district and that annexation is feasible, expedient, and for the public good, it shall proceed in all respects as to notice, hearing, appointment of appraisers to fix damages and as to hearing on the annexation; and if the annexation is finally made, as to classification and assessment of benefits to the annexed lands only, to the same extent and in the same manner as provided in the establishment of an original district. However, the annexation and classification of the annexed lands for benefits may be determined at one hearing. Those parties having an interest in the lands proposed to be annexed have the right to receive notice, to make objections, to file claims for damages, to have hearing, to take appeals and to do all other things to the same extent and in the same manner as provided in the establishment of an original district.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7550;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.129]

85 Acts, ch 163, §6; 89 Acts, ch 126, §2

CS89, §468.120

Referred to in §468.263, 468.269

468.121 Levy on annexed lands.

After annexation is made the board may levy upon the annexed lands an assessment sufficient to equal the assessments for benefit originally paid by the lands of equal classification if the finding by the board as provided by section 468.119 was that the lands should have been included in the district when originally established, plus their proportionate

share of the costs of any enlargement or extension of drains required to serve the annexed lands. If the finding of the board as provided in section 468.119 was based on the fact that additional lands are now benefited by virtue of the repair, improvement, or the change of the topographical conditions made to the district and were not benefited by the district as originally established, then the board shall levy upon the annexed lands an assessment sufficient to pay their proportionate share of the costs of the repair or improvement which was the basis for the lands being annexed. If the board finds that the lands are presently receiving benefits from the district but that some were reasonably omitted from the original establishment because of the change of the topographical conditions, the assessments levied upon the annexed lands shall be limited to a proportionate share of the costs of current and future maintenance, repairs and improvements.

[S13, §1989-a54; C24, 27, 31, 35, 39, §**7551;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.130]

85 Acts, ch 163, §7; 89 Acts, ch 126, §2

CS89, §468.121

Referred to in §468.263, 468.269

468.122 Use of former and abandoned surveys.

In cases where proceedings have been taken for the establishment of a levee or drainage district and an engineer has been appointed who has made a survey, return, and plat thereof and for any reason the improvement has been abandoned and the proceedings dismissed, and afterward proceedings are instituted for the establishment of a levee or drainage district which will benefit any territory surveyed in said former proceedings, the engineer shall use so much of the return, levels, surveys, plat, and profile made in the former proceedings as may be applicable. The engineer shall specify in the engineer's reports the parts thereof so used, and in case the cost of said returns, levels, surveys, plat, and profile made in said former proceedings has been paid by the former petitioners or their sureties, then a reasonable amount shall be allowed said petitioners or sureties for the use of the same.

[S13, §1989-a16; C24, 27, 31, 35, 39, §**7552;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.131]

89 Acts, ch 126, §2

CS89, §468.122

468.123 Unsuccessful procedure — reestablishment.

When proceedings have been instituted for the establishment of a drainage district or for any change or repair thereof, or the change of a natural watercourse, and the establishment thereof has failed for any reason either before or after the improvement is completed, the board shall have power to reestablish such district or improvement and any new improvement in connection therewith as recommended by the report of the engineer. As to all lands benefited by such reestablishment, repair, or improvement, the board shall proceed in the same manner as in the establishment of an original district, using as a basis for assessment the entire cost of the proceedings, improvement, and maintenance from the beginning; but in awarding damages and in the assessment of benefits account shall be taken of the amount of damages and taxes, if any, theretofore paid by those benefited, and credit therefor given accordingly. All other proceedings shall be the same as for the original establishment of the district, making of improvements, and assessment of benefits.

[S13, §1989-a17, -a50; C24, 27, 31, 35, 39, §**7553;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.132]

89 Acts, ch 126, §2

CS89, §468.123

468.124 New district including old district.

If any levee or drainage district or improvement established either by legal proceedings or by private parties shall be insufficient to properly drain all of the lands tributary thereto, the board upon petition as for the establishment of an original levee or drainage district, shall have power to establish a new district covering and including such old district or improvement

together with any additional lands deemed necessary. All outstanding indebtedness of the old levee or drainage district shall be assessed only against the lands included therein.

[S13, §1989-a25; C24, 27, 31, 35, 39, §**7554;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.133]

89 Acts, ch 126, §2

CS89, §468.124

Referred to in §468.125

468.125 Credit for old improvement.

When such district as contemplated in section 468.124 and the new improvement therein shall include the whole or any part of the former improvement, the commissioners, for classification of lands for assessment of benefits and apportionment of costs and expenses of such new improvement, shall take into consideration the value of such old improvement in the construction of the new one and allow proper credit therefor to the parties owning the old improvement as their interests may appear. In all other respects the same proceedings shall obtain as are provided for the original establishment of levee and drainage districts.

[S13, §1989-a25; C24, 27, 31, 35, 39, §**7555;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.134]

89 Acts, ch 126, §2

CS89, §468.125

468.126 Repairs and improvements.

1. When any levee or drainage district has been established and the improvement constructed, the improvement shall be at all times under the supervision of the board of supervisors except as otherwise provided for control and management by a board of trustees and the board shall keep the improvement in repair as provided in this section.

a. The board at any time on its own motion, without notice, may order done whatever is necessary to restore or maintain a drainage or levee improvement in its original efficiency or capacity, and for that purpose may remove silt and debris, repair any damaged structures, remove weeds and other vegetable growth, and whatever else may be needed to restore or maintain such efficiency or capacity or to prolong its useful life.

b. The board may at any time obtain an engineer's report regarding the most feasible means of repairing a drainage or levee improvement and the probable cost of making the repair. If the engineer advises, or the board otherwise concludes that permanent restoration of a damaged structure is not feasible at the time, the board may order temporary construction it deems necessary to the continued functioning of the improvement. If in maintaining and repairing tile lines the board finds from an engineer's report it is more economical to construct a new line than to repair the existing line, the new line may be considered to be a repair.

c. If the estimated cost of the repair does not exceed fifty thousand dollars, the board may order the work done without conducting a hearing on the matter. Otherwise, the board shall set a date for a hearing and provide notice of the hearing to landowners in the district by publication in the same manner as provided in section 468.15. However, if the estimated cost of the repair exceeds the adjusted competitive bid threshold, the board shall provide notice to the landowners pursuant to sections 468.14 through 468.18. The board shall not divide a proposed repair into separate programs in order to avoid the notice and hearing requirements of this paragraph.

d. If a hearing is required under paragraph "*c*", the board shall order an engineer's report or a report from the soil and water conservation district conservationist regarding the matter to be presented at the hearing. The board may waive the report requirement if a prior report on the repair exists and that report is less than ten years old. At the hearing, the board shall hear objections to the feasibility of making the proposed repair.

e. Following a hearing, if required in paragraph "*c*", the board shall determine whether the repair is necessary or desirable, and feasible.

f. Any interested party has the right of appeal from such orders in the manner provided in this subchapter, parts 1 through 5.

g. The right of remonstrance does not apply to a repair as provided in this section.

2. In the case of a repair, or the eradication of brush or weeds along the open ditches, not in excess of the adjusted competitive bid threshold, where the board finds that a saving to the district will result, the board may cause the repairs or eradication to be done by secondary road fund equipment, or weed fund equipment, and labor of the county and then reimburse the secondary road fund or the weed fund from the fund of the drainage district thus benefited.

3. When the board deems it necessary it may repair or reconstruct the outlet of any private tile line which empties into a drainage ditch of any district and assess the costs in each case against the land served by the private tile line.

4. *a.* For the purpose of this subsection, an "*improvement*" in a drainage or levee district in which any ditch, tile drain, or other facility has previously been constructed is a project intended to expand, enlarge, or otherwise increase the capacity of any existing ditch, drain, or other facility above that for which it was designed.

b. When the board determines that an improvement is necessary or desirable, and feasible, the board shall appoint an engineer to make surveys as seem appropriate to determine the nature and extent of the improvement, and to file a report showing what improvement is recommended and its estimated cost, which report may be amended before final action.

c. If the estimated cost of the improvement does not exceed fifty thousand dollars, the board may order the work done without conducting a hearing on the matter. Otherwise, the board shall set a date for a hearing on whether to construct the proposed improvement and whether there shall be a reclassification of benefits for the cost of the proposed improvement.

(1) (a) The board shall provide notice to landowners in the district by publication in the same manner as provided in section 468.15. However, if the estimated cost of the improvement exceeds the adjusted competitive bid threshold, the board shall provide notice to the landowners pursuant to sections 468.14 through 468.18.

(b) Notwithstanding subparagraph division (a), and in lieu of publishing the notice, the board may mail a copy of the notice to each address where a landowner within the district resides by first class mail if the cost of mailing is less than publication of the notice. The mailing shall be made during the time the notice would otherwise be required to be published.

(2) The board shall not divide proposed improvements into separate programs in order to avoid compliance with this paragraph "*c*".

d. At the hearing, if required in paragraph "*c*", the board shall hear objections to the feasibility of the proposed improvements and arguments for or against a reclassification presented by or for any taxpayer of the district. Following the hearing, the board shall order that the improvement it deems necessary or desirable and feasible be made and shall also determine whether there should be a reclassification of benefits for the cost of the improvement. If it is determined that a reclassification of benefits should be made, the board shall proceed as provided in section 468.38.

e. If the estimated cost of the improvement exceeds the adjusted competitive bid threshold, or the original cost of the district plus the cost of subsequent improvements in the district, whichever amount is greater, a majority of the landowners, owning in the aggregate more than seventy percent of the total land in the district, may file a written remonstrance against the proposed improvement, at or before the date set for hearing on the proposed improvement as provided in paragraph "*c*", with the county auditor, or auditors in case the district extends into more than one county. If a remonstrance is filed, the board shall discontinue and dismiss all further proceedings on the proposed improvements and charge the costs incurred to date for the proposed improvements to the district. Any interested party may appeal from such orders in the manner provided in this subchapter, parts 1 through 5. However, this section does not affect the procedures of section 468.132 covering the common outlet.

5. Where under the laws in force prior to 1904 drainage ditches and levees were established and constructed without fixing at the time of establishment a definite boundary line for the body of land to be assessed for the cost thereof, the body of land which was last assessed to pay for the repair thereof shall also be considered as the established district for the purpose of this section.

6. The governing body of the district may, by contract or conveyance, acquire, within or

without the district, the necessary lands or easements for making repairs or improvements under this section, including easements for borrow and easements for meander, and in addition thereto, the same may be obtained in the manner provided in the original establishment of the district, or by exercise of the power of eminent domain as provided for in chapter 6B. If additional right-of-way is required for any repair or improvement under this section, the same may be acquired in the same manner as provided for the acquisition of right-of-way in the original establishment of a district, except that where notice and hearing are not otherwise required under this section notice as provided in this subchapter, parts 1 through 5, to owners, lienholder of record, and occupants of the land from which right-of-way is to be acquired shall suffice.

7. In existing districts where the stream has by erosion appropriated lands beyond its original right-of-way and it is more economical and feasible to acquire an easement for such erosion and meander than to undertake containment of the stream in its existing right-of-way, the board may, in the discharge of the duties enjoined upon it by this section, effect such acquisition as to the whole or part of the course. Right-of-way so taken shall be classed an improvement for the purpose of procedure under this section.

8. If the drainage records on file in the auditor's office for a particular district do not define specifically the land taken for right-of-way for drainage purposes, the board may at any time upon its own motion employ a land surveyor to make a survey and report of the district and to actually define the right-of-way taken for drainage purposes. After the land surveyor has filed the survey and report with the board, the board shall fix a date for hearing on the report and shall serve notice of the hearing upon all landowners and lienholder of record and occupants of the lands traversed by the right-of-way in the manner and for the time required for service of original notices in the district court. At the hearing the board shall specifically define the land taken for the right-of-way. Once established, the right-of-way constitutes a permanent easement in favor of the drainage district for drainage purposes including the right of ingress and egress across adjoining land and the right of access for maintenance, repair, improvement and inspection. A person aggrieved by the action or failure to act of the board under this subsection may appeal only in compliance with sections 468.83 through 468.98.

[S13, §1989-a21; C24, 27, 31, 35, 39, §**7556, 7558 – 7561;** C46, §455.135, 455.137 – 455.140; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.135; 81 Acts, ch 150, §1]

85 Acts, ch 163, §8, 9; 87 Acts, ch 23, §15; 87 Acts, ch 143, §1; 89 Acts, ch 126, §2

CS89, §468.126

94 Acts, ch 1051, §7, 8; 2004 Acts, ch 1051, §1 – 3; 2008 Acts, ch 1047, §1 – 4; 2014 Acts, ch 1075, §14 – 16; 2015 Acts, ch 51, §9 – 12

Referred to in §461A.76, 468.41, 468.57, 468.119, 468.127, 468.131, 468.132, 468.201, 468.260, 468.359, 468.396

468.127 Payment.

1. The costs of the repair or improvements provided for in section 468.126 shall be paid for out of the funds of the levee or drainage district. If the funds on hand are not sufficient to pay such expenses, the board within two years shall levy an assessment sufficient to pay the outstanding indebtedness and leave the balance which the board determines is desirable as a sinking fund to pay maintenance and repair expenses. Any assessment made under this section on any tract, parcel or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

2. If the board deems that the costs of the repairs or improvements will create assessments against the lands in the district greater than should be borne in one year, the board may levy the assessment at one time and provide for the payment of the costs and assessments in the manner provided in sections 468.57 through 468.61; provided that assessments may be collected in not more than twenty installments as the board may determine.

[S13, §1989-a21; C24, 27, 31, 35, 39, §**7557;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.136]

89 Acts, ch 126, §2

CS89, §468.127

94 Acts, ch 1051, §9; 98 Acts, ch 1048, §1; 2019 Acts, ch 59, §157

Section amended

468.128 Impounding areas and erosion control devices.

Levee and drainage districts are empowered to construct impounding areas and other flood and erosion control devices to protect lands of the district and drainage structures and may provide ways for access to improvements for the operation or protection thereof, where the cost is not excessive in consideration of the value to the district. Necessary lands or easements may be acquired within or without the district by purchase, lease or agreement, or by exercise of the right of eminent domain as provided for in chapter 6B and may be procured and construction undertaken either independently or in cooperation with other districts, individuals, or any federal or state agency or political subdivision.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.137]
89 Acts, ch 126, §2
CS89, §468.128
2006 Acts, 1st Ex, ch 1001, §44, 49

468.129 Revenues used for operation, maintenance, and construction.

Levee and drainage districts may realize income from incidental uses of their improvements and rights-of-way which are not injurious to same or incompatible with the purposes of the district. Revenues derived therefrom may be expended for operating, maintenance or construction costs of the district as its governing body may elect.

[C54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.138]
89 Acts, ch 126, §2
CS89, §468.129

468.130 City may discharge treated sewage.

Any board, as defined in section 468.3, may by contract permit any city to discharge adequately treated sewage into drainage ditches. The contract shall fix the rental, make provision for termination, and shall provide that no nuisance shall be created.

[C58, 62, 66, 71, 73, §393.12; C75, 77, 79, 81, §455.139]
89 Acts, ch 126, §2
CS89, §468.130

468.131 Reclassification required.

When an assessment for improvements as provided in section 468.126, exceeds twenty-five percent of the original assessment and the original or subsequent assessment or report of the benefit commission as confirmed did not designate separately the amount each tract should pay for the main ditch and tile lateral drains then the board shall order a reclassification in accordance with the principles and rules set forth in section 468.41.

[C24, 27, 31, 35, 39, §**7562;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.141]
89 Acts, ch 126, §2
CS89, §468.131

468.132 Improvement of common outlet — notice of hearing.

When two or more drainage districts outlet into the same ditch, drain, or natural watercourse and the board determines that it is necessary to clean out, deepen, enlarge, extend, or straighten said ditch, drain, or natural watercourse in order to expeditiously carry off the combined waters of such districts, the board may proceed as provided in section 468.126. After said board has decided that such work should be done, it shall fix a date for hearing on its decision, and it shall give two weeks' notice thereof by certified mail to the auditor of the county wherein the land to be assessed for such work is located, and said county auditor shall thereupon immediately notify by certified mail the board or boards of trustees of the districts having supervision thereof, as to said hearing on said contemplated work. In those instances where two or more districts involved are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed for in sections 468.14 through 468.18. Each district shall be assessed for the cost of such work in proportion to the benefits derived. Common outlet for the purpose of this section shall mean an outlet where two adjacent districts have

an outlet common to both of said districts and which districts are also contiguous, one to the other.

[S13, §1989-a24; C24, 27, 31, 35, 39, §**7563;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.142]

89 Acts, ch 126, §2

CS89, §468.132

Referred to in §468.126

468.133 Commissioners to apportion benefits — interest prohibited.

1. For the purpose of ascertaining the proportionate benefits, the board shall appoint commissioners having the qualifications of benefit commissioners, one of whom shall be an engineer. The commissioners who are appointed shall not be residents of any of the districts affected, nor shall any member of the commission have any interest in land in any districts affected by the contemplated work. The commission shall determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

2. In the event that one of the districts to be assessed under this section shall have any improvement such as a settling basin which reduces the quality and quantity of flow or sediment, such commission may give consideration to the existence of such an improvement when they determine the percentage of benefits and the sum total to be assessed to each district for the improvement.

[C24, 27, 31, 35, 39, §**7564;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.143]

89 Acts, ch 126, §2

CS89, §468.133

2019 Acts, ch 59, §158

Referred to in §468.135

Section amended

468.134 Time of report — notice of hearing.

When said commissioners are appointed, the board shall, by proper order, fix the time when the commissioners shall report their findings, but a report filed within thirty days of the time so fixed shall be deemed a compliance with said order. On the filing of said report, the board shall fix a time for hearing thereon, and it shall give notice thereof to the auditor of the county in which the land to be assessed for such work is located by certified mail; said county auditor shall thereupon immediately notify by certified mail the board of supervisors, and board or boards of trustees of the districts having supervision thereof, as to said hearing on said commissioner's report. In those instances where two or more districts are under the supervision of the same board, or joint board if the district is intercounty, the notice shall be given to all landowners affected as prescribed in sections 468.14 through 468.18.

[C24, 27, 31, 35, 39, §**7565;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.144]

89 Acts, ch 126, §2

CS89, §468.134

Referred to in §468.135

468.135 Report and review — appeal.

1. The commissioners shall file with the board a detailed report of their findings. The board shall review the report and may, by proper order, increase or decrease the amount which shall be charged to each district. After the final order of the board has been made, the board shall notify the county auditor, in the time and manner as provided in sections 468.133 and 468.134, of the order. The county auditor shall notify by certified mail the board of supervisors and the board or boards of trustees of the final order. The board of supervisors and the board or boards of trustees, if aggrieved by the final order, may appeal from the order to the district court of the county in which any of the improvement proposed or done is located.

2. Any such appeal shall be taken, perfected, and conducted in the time and manner provided in section 468.83, subsection 1, and sections 468.84 through 468.88, for appeals contemplated by those sections.

[C24, 27, 31, 35, 39, §**7566;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.145]

89 Acts, ch 126, §2
CS89, §468.135
2019 Acts, ch 59, §159
Section amended

468.136 Levy under original classification.

If the amount finally charged against a district does not exceed twenty-five percent of the original cost of the improvement in the district, the board shall proceed to levy the amount against all lands, highways, and railway rights-of-way and property within the district, in accordance with the original classification and apportionment. Any assessment made under this section on any tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

[C24, 27, 31, 35, 39, §**7567;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.146]
89 Acts, ch 126, §2
CS89, §468.136
94 Acts, ch 1051, §10

468.137 Levy under reclassification.

If the amount finally charged against a district exceeds twenty-five percent of the original cost of the improvement, the board may order a reclassification as provided for the original classification of a district and upon the final adoption of the new classification and apportionment shall proceed to levy that amount upon all lands, highways, and railway rights-of-way and property within the district, in accordance with the new classification and apportionment. An assessment made under this section on a tract, parcel, or lot within the district which is computed at less than five dollars shall be fixed at the sum of five dollars.

[C24, 27, 31, 35, 39, §**7568;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.147]
85 Acts, ch 163, §10; 89 Acts, ch 126, §2
CS89, §468.137
94 Acts, ch 1051, §11

468.138 Removal of obstructions.

The board shall cause to be removed from the ditches, drains, and laterals of any district any obstructions which interfere with the flow of the water, including trees, hedges, or shrubbery and the roots thereof, and may cause any tile drain so obstructed to be relaid in concrete or any other adequate protection, such work to be paid for from the drainage funds of the district.

[C24, 27, 31, 35, 39, §**7569;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.148]
89 Acts, ch 126, §2
CS89, §468.138

468.139 Trees and hedges.

When it becomes necessary to destroy any trees or hedges outside the right-of-way of any ditch, lateral, or drain in order to prevent obstruction by the roots thereof, if the board and the owners of such trees or hedges cannot agree upon the damage for the destruction thereof, the board may proceed to acquire the right to destroy and remove such trees or hedges by the same proceedings provided for acquiring right-of-way for said drainage improvement in the first instance.

[C24, 27, 31, 35, 39, §**7570;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.149]
89 Acts, ch 126, §2
CS89, §468.139
Condemnation procedure, chapter 6B
Similar provision, §468.347

468.140 Outlet for lateral drains — specifications.

The owner of any premises assessed for the payment of the costs of location and construction of any ditch, drain, or watercourse as in this subchapter, parts 1 through 5, provided, shall have the right to use the same as an outlet for lateral drains from the

premises. The board of supervisors shall make specifications covering the manner in which such lateral drains shall be connected with the main ditches or other laterals and be maintained, and the owner shall follow such specifications in making and maintaining any such connection.

[S13, §1989-a22; C24, 27, 31, 35, 39, §**7571;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.150]

89 Acts, ch 126, §2

CS89, §468.140

468.141 Subdistricts in intercounty districts.

The board of supervisors of any county shall have jurisdiction to establish subdrainage districts of lands included within a district extending into two or more counties when the lands to compose such subdistricts lie wholly within such county, and to make improvements therein, repair and maintain the same, fix and levy assessments for the payment thereof, and the provisions of this section shall apply to all such drainage subdistricts, the lands of which lie wholly within one county. The proceedings for all such purposes shall be the same as for the establishment, construction, and maintenance of an original levee or drainage district the lands of which lie wholly within one county, so far as applicable, except that one or more persons may petition for a subdistrict as provided in section 468.63.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7572;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.151]

89 Acts, ch 126, §2

CS89, §468.141

468.142 District by mutual agreement — presumption.

The owners of lands may provide by mutual agreement in writing duly signed, acknowledged, and filed with the auditor for combined drainage of their lands by the location and establishment of a drainage district for such purposes and the construction of drains, ditches, settling basins, and watercourses upon and through their said lands. Such drainage district shall be presumed to be conducive to the public welfare, health, convenience, or utility.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7573;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.152]

89 Acts, ch 126, §2

CS89, §468.142

Referred to in §418.1, 468.49, 468.65

468.143 What the agreement shall contain.

Such agreements shall contain the following:

1. A description of the lands by congressional divisions, metes and bounds, or other intelligible manner, together with the names of the owners of all said lands.
2. The location of the drains and ditches to be constructed, describing their sources and outlets and the courses thereof.
3. The character and extent of drainage improvement to be constructed, including settling basins, if any.
4. The assessment of damages, if any.
5. The classification of the lands included in such district, the amount of drainage taxes or special assessments to be levied upon and against the several tracts, and when the same shall be levied and paid.
6. Such other provisions as the board deems necessary.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7574;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.153]

89 Acts, ch 126, §2

CS89, §468.143

468.144 Board to establish.

When such agreement is filed, the auditor shall record it in the drainage record. The board shall at a regular, special, or adjourned session thereafter locate and establish a drainage district and locate the ditches, drains, settling basins, and watercourses thereof as provided in said agreement, and enter of record an order accordingly. The board thereafter shall carry out the object, purpose, and intent of such agreement and cause to be completed and constructed the said improvement and shall retain jurisdiction of the same as fully as in districts established in any other manner. It shall cause to be levied upon and against the lands of such district, the drainage taxes and assessments according to said agreement and when collected said taxes and assessments shall constitute the drainage funds of said district to be applied upon order of the board as in said agreement provided.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7575;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.154]

89 Acts, ch 126, §2

CS89, §468.144

468.145 Procedure.

The board shall proceed to carry out the provisions of the agreement, advertising for and receiving bids, letting the work, making contracts, levying assessments, paying on estimates, issuing warrants, improvement certificates, or drainage bonds as the case may be, in the same manner as in districts established on petition, except as in said mutual agreement otherwise provided.

[S13, §1989-a28; C24, 27, 31, 35, 39, §**7576;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.155]

89 Acts, ch 126, §2

CS89, §468.145

468.146 Outlet in adjoining county or in another state.

1. When a drainage district is established and a satisfactory outlet cannot be obtained except through lands in an adjoining county, or when an improved outlet cannot be obtained except through lands downstream from the district boundary, the board shall have the power to purchase a right-of-way, to construct and maintain such outlets, and to pay all necessary costs and expenses out of the district funds. The board shall have similar authority relative to the construction and maintenance of silt basins upstream from the district boundary. In case the board and the owners of the land required for such outlet or silt basin cannot agree upon the price to be paid as compensation for the land taken or used, the board is hereby empowered to exercise the right of eminent domain as provided for in chapter 6B in order to procure such necessary right-of-way.

2. When a district is, or has been established in this state and no practicable outlet therefor can be obtained except through lands in an adjoining state, the board of supervisors of the county where said district is situated shall, as drainage commissioners, have power to purchase a right-of-way and to construct a ditch for such outlet in an adjoining state or to contribute to the construction of such a ditch, in an adjoining state and to pay for the same out of the funds of such district. Provided, however, that no drainage district or districts shall be charged or assessed any of the cost for land or work done unless previously agreed to by the board of supervisors or trustees of all of the drainage districts which will be assessed.

[S13, §1989-a39, -a55; C24, 27, 31, 35, 39, §**7577, 7578;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.156, 455.157]

89 Acts, ch 126, §2

CS89, §468.146

2006 Acts, 1st Ex, ch 1001, §45, 49

Referred to in §468.147

468.147 Tax.

The board of supervisors shall have authority to levy a tax on the lands in said drainage district established in this state to provide funds from which to pay for the improvement referred to in section 468.146, subsection 2, should such levy be necessary.

[C31, 35, §7578-c1; C39, §**7578.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.158]

89 Acts, ch 126, §2

CS89, §468.147

468.148 Injuring or diverting — damages.

Any person who shall willfully break down or through or injure any levee or bank of a settling basin, or who shall dam up, divert, obstruct, or willfully injure any ditch, drain, or other drainage improvement authorized by law shall be liable to the person or persons owning or possessing the lands for which such improvements were constructed in double the amount of damages sustained by such owner or person in possession; and in case of a subsequent offense by the same person, the person shall be liable in treble the amount of such damages.

[C73, §1227; C97, §1961; C24, 27, 31, 35, 39, §**7579;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.159]

89 Acts, ch 126, §2

CS89, §468.148

468.149 Obstructing or damaging.

1. A person is guilty of a serious misdemeanor if, without legal authority, the person willfully does any of the following:

a. Diverts, obstructs, impedes, or fills up any ditch, drain, or watercourse.

b. Breaks down or injures any levee or the bank of any settling basin, established, constructed, and maintained under any provision of law.

c. Obstructs or engages in travel or agricultural practices upon the improvement or rights-of-way of a levee or drainage district which the governing body thereof has, by resolution, determined to be injurious to such improvement or to interfere with its proper preservation, operation, or maintenance, and has prohibited.

2. Any unlawful act described in subsection 1 is a nuisance and may be abated.

3. A governing body shall have the power to repair any ditch, drain, or watercourse, or any levee or bank of any settling basin, damaged by any person or persons in violation of a resolution of the governing body, after three days' notice to such person or persons to make such repair. In the event that there is a failure to make the repair, the expense of the repair shall be assessed to the person or persons and shall be certified and collected in the same manner as other taxes.

[C24, 27, 31, 35, 39, §**7580;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.160]

89 Acts, ch 126, §2

CS89, §468.149

2016 Acts, ch 1073, §132

Nuisances in general, chapter 657

468.150 Nuisance — abatement.

Any ditch, drain, or watercourse which is now or hereafter may be constructed so as to prevent the surface and overflow water from the adjacent lands from entering and draining into and through the same is hereby declared a nuisance and may be abated as such.

[S13, §1989-a15; C24, 27, 31, 35, 39, §**7581;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.161]

89 Acts, ch 126, §2

CS89, §468.150

Nuisances in general, chapter 657

468.151 Actions — settlement — counsel.

1. Levee or drainage districts through their governing bodies are authorized to maintain actions in law or equity for the purposes of preventing or recovering damages that may accrue to the districts on account of the impairment of their functions, or the increase in

the cost of maintenance or operation of the districts, or on account of damages to property owned by the districts, resulting from the construction or operation of locks, dams, and pools in the Mississippi or Missouri river. Levee or drainage districts may make settlements and adjustments of such damages and written contracts with relation to such damages, and receive any appropriations that may be made by the Congress of the United States for the increased cost to drainage or levee districts and may agree to the construction and maintenance of present equipment and of new or remedial works, improvements and equipment as a part of such damages, or as a means of lessening the damages which will be suffered by the said districts. The districts are further authorized to employ legal and engineering counsel for such purposes and to pay for the cost of employing legal and engineering counsel out of the award of damages or out of the maintenance funds of the district.

2. If a lump sum settlement is made between the United States and the district to provide an annual payment of income from the lump sum settlement, the county treasurer of the county in which the greater portion of the district is situated shall be custodian of the principal fund. The governing body of the district shall apply to the district court for authority to invest the fund as provided by section 636.23, and, in addition to the investments approved, the court may authorize investment of the fund in interest-bearing bonds or warrants of the district. The income from the fund shall be disbursed by direction of the governing body of the district.

[C39, §**7581.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.162]
89 Acts, ch 126, §2
CS89, §468.151
2019 Acts, ch 59, §160
Section amended

468.152 Waste banks — private use.

The landowner may have any beneficial use of the land to which the landowner has fee title and which is occupied by the waste banks of an open ditch when such use does not interfere in any way with the easement or rights of the drainage district as contemplated by this subchapter, parts 1 through 5. For the purpose of gaining such use the landowner may smooth said waste banks, but in doing so the landowner must preserve the berms of such open ditch without depositing any additional dirt upon them.

[C24, 27, 31, 35, 39, §**7582;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.163]
89 Acts, ch 126, §2
CS89, §468.152

468.153 Preliminary expenses — how paid.

If the proposed district is all in one county, the board of supervisors may pay all necessary preliminary expenses in connection with the district. If it extends into other counties, the boards of the respective counties may pay a proportion of the expenses as the work done or expenses created in each county bears to the whole amount of work done or expenses created. The amounts shall be ascertained and reported by the engineer in charge of the work and be approved by the respective boards which shall, as soon as paid, charge the amount to the district, as their interests may appear, as soon as the district is established. If the district is not established, the amounts shall be collected upon the bond or bonds of the petitioners.

[S13, §1989-a48; C24, 27, 31, 35, 39, §**7583;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.164]
83 Acts, ch 123, §185, 209; 89 Acts, ch 126, §2
CS89, §468.153

468.154 Additional help for auditor.

If the work in the office of the auditor by reason of the existence of drainage districts is so increased that the regular officer is unable by diligence to do the same, the board of supervisors may employ such additional help as may be necessary to keep the records and

transact the business of the drainage districts. The expense of such help shall be paid by the districts in proportion to the amount of work done therefor.

[S13, §1989-a42; C24, 27, 31, 35, 39, §**7584;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.165]

89 Acts, ch 126, §2

CS89, §468.154

468.155 Employment of counsel.

The board is authorized to employ counsel to advise and represent it and drainage districts in any matter in which they are interested. Attorney fees and expenses shall be paid out of the drainage fund of the district for which the services are rendered, or may be apportioned equitably among two or more districts. Such attorneys shall be allowed reasonable compensation for their services, also necessary traveling expenses while engaged in such business. Attorneys rendering such services shall file with the auditor an itemized, verified account of all claims therefor, and statement of expenses, and the same shall be audited and allowed by the board in the amount found to be due.

[S13, §1989-a14; C24, 27, 31, 35, 39, §**7585;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.166]

89 Acts, ch 126, §2

CS89, §468.155

468.156 Compensation of appraisers.

Persons appointed to appraise and award damages and make classification of lands and assess benefits, other than the engineer, shall receive such compensation as the board may fix and in addition thereto, the necessary expense of transportation of said persons while engaged upon their work. They shall file with the auditor an itemized, verified account of the amount of time employed upon said work and their expenses.

[S13, §1989-a41; C24, 27, 31, 35, 39, §**7586;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.167]

89 Acts, ch 126, §2

CS89, §468.156

468.157 Payment.

All compensation for services rendered, fees, costs, and expenses when properly shown by itemized and verified statement shall be filed with the auditor and allowed by the board in such amounts as shall be just and true, and when so allowed shall be paid on order of the board from the levee or drainage funds of the district for which such services were rendered or expenses incurred, by warrants drawn on the treasurer by the auditor.

[S13, §1989-a41; C24, 27, 31, 35, 39, §**7588;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.169]

89 Acts, ch 126, §2

CS89, §468.157

468.158 Purchase at tax sale.

When land in a levee, drainage, or improvement district is being sold at a tax sale for delinquent taxes or assessment, the board of supervisors or the district trustees, as the case may be, shall have authority to bid in such land or any part of it, paying the amount of the bid from the funds of the district, and taking the certificate of sale in their names as trustees for such district, and may thereafter pay any assessments for taxes or benefits levied against said premises from the district funds. The amount paid for redemption which shall include such additional payment, shall be credited to the district.

[C24, 27, 31, 35, 39, §**7589;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.170]

89 Acts, ch 126, §2

CS89, §468.158

Similar provisions, chapter 569

468.159 Tax deed — sale or lease.

1. If no redemption shall be made, the board of supervisors or trustees, as the case may be, shall receive the tax deed as trustees for the district. They shall credit the district with all income from said property. They may lease or sell and convey said property as trustees for such district and shall deposit all money received therefrom to the credit of such district.

2. The board of trustees may also lease or sell and convey such other property of the district, both real and personal, as is no longer needed for the purposes for which the district was established, and any such leases or sales and conveyances prior to July 1, 1970, are hereby legalized and declared to be valid and binding.

3. This amendment in 1978 shall not be construed to affect any litigation involving the lease, sale, or conveyance of property by the board of supervisors or board of trustees, as the case may be, of a drainage or levee district, which litigation is pending on July 1, 1978.

[C24, 27, 31, 35, 39, §**7590;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.171]
89 Acts, ch 126, §2
CS89, §468.159
2018 Acts, ch 1041, §127; 2019 Acts, ch 59, §161
Subsection 2 amended

468.160 Purchase of tax certificate.

When land in a drainage or levee district, or subdistrict, is subject to an unpaid assessment and levy for drainage purposes and has been sold for taxes the board of supervisors of that county, or if control of the district has passed to trustees then such trustees, may purchase the certificate of sale issued by the county treasurer by depositing with the county treasurer the amount of money to which the holder of the certificate would be entitled if redemption was made at that time, and thereupon the rights of the holder of the certificate and the ownership thereof shall vest in the board of supervisors, or the trustees of that district, as the case may be, in trust for said drainage district or subdistrict.

[C31, 35, §7590-c1; C39, §**7590.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.172]
89 Acts, ch 126, §2
CS89, §468.160
97 Acts, ch 121, §27
Referred to in §468.166

468.161 Terms of redemption.

Redemption from said tax sale shall be made on such terms as may be agreed upon between such board of supervisors or such trustees and the owner of the land involved; but in any case in which the owner of said land will pay as much as fifty percent of the value of the land at the time of redemption the owner shall be permitted to redeem. If the parties cannot agree upon such value, either of them may bring an action against the other in the district court of the county where the land is situated, and the court shall determine the matter. The proceeding shall be triable in equity.

[C31, 35, §7590-c2; C39, §**7590.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.173]
89 Acts, ch 126, §2
CS89, §468.161

468.162 Payment — assignment of certificate.

When such money is deposited with the county treasurer, the treasurer shall by mail notify the purchaser at the tax sale, or the latter's assignee if of record, and shall pay to the holder of such certificate the sum of money deposited with the treasurer for that purpose on surrender of the certificate with proper assignment thereon to the board of supervisors, or to the trustees of the district, as the case may be, as trustee for the district.

[C31, 35, §7590-c3; C39, §**7590.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.174]
89 Acts, ch 126, §2
CS89, §468.162
97 Acts, ch 121, §28

468.163 Funds.

Payment to the county treasurer for such certificate shall be from the fund of said drainage or levee district, or subdistrict, on a warrant issued against that fund which shall have precedence over all other outstanding warrants drawn against that fund in the order of their payment. Should there not be a sufficient amount in the fund of said district, or subdistrict, to pay said warrant then the board of supervisors, or the trustees of the district, as the case may be, are authorized to borrow a sum of money sufficient for that purpose on a warrant for that amount on the fund of the district, or subdistrict, which warrant shall bear interest from date at a rate not exceeding that permitted by chapter 74A and shall have preference in payment over all other unpaid warrants on said fund, and the county treasurer shall so enter the same on the list of warrants in the treasurer's office and call the same for payment as soon as there is sufficient money in said fund.

[C31, 35, §7590-c4; C39, §**7590.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.175]
89 Acts, ch 126, §2
CS89, §468.163
97 Acts, ch 121, §29

468.164 Lease or sale of land.

If said certificate goes to deed to the board or to the trustees, all leases and sales of the land shall be effected and record thereof made in the same manner in which leases and sales are effected and record thereof made when the county acquires title as a purchaser under execution sale.

[C31, 35, §7590-c5; C39, §**7590.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.176]
89 Acts, ch 126, §2
CS89, §468.164

468.165 Duty of treasurer. Repealed by 2003 Acts, ch 24, §9.

468.166 Purchase by bondholder.

In any event where upon the request of the holder of any bond or bonds issued by any drainage district the board of supervisors shall fail, neglect or refuse to purchase the certificate of sale issued by the county treasurer and referred to in section 468.160 in manner and form as permitted by said section, the holder of such bond or bonds may, upon filing with the county auditor a sworn statement as to the making of such written request upon the board of supervisors and a recital of the failure of such board to act in the premises by complying with the provisions of said section, in the same manner and form purchase such certificate and the ownership thereof shall thereupon vest in such holder of such bond or bonds in trust for said drainage district or subdistrict, provided, however, that the holder shall have a lien upon said certificate and any beneficial interest arising therefrom for the holder's actual outlays including the holder's reasonable expenses and attorney's fees, if any, incurred in the premises. In the event any such holder of any bond or bonds shall acquire title the holder shall have a right to lease or convey said premises, upon giving thirty days' written notice to the board of supervisors by filing the same with the county auditor and in the event said board shall not approve said lease or sale, the same shall be referred to the district court of the county where the land is situated and there tried and determined in the manner prescribed in section 468.160. Any funds realized from the lease or sale of said land shall be first applied in extinguishing the lien of the holder of the certificate herein provided for and the balance shall be paid to the said drainage bond fund of said district.

[C35, §7590-g1; C39, §**7590.7;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.178]
89 Acts, ch 126, §2
CS89, §468.166

468.167 Voting power.

In case any proposition arises in said district to be determined by the vote of parties owning land therein, notice of such hearing shall be given and the board of supervisors or trustees, as the case may be, while holding title in trust to any such land, shall have the same right to

vote for or against such proposition as the former owner would have had if the former owner had not been divested of the title to said land.

[C24, 27, 31, 35, 39, §**7591;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.179]

89 Acts, ch 126, §2

CS89, §468.167

468.168 Inspection of improvements.

The board of any county into which a levee or drainage improvement extends shall cause a competent engineer to inspect such levee or drainage improvement as often as it deems necessary for the proper maintenance and efficient service thereof. The engineer shall make report to the board of the condition of the improvement, together with such recommendations as the engineer deems necessary. For any claim for services and expenses of inspection, the engineer shall file with the auditor an itemized and verified account of such service and expense to be allowed by the board in such amount as it shall find due and paid out of the drainage funds of the district. If the district extends into two or more counties, such action shall be had jointly by the several boards, and the expenses equitably apportioned among the lands in the different counties.

[S13, §1989-a44; C24, 27, 31, 35, 39, §**7592;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.180]

89 Acts, ch 126, §2

CS89, §468.168

468.169 Watchpersons.

When a levee has been established and constructed in any county, the board shall be empowered to employ one or more watchpersons, and fix their compensation, whose duty it shall be to watch such levee and make repairs thereon in case of emergency. Such employee shall file with the auditor an itemized, verified account for services rendered, and cost and expense incurred in watching or repairing such levee, and the same shall be audited and allowed by the board as other claims and paid by the county from funds belonging to such district.

[S13, §1989-a40; C24, 27, 31, 35, 39, §**7593;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.181]

89 Acts, ch 126, §2

CS89, §468.169

468.170 Technical defects.

The collection of drainage taxes and assessments shall not be defeated where the board has acquired jurisdiction of the interested parties and the subject matter, on account of technical defects and irregularities in the proceedings occurring prior to the order of the board locating and establishing the district and the improvements therein.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7595;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.183]

89 Acts, ch 126, §2

CS89, §468.170

468.171 Conclusive presumption of legality.

The final order establishing such district when not appealed from, shall be conclusive that all prior proceedings were regular and according to law.

[S13, §1989-a46; C24, 27, 31, 35, 39, §**7596;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.184]

89 Acts, ch 126, §2

CS89, §468.171

468.172 Drainage record book.

The board shall provide a drainage record book, which shall be in the custody of the auditor, who shall keep a full and complete record therein of all proceedings relating to drainage

districts, so arranged and indexed as to enable any proceedings relative to any particular district to be examined readily.

[S13, §1989-a14, -a42; C24, 27, 31, 35, 39, §**7597;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.185]

89 Acts, ch 126, §2

CS89, §468.172

Referred to in §468.27, 468.298

468.173 Records belong to district.

All reports, maps, plats, profiles, field notes, and other documents pertaining to said matters, including all schedules, and memoranda relating to assessment of damages and benefits, shall belong to the district to which they relate, remain on file in the office of the county auditor, and be matters of permanent record of drainage proceedings.

[C24, 27, 31, 35, 39, §**7598;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.186]

89 Acts, ch 126, §2

CS89, §468.173

Referred to in §468.27, 468.298

468.174 Membership in the national drainage association.

1. Any drainage district may join and become a member of the national drainage association. A drainage district may pay a membership fee and annual dues upon the approval of the drainage board of such district, but not in excess of the following:

a. One hundred dollars for drainage districts having indebtedness in excess of one million dollars.

b. Fifty dollars for drainage districts having an indebtedness of five hundred thousand dollars and less than one million dollars.

c. Twenty-five dollars for drainage districts having an indebtedness of two hundred fifty thousand dollars and less than five hundred thousand dollars.

d. Ten dollars for drainage districts having an indebtedness less than two hundred fifty thousand dollars.

2. The annual dues for any district shall not exceed one-twentieth of one percent of the outstanding indebtedness of the district.

[C31, 35, §7598-c1; C39, §**7598.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.187]

89 Acts, ch 126, §2

CS89, §468.174

2012 Acts, ch 1023, §66

468.175 Membership fee.

The cost of membership fees and dues shall be assessed against the land in the drainage district and collected in the same manner and in the same ratio as assessments for the cost and maintenance of the drainage district.

[C31, 35, §7598-c2; C39, §**7598.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.188]

89 Acts, ch 126, §2

CS89, §468.175

468.176 Other associations.

Levee or drainage districts are authorized to become members of drainage associations for their mutual protection and benefit, and may pay dues and membership fees therein out of the maintenance funds.

[C39, §**7598.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.189]

89 Acts, ch 126, §2

CS89, §468.176

468.177 Receiver authorized.

Whenever the governing board of any drainage or levee district becomes the owner of a tax sale certificate, for any tract of land within the district, and one or more year's taxes subsequent to the tax certificate have gone delinquent, the said governing board may, on

behalf of such district, make application to the district court of the county within which such real estate or a part thereof is situated, for the appointment of a receiver to take charge of said delinquent real estate.

[C35, §7598-e1; C39, §**7598.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.190]
89 Acts, ch 126, §2
CS89, §468.177

468.178 Hearing and notice thereof.

Upon the filing of the petition for such appointment, the court shall fix a time and place of hearing thereon, and shall prescribe and direct the manner for the service of notice upon the owner, lienholders and persons in possession of said real estate, of the pendency of said application.

[C35, §7598-e2; C39, §**7598.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.191]
89 Acts, ch 126, §2
CS89, §468.178

468.179 Appointment — grounds.

Said application shall be heard by the court, at the time and place so designated, and after hearing thereon the court may appoint one of the members of the governing board of said drainage or levee district as receiver for said real estate, on the grounds that the said real estate is producing returns, and that the general and special taxes against the same are not being paid, and direct the receiver to forthwith take possession of the same and to collect the rents, issues and profits therefrom.

[C35, §7598-e3; C39, §**7598.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.192]
89 Acts, ch 126, §2
CS89, §468.179

468.180 Bond.

The cost of the premium of the bond of such receiver shall be paid for out of the general funds of the drainage or levee district, and no charge shall be made by the receiver for compensation in said cause.

[C35, §7598-e4; C39, §**7598.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.193]
89 Acts, ch 126, §2
CS89, §468.180

468.181 Avoidance of receivership.

The owner of any such tract of real estate may avoid the appointment of such receiver, either before or after the action is commenced, by entering into a good and sufficient written instrument with the governing board of such district, agreeing to apply the rent share of the products of said land, or its equivalent to the payment of taxes thereon.

[C35, §7598-e5; C39, §**7598.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.194]
89 Acts, ch 126, §2
CS89, §468.181

468.182 Preference in leasing.

In the event a receiver is appointed for any tract of land, the owner if actually in possession thereof, shall have the preference to rent the same.

[C35, §7598-e6; C39, §**7598.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.195]
89 Acts, ch 126, §2
CS89, §468.182

468.183 Rents — application of.

The rents, issues and profits of the real estate when collected by the receiver, shall be applied as follows:

1. To the payment of the costs and expenses of the receivership.
2. To the payment of current general taxes against said real estate.

3. To the payment of any current special taxes against said real estate.

4. The surplus shall be applied upon any delinquent taxes or tax certificates, and the remainder, if any, shall be paid to the owner of said real estate.

[C35, §7598-e7; C39, §**7598.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §455.196]

89 Acts, ch 126, §2

CS89, §468.183

468.184 Land classification and assessment in district.

1. *a.* (1) When a levee district shall have been located and finally established; or

(2) When the required proceedings have been taken to enlarge, extend, strengthen, raise, relocate, reconstruct, or improve any existing levee; or

(3) When the required proceedings have been held to annex additional lands to said levee district or to exclude or eliminate lands from said levee district; or

(4) When a plan of the United States government for the construction of any levee, or a portion of a levee, in said levee district, or for the enlarging, extending, strengthening, raising, relocating, reconstructing, or improving any existing levee, or a portion thereof, in accordance with any such plan in said levee district, has been heretofore or hereafter adopted by such levee district under the provisions of sections 468.201 through 468.216; or

(5) When the board shall, as authorized by section 468.65, determine that the assessments of benefits of said levee district against the lands in said levee district are generally inequitable the board may by resolution, or if a petition is filed by more than one-third of the owners, including corporations, of land within said levee district and who in the aggregate own more than one-third of the value of the land and land improvements in said levee district as the value thereof is then shown by the general tax records of the county or counties in which such land and land improvements are located, requesting the board to do so, the board shall order the lands in said levee district and the improvements on the land in said levee district classified or reclassified in accordance with the assessed taxable value of said land and land improvements as the same are then shown and as the same may be thereafter shown by the assessment roll of the county or counties in which said land and land improvements are located.

b. The assessed taxable value of any land, including land improvements exempt from general taxation but subject to assessment for levee purposes, shall be determined by the county assessor who shall make such determination in accordance with the rules of assessment applicable to adjacent lands and without any additional compensation therefor.

2. *a.* If the board orders classification or reclassification of lands as authorized in subsection 1, the board shall fix a time and place for a hearing to be held upon the action of the board in ordering such classification or reclassification, which hearing shall be held at the county seat of the county having the largest acreage in said levee district. The board shall cause notice of the time and place of such hearing to be served by the county auditor or auditors upon each person whose name appears as owner of lands or land improvements within the levee district in the transfer books of the auditor's office in the county or counties in which said levee district is located, naming that person, and also upon the person or persons in actual occupancy of any tract of land or land improvements located in said levee district, without naming that person or persons. Such notice shall be for the same time and served in the same manner as is provided for the establishment of a levee district, and such notice shall state:

(1) The aggregate estimated costs and expenses which the board proposes to assess under such classification or reclassification;

(2) The total aggregate assessed taxable value of all lands and land improvements in said levee district;

(3) That the said classification or reclassification of benefits will be based on the assessed taxable value of all lands and improvements to lands located in said levee district;

(4) That each tract of land and each land improvement in said levee district will be assessed for its pro rata share of said costs and expenses based upon the ratio that the assessed value of each tract of land and the assessed value of each land improvement bears to the total assessed taxable value of all lands and all land improvements in said district; and

(5) That all objections to said method of classification or reclassification shall be in writing and filed with the auditor of the county in which said land or land improvements are located before the time set for said hearing or with the board of trustees of said district at or before the time set for such hearing.

b. The notice need not show the amount of such costs and expenses to be apportioned to each such owner or to any particular tract of land or land improvement within such levee district.

3. If at or before the time set for said hearing as to such classification or reclassification, there shall have been filed with the county auditor, or auditors in case the district extends into more than one county, or with said board, a remonstrance or remonstrances or objections to such method of classification or reclassification signed by owners of land and land improvements in the levee district aggregating sixty percent of the total assessed value of the lands plus land improvements in said district as shown by the taxing records in said county or counties in which said district is located, the board shall abandon the alternative method of classification or reclassification herein authorized. The board may then proceed to classify the lands in said levee district as authorized under sections 468.38 through 468.44 or may proceed to reclassify the same as authorized under section 468.65 unless said remonstrances and objections filed as above provided are filed by a majority of the landowners in the levee district and these remonstrants and objectors in the aggregate own seventy percent or more of the acreage of lands in the levee district and, in writing, object to any reclassification of any kind, then the board shall not reclassify the lands within the district under the provision of this section nor shall the same be reclassified under the provisions of section 468.65.

4. At the time fixed or at any adjourned hearing if the remonstrances and objections filed at or before the hearing are not signed by sufficient number of owners, or the owners signing such remonstrances and objections do not meet the requirements hereinabove provided, then the board shall fully consider all objections and remonstrances and shall make a determination as to whether or not the costs and expenses shall be assessed:

a. By the alternative method hereinabove set forth; or

b. As provided by sections 468.38 through 468.44; or

c. That the land should be reclassified as provided in section 468.65; or

d. On the basis of a then existing classification of lands.

5. If the board shall determine that the cost and expenses shall be assessed on the basis of assessed taxable value as provided in subsections 1 through 4, then such basis shall be used for all future assessments made for the purposes of said levee district except if said assessed taxable value of lands and land improvements in said levee district may be changed or revised by the county assessor in the county or counties in which the same are located for general tax purposes, then any such revision made in the assessed taxable value by any such county assessor shall automatically constitute a revision of the classification of such land or land improvements for future assessments made by the board for the purpose of said levee district.

6. In lieu of the hearing provided for in subsections 1 through 5, the board may, and if the petition of owners provided for in subsections 1 through 5 so asks, the board shall call for an election for the purpose of determining the question of classification on the basis of assessed value of lands and land improvements. The question may be submitted at a regular election of the district or at a special election called for that purpose. It shall not be mandatory for the county commissioner of elections to conduct the elections, however provisions of sections 49.43 through 49.47 and of subchapter III of this chapter, insofar as the same are applicable, shall govern all such elections, and the question to be submitted shall be set forth in the notice of election. If sixty percent of the votes cast be in favor of the proposed change in assessment, it shall become effective for all future assessments as heretofore provided in this section. If the question should fail, no new election on the subject may be called for a period of one year.

7. When a levee district has been established and constructed, as an alternative to the other methods prescribed by law, upon reclassification, the levee district may adopt a method of classification and assessment uniform as to all land in the district, including railroad land, public highways and other public land and land exempt from general taxation, based on

the total amount to be assessed divided by the total acres within the district. This method of classification and assessment may be adopted either by hearing or by election and shall become effective as heretofore provided in this section.

8. When a drainage district or drainage and levee district has been established and constructed, and after the lands therein have been classified in accordance with the provisions of sections 468.39, 468.40, and 468.41 or reclassified in accordance with section 468.65, the district may adopt methods of assessment for maintenance, repair, and operation of said district uniform as to all land in the district in the same manner and by the same procedures as prescribed in subsections 1 through 7 of this section. Provided, however, that only those lands drained by respective mains and laterals shall be assessed for maintenance, repair, and operation of said mains and laterals, and provided further that this alternate method of assessment shall not be applied to making improvements in the drainage system.

9. Following the adoption of any alternative method of classification or assessment as provided in this section, the same shall continue in effect until such time as the method is changed pursuant to this section or to section 468.65.

10. *a.* All proceedings taken prior to July 1, 1968, purporting to establish or reestablish a drainage or levee district or districts, or to enlarge or change the boundaries of any drainage or levee district, and any assessments not heretofore declared invalid by any court, are hereby legalized, validated, and confirmed.

b. The foregoing shall not be construed to affect any litigation that may be pending at the time this section becomes effective involving the establishment, reestablishment, enlargement, or change in boundaries or any assessments of drainage or levee districts.

[C71, 73, 75, 77, 79, 81, §455.197]
89 Acts, ch 126, §2
CS89, §468.184
2011 Acts, ch 25, §122

468.185 Warrants not paid for want of funds. Repealed by 96 Acts, ch 1033, §1.

468.186 Easements through a drainage or levee district.

As used in this section, "*person*" shall mean any individual or group of individuals, corporation, firm, company, or association, except a railroad company.

1. When any person proposes to construct a pipeline, electric transmission line, communication line, underground service line, or other similar installations on, over, across, or beneath the right-of-way of any drainage or levee district, such person shall, before beginning construction, obtain from the drainage or levee district an easement to cross the district's right-of-way. The governing body of the district shall require such person to agree to comply with subsection 3 of this section and may, as a condition of granting such easement, attach thereto such additional conditions as they deem necessary. When the necessary easement has been obtained, such person shall construct the installation at the person's own expense and shall pay all costs of any reconstruction, relocation, modification, or reinstallation of the drainage or levee district's facility which may be necessary as a result of construction of the installation for which the easement was granted.

2. After construction of the installation has been completed in accordance with all conditions under which the easement is granted, the drainage or levee district shall maintain its facility at its own expense, and the person who constructed the installation, or the person's successors in interest, shall maintain the installation at the person's or successor's own expense. If the drainage or levee district subsequently undertakes any maintenance, improvement, or reconstruction of its facility which requires the modification, relocation, or reconstruction of the installation, the expense of such modification, relocation, or reconstruction shall be borne by the person who constructed the installation or the person's successors in interest.

3. When the construction of a public highway, or any installation for which an easement has been obtained under subsection 1 of this section, on, over, across, or beneath the right-of-way of any drainage or levee district disturbs or requires replacement of any portion of a tile drain less than twenty inches in diameter, and a portion of such drain will remain

wholly or partially exposed after the construction project has been completed, the portion which is to remain exposed and not less than three feet of such drain immediately on either side of the portion which is to remain exposed, shall be replaced either with steel pipe of not less than sixteen gauge or polyvinyl chloride pipe conforming to current industry standards regarding diameter and wall thickness.

[C71, 73, 75, 77, 79, 81, §455.199]
89 Acts, ch 126, §2
CS89, §468.186

468.187 Agreements with owners or other districts.

1. Levee and drainage districts are empowered to enter into agreements with the owners of lands lying inside or outside of said districts, or with other levee and drainage districts or municipalities, to provide levee protection or drainage for such lands on such terms as the board may agree and subject to the following terms and conditions:

a. The facilities of the district furnishing the service shall not be overburdened.

b. There shall be no additional cost to the district furnishing the service.

c. The agreement shall be in writing, be made a part of the drainage records and shall include all of the following:

(1) The description of the lands to be served.

(2) The location of tile lines constructed or to be constructed.

(3) The consideration to be paid to the district furnishing the service and the classification of the lands to be served.

(4) Such other provisions as the board deems necessary.

2. The provisions in an agreement described in subsection 1 modify other provisions of this chapter applicable to such lands.

[C71, 73, 75, 77, 79, 81, §455.200]
89 Acts, ch 126, §2
CS89, §468.187
2013 Acts, ch 86, §1, 6

468.188 Public improvements which divide a district — procedure.

1. If it should develop that any type of public improvement, other than the forces of nature, has caused such a change in the district as to effectively sever and cut off some of the land in the district from other lands in the district and from the improvements in the district in such a way as to deprive the land of any further benefits from the improvement, or in some manner to divide the benefits that may be derived from two separated portions of the improvement, then the board of supervisors or the board of trustees in charge may upon notice to interested parties and hearing as provided by this subchapter, parts 1 through 5, for the original establishment of a district make an order to remove lands so deprived of benefits from the district without any reclassification, or may subdivide the district into two separate entities if the public improvement splits the district into two separate units, each of which may still derive some separate benefits from the separated portions of the district.

2. If the public improvement is such as to leave two separate portions of the improvement that are still operable and of benefit to the land on each side of the division made by the public improvement, then the board may divide the district into two separate units so that each may perform further work on the improvements in their respective parts, but neither shall be charged for work completed on the opposite side of the new improvement that divides them and may only be charged for the work done in that portion of the district remaining on their side of the division.

3. The same authority provided in this section shall vest in the board of supervisors or the board of trustees in the event a drainage district in any manner relinquishes its control over any portion of its improvements or its obligation to maintain same to another district and lands may be removed from the district or the district may be divided as provided in this section.

4. The board may further in dividing the district award to each of the separated portions of the district the improvement remaining in each portion, determine the value of the

improvement so remaining on each side and secondly determine the contributions of the lands in the separated portions to the improvements and the upkeep of the earlier district, and if the contribution is proportionate neither side shall owe the other portion of the district any money, but if contribution is disproportionate, the board shall determine an equitable adjustment and the amount of payment required for one portion to pay to the other to buy the existing improvement.

5. If land is eliminated from any further benefits, there need not be any reclassification and the board may remove the same from the district in the same manner as if the land has been destroyed in whole by the erosion of a river and spread any deficiency in assessment among the remaining lands as provided by section 468.49.

6. *"Type of public improvement"* for the purpose of this section includes drainage or levee improvements or new highways.

[C71, 73, 75, 77, 79, 81, §455.201]
89 Acts, ch 126, §2
CS89, §468.188
2014 Acts, ch 1026, §106
Referred to in §468.92, 468.250, 468.396

468.189 Closing agricultural drainage wells — assessment of costs within a drainage district.

The costs of closing an agricultural drainage well and constructing an alternative drainage system as part of a drainage district shall be assessed as a special assessment by the board as provided in this chapter.

97 Acts, ch 193, §11
For provisions governing agricultural drainage wells and alternative drainage systems see chapter 460.

468.190 Farm mediation not applicable.

A case, dispute, or other controversy arising under this chapter shall not be subject to any of the requirements of mediation provided in chapter 654A, 654B, or 654C.

2011 Acts, ch 94, §1

468.191 through 468.200 Reserved.

PART 2

FEDERAL FLOOD CONTROL COOPERATION

Referred to in §331.502, 331.552, 350.4, 358.23, 461A.76, 468.3, 468.10, 468.41, 468.49, 468.59, 468.65, 468.67, 468.96, 468.115, 468.119, 468.126, 468.140, 468.152, 468.188, 468.207, 468.211, 468.240, 468.273, 468.283, 468.284, 468.288, 468.292, 468.297, 468.308, 468.335, 468.345, 468.529

468.201 Plan of improvement.

1. Whenever the government of the United States acting through its proper agencies or instrumentalities will undertake the original construction of improvements or the repair or alteration of existing improvements which will accomplish the purposes for which the district was established or aid in the accomplishment thereof and shall cause to be filed in the office of the auditor of the county in which said district is located a plan of such improvement or for the repair or alteration of existing improvements, the board shall have jurisdiction, power and authority, upon the notice, hearing and determination hereinafter provided, to adopt such plan of improvement or of repair or alteration of existing improvements and to provide necessary right-of-way therefor; and to pay such portion of all costs and damages incident to the adoption of such plan, the construction thereunder and the maintenance and operation of the works as will not be discharged by the federal government under legislation existing at the time of adoption; also to enter into such agreements with the United States government as may be necessary to meet federal requirements including the taking over, repair and maintenance of the works and to perform under such agreements.

2. If the cost to the district of the repair or alteration of existing improvements contemplated by this section does not exceed twenty-five percent of the sum of the

original cost to the district and the cost of subsequent improvements, including all federal contributions, the board may proceed under the provisions of section 468.126, without notice and hearing, and without appraisement as contemplated by section 468.210, but the remaining provisions of this section and sections 468.202 through 468.216 that are not in conflict with section 468.126 shall remain applicable.

3. If the federal program divides a project into separate phases, each phase shall be considered a separate program as described in section 468.126, subsection 4, and shall in no event be construed as an unauthorized division into separate programs to avoid the twenty-five percent limitation prescribed for making improvements under said section 468.126, subsection 4, without notice and hearing.

[C50, 54, 58, 62, 66, §455.201; C71, 73, 75, 77, 79, 81, §455.202]
89 Acts, ch 126, §2
CS89, §468.201
2011 Acts, ch 25, §123
Referred to in §468.38, 468.62, 468.184, 468.202, 468.203, 468.212

468.202 Agreement in advance.

The agreement with the federal government contemplated in section 468.201 may be entered into by the board in advance of the filing of the plan, such agreement to be effective if the plan is finally adopted. If the plan is approved the board shall make a record of any such cooperative agreement.

[C50, 54, 58, 62, 66, §455.202; C71, 73, 75, 77, 79, 81, §455.203]
89 Acts, ch 126, §2
CS89, §468.202
2013 Acts, ch 30, §110
Referred to in §468.38, 468.184, 468.201

468.203 Engineer appointed.

After the filing of the plan contemplated in section 468.201 the board shall, at its first session thereafter, regular, special or adjourned, appoint a disinterested and competent civil or drainage engineer who shall give bond in an amount to be fixed by the board conditioned for the faithful and competent performance of the engineer's duties.

[C50, 54, 58, 62, 66, §455.203; C71, 73, 75, 77, 79, 81, §455.204]
89 Acts, ch 126, §2
CS89, §468.203
Referred to in §468.38, 468.184, 468.201

468.204 Engineer's report.

The engineer shall examine the plan filed by the federal agency and the lands affected thereby and shall make and file with the county auditor a full written report which, together with the federal plan, will show the following:

1. The character and location of all contemplated improvements, and the plats, profiles and specifications thereof.

2. The particular description and acreage of land required from each forty-acre tract or fraction thereof for right-of-way, borrow pits or other purposes together with congressional or other description of each tract and the names of the owners thereof as shown by the transfer books in the office of the auditor.

3. A particular description of each forty-acre tract or fraction thereof that will be excluded from benefit by adoption of the plan as filed, together with the name of the owners thereof as shown by the transfer books in the office of the auditor.

4. A particular description of each forty-acre tract or fraction thereof outside the district which will benefit from adoption of the plan as filed and the name of the owner thereof as shown by the transfer books in the office of the auditor.

5. Such rights-of-way or portions thereof previously established or acquired as will be rendered unnecessary by adoption of the federal plan and any unpaid damages awarded therefor.

6. Such other damages previously awarded as will be affected by adoption of the federal plan.

7. The recommendation of the engineer with respect to the adoption of the plan.

[C50, 54, 58, 62, 66, §455.204; C71, 73, 75, 77, 79, 81, §455.205]

89 Acts, ch 126, §2

CS89, §468.204

Referred to in §468.38, 468.184, 468.201

468.205 Supplemental reports.

Upon the filing of such report the board shall examine and consider the same together with the plan and the commitments involved in its adoption and may require supplemental reports of the engineer or of another disinterested engineer with such data as they may deem necessary or desirable including recommendations for any change or modification, negotiate with the federal agency involved and amend the plan in such manner as may be mutually agreed upon. The engineer shall make such supplemental reports as may be required by the board or necessitated by amendment of plan.

[C50, 54, 58, 62, 66, §455.205; C71, 73, 75, 77, 79, 81, §455.206]

89 Acts, ch 126, §2

CS89, §468.205

Referred to in §468.38, 468.62, 468.184, 468.201

468.206 Notice and hearing.

If upon consideration of the plan or amended plan and the report or reports of the engineer and the commitments involved in the adoption of the plan the board finds that the district will benefit therefrom or the purposes for which the district was established will be promoted thereby, the board shall adopt the same as a tentative plan, enter an order to that effect, and fix a date for hearing thereon not less than thirty days thereafter and direct the auditor to cause notice to be given of such hearing as provided in section 468.207.

[C50, 54, 58, 62, 66, §455.206; C71, 73, 75, 77, 79, 81, §455.207]

89 Acts, ch 126, §2

CS89, §468.206

2015 Acts, ch 30, §145

Referred to in §468.38, 468.62, 468.184, 468.201, 468.207

468.207 Form of notice.

1. The notice under section 468.206 shall be captioned in the name of the district and shall be directed to all of the following:

a. The owners of each tract or lot within the levee or drainage district, including railroad companies having rights-of-way and lienholders and encumbrancers.

b. The owners, lienholders, or encumbrancers of lands which an adoption of the plan would exclude from benefits.

c. The owners, lienholders, or encumbrancers of lands outside the district which will benefit from the plan.

d. Without naming them, the occupants of all lands affected.

e. All other persons whom the plan may concern.

2. The notice shall set forth all of the following:

a. That there is on file in the office of the auditor a plan of construction of the federal agency, naming the agency, together with reports of an engineer on the plan, which the board has tentatively approved.

b. That the plan may be amended before final action.

c. The day and hour set for hearing on the adoption of the plan.

d. That all claims for damages, except claims for land required for right-of-way or construction, and all objections to the adoption of the plan for any reason must be made in writing and filed in the office of the auditor at or before the time set for hearing.

3. Provisions of this subchapter, parts 1 through 5, for giving notice, waiver of notice,

waiver of objection and damages and adjournment for service contained in sections 468.15 through 468.20 shall apply.

[C50, 54, 58, 62, 66, §455.207; C71, 73, 75, 77, 79, 81, §455.208]
89 Acts, ch 126, §2
CS89, §468.207
2016 Acts, ch 1073, §133
Referred to in §468.38, 468.62, 468.184, 468.201, 468.206

468.208 Amendment — new parties.

The board may continue the hearing pending decision and may amend the plan but in the event of amendment the board shall continue further hearing to a fixed date. All parties over whom the board then has jurisdiction shall take notice of such further hearing but any new parties rendered necessary by the modification or change of plans shall be served with notice as for the original hearing.

[C50, 54, 58, 62, 66, §455.208; C71, 73, 75, 77, 79, 81, §455.209]
89 Acts, ch 126, §2
CS89, §468.208
Referred to in §468.38, 468.62, 468.184, 468.201

468.209 Entry of order — effect.

1. If the board, after consideration of the subject matter, including all objections filed to the adoption of the plan and all claims for damages, shall find that the district will be benefited by adoption of the plan or the purposes for which the district was established is furthered by the plan, the board shall enter an order approving and adopting the final plan. The order shall have the effect of:

a. Altering the boundaries of the district to conform to the changes effected by the plan adopted.

b. Canceling all existing awards for damages for property not appropriated for right-of-way or construction and rendered unnecessary by the plan so adopted.

c. Canceling all awards previously made for damages other than for right-of-way or construction but reinstating the claims for such damages which said claims may be amended by the claimants within ten days thereafter.

d. Canceling all unpaid assessments for benefits on lands excluded from the district by adoption of the plan. The assessments so canceled shall become part of the costs of the improvement.

e. Establishing as benefited thereby the lands added to the district by adoption of the plan and rendering same subject to classification and assessment.

2. Whenever a plan has been adopted as contemplated by this section, modification and changes can be made therein without further notice or hearing, provided the same do not increase or decrease the estimated cost of the plan to the district by more than twenty-five percent.

[C50, 54, 58, 62, 66, §455.209; C71, 73, 75, 77, 79, 81, §455.210]
89 Acts, ch 126, §2
CS89, §468.209
2015 Acts, ch 30, §146; 2016 Acts, ch 1073, §134
Referred to in §468.38, 468.62, 468.184, 468.201

468.210 Appraisement.

The board shall thereupon appoint three appraisers of the qualifications prescribed in section 468.24, who shall qualify in the manner therein provided, and shall fix a time for hearing on their report of which all interested parties shall take notice. The appraisers shall view the premises and fix and determine the damages to which each claimant is entitled, including claimants whose awards for damages were canceled by the order of adoption, and shall place a separate valuation upon the acreage of each owner taken for right-of-way or other purposes necessitated by adoption of the plan and shall file a report thereof in writing in the office of the auditor at least five days before the date fixed by the board for hearing thereon. Should the report not be filed on time or should good cause for delay exist the

board may postpone the time for final action on the subject and, if necessary, may appoint other appraisers. Thereafter the provisions of section 468.26 shall apply.

[C50, 54, 58, 62, 66, §455.210; C71, 73, 75, 77, 79, 81, §455.211]
89 Acts, ch 126, §2
CS89, §468.210
Referred to in §468.38, 468.184, 468.201

468.211 Assessment of benefits.

Appointment of commissioners to assess benefits and classify lands within the district and all proceedings relative to such assessment and classification shall be as otherwise provided in this subchapter, parts 1 through 5, except that when the lands of the district have previously been classified, the commissioners shall classify and assess only such lands as have been added to the district by adoption of the plan and recommend such changes in existing classifications as are materially affected by the plan so adopted. The board may, upon hearing, adjust the classification of lands affected by the plan.

[C50, 54, 58, 62, 66, §455.211; C71, 73, 75, 77, 79, 81, §455.212]
89 Acts, ch 126, §2
CS89, §468.211
Referred to in §468.38, 468.184, 468.201

468.212 Installments — warrants.

The board shall levy the costs contemplated in section 468.201 upon all of the lands of the district on the basis of the classification for benefits as finally established and the assessments so levied shall be paid in one installment unless the board in its discretion shall provide for the payment thereof in not more than twenty equal installments with interest at a rate determined by the board notwithstanding chapter 74A. The board may issue anticipatory warrants bearing interest at a rate determined by the board, notwithstanding chapter 74A. The warrants may be numbered and state a maturity date. The warrants may be sold by the board for cash in an amount not less than the face value thereof, together with accrued interest, if any.

[C50, 54, 58, 62, 66, §455.212; C71, 73, 75, 77, 79, 81, §455.213]
89 Acts, ch 126, §2
CS89, §468.212
94 Acts, ch 1035, §6
Referred to in §468.38, 468.184, 468.201

468.213 Subsequent levies.

The board shall make such subsequent levies as may be necessary to meet the expenses of the district including costs of maintenance, repair and operation of the works.

[C50, 54, 58, 62, 66, §455.213; C71, 73, 75, 77, 79, 81, §455.214]
89 Acts, ch 126, §2
CS89, §468.213
Referred to in §468.38, 468.184, 468.201

468.214 Applicable statutes.

Except as otherwise provided herein all provisions of this chapter relative to assessment of damages, appointment of an engineer, employment of counsel, payment for work, levy and collection of drainage and levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial thereof and all other proceedings relating thereto shall apply.

[C50, 54, 58, 62, 66, §455.214; C71, 73, 75, 77, 79, 81, §455.215]
89 Acts, ch 126, §2
CS89, §468.214
Referred to in §468.38, 468.184, 468.201

468.215 Scope of plan.

The provisions of this part shall be applicable to districts organized or established under the provisions of subchapters II and III.

[C50, 54, 58, 62, 66, §455.215; C71, 73, 75, 77, 79, 81, §455.216]
89 Acts, ch 126, §2
CS89, §468.215
Referred to in §468.38, 468.184, 468.201

468.216 Districts under trustees.

When a district is in the management of trustees as provided in subchapter III the board of trustees shall have the jurisdiction to adopt the federal plan as provided herein and to exercise all other powers herein granted except that any levy shall be made by the board of supervisors upon certificate of the amount necessary by the trustees as provided in section 468.527.

[C50, 54, 58, 62, 66, §455.216; C71, 73, 75, 77, 79, 81, §455.217]
89 Acts, ch 126, §2
CS89, §468.216
Referred to in §468.38, 468.184, 468.201

468.217 through 468.219 Reserved.

PART 3

INTERACTION WITH STATE AND LOCAL GOVERNMENTS

Referred to in §331.502, 331.552, 350.4, 358.23, 461A.76, 468.3, 468.10, 468.41, 468.49, 468.59, 468.65, 468.67, 468.96, 468.115, 468.119, 468.126, 468.140, 468.152, 468.188, 468.207, 468.211, 468.240, 468.273, 468.283, 468.284, 468.288, 468.292, 468.297, 468.308, 468.335, 468.345, 468.529

468.220 Occupancy and use permitted — assessments paid.

1. Any levee or drainage district organized, or in the process of being organized, under the laws of this state may occupy and use for any lawful levee or drainage purpose land owned by the state of Iowa, upon first obtaining permission to do so from the state or state agency controlling the land.

2. In the case of lands lying within the beds of meandered streams and border streams the permission shall be obtained from the natural resource commission of the department of natural resources. In the case of lands that are not under the control of any office or agency of the state, then the permission shall be obtained from the executive council.

3. Such permission shall not be unreasonably withheld and shall be in the form of an easement executed by the governor or in the case of an agency, by the chairperson or presiding officer thereof, and when once granted shall be perpetual, except that if no use is made of the easement for a period of five years, the permission shall immediately thereafter expire.

4. All uses and occupancies as contemplated by this section existing on July 4, 1961, are hereby legalized.

5. The state of Iowa, its agencies and subdivisions shall be financially responsible for drainage and special assessments against land which they own, or hold title to, within existing drainage districts.

[C62, 66, §455.217; C71, 73, 75, 77, 79, 81, §455.218]
89 Acts, ch 126, §2
CS89, §468.220
2015 Acts, ch 30, §147

468.221 Written communication delivered to the state or a local government.

1. This section applies whenever a board or county officer acting under this chapter is required to deliver a written communication to a state agency or local government. The

written communication includes but is not limited to a notice, service of process, demand, statement, or a report.

2. *a.* If the written communication is to be delivered to a state agency, it may be delivered to the administrative head of the state agency or its governing body. The written communication may also be delivered to a person designated by the administrative head of the state agency or its governing body. The written communication may be delivered to the executive council if the administrative head of the state agency or its governing body cannot be determined.

b. If the written communication is to be delivered to a local government, it may be delivered to the governing body of the local government. The written communication may also be delivered to a person designated by the governing body. As used in this section, *"local government"* includes a county, city, township, or any special purpose district or authority.

2011 Acts, ch 39, §1; 2012 Acts, ch 1021, §87

468.222 through 468.229 Reserved.

PART 4

BOARD OF COUNTY DRAINAGE ADMINISTRATORS

Referred to in §331.502, 331.552, 350.4, 358.23, 461A.76, 468.3, 468.10, 468.41, 468.49, 468.59, 468.65, 468.67, 468.96, 468.115, 468.119, 468.126, 468.140, 468.152, 468.188, 468.207, 468.211, 468.240, 468.273, 468.283, 468.284, 468.288, 468.292, 468.297, 468.308, 468.335, 468.345, 468.529

468.230 Administrators appointed.

The county board of supervisors of any county of this state in which one or more drainage districts are established may by resolution establish a board of county drainage administrators. All of the powers, duties, and responsibilities now or hereafter conferred on county boards of supervisors in this chapter shall thereupon be transferred to and thereafter exercised by the board of county drainage administrators. A drainage or levee district may be established pursuant to subchapter III.

[C71, 73, 75, 77, 79, 81, §455.219]
89 Acts, ch 126, §2
CS89, §468.230

468.231 Administrator areas.

When establishing a board of county drainage administrators, the board of supervisors shall divide the county, along township lines, into three drainage administrator areas of approximately equal territory. The board of county drainage administrators shall consist of one resident freeholder appointed by the county board of supervisors from each area, and at least two of the administrators shall be agricultural landowners. The members first appointed shall hold office for terms of one, two, and three years respectively, as indicated and fixed by the county board of supervisors. Thereafter, succeeding members shall be appointed for a term of three years, except that vacancies occurring otherwise than by expiration of a term shall be filled by appointment for the unexpired term. Any member of the board of county drainage administrators who shall cease to have any of the qualifications prescribed by this section shall thereupon be disqualified as a member of the board and the office shall be deemed vacant. Members of the board of county drainage administrators may be removed by the county board of supervisors for cause, but every such removal shall be by written order which shall be filed with the county auditor.

[C71, 73, 75, 77, 79, 81, §455.220]
89 Acts, ch 126, §2
CS89, §468.231

468.232 Compensation.

The members of the board of county drainage administrators shall each receive compensation at an hourly rate established by the county board of supervisors for time actually devoted to the duties of their office, and reimbursement at the rate established by section 70A.9 for travel to and from meetings of, or other places of performing the duties of, the board, and other actual and necessary expenses incurred in the performance of their duties.

[C71, 73, 75, 77, 79, 81, §455.221]
89 Acts, ch 126, §2
CS89, §468.232

468.233 How paid.

The compensation and expenses of the county board of drainage administrators, for each day or portion thereof necessarily expended in the transaction of the business of a drainage or levee district, shall be paid out of the funds of the district served. The administrators shall file with the auditor or auditors, as the case may be, itemized, verified statements of their time devoted to the business of the district and the expenses incurred. If the administrators transact business of more than one district on a given day, they shall prorate their claims for compensation proportionately among the districts served on that day, but in no case shall a member of the board of county drainage administrators claim or receive a sum in excess of seventeen dollars and fifty cents, plus actual and necessary expenses, for a single day.

[C71, 73, 75, 77, 79, 81, §455.222]
89 Acts, ch 126, §2
CS89, §468.233

468.234 Soil and water conservation districts.

The governing board of every drainage or levee district organized under the laws of this state shall take notice of the district plan, and shall conform to the duly adopted rules, of the soil and water conservation district or districts in which the drainage or levee district is located. However, this section does not grant authority not otherwise granted by law to the governing boards of drainage or levee districts.

[C73, 75, 77, 79, 81, §455.223]
86 Acts, ch 1238, §61; 89 Acts, ch 83, §53; 89 Acts, ch 126, §2
CS89, §468.234
For establishment and management of soil and water conservation districts, see chapter 161A

468.235 through 468.239 Reserved.

PART 5

COUNTY-CITY DRAINAGE DISTRICT

Referred to in §331.502, 331.552, 350.4, 358.23, 461A.76, 468.3, 468.10, 468.41, 468.49, 468.59, 468.65, 468.67, 468.96, 468.115, 468.119, 468.126, 468.140, 468.152, 468.188, 468.207, 468.211, 468.240, 468.273, 468.283, 468.284, 468.288, 468.292, 468.297, 468.308, 468.335, 468.345, 468.529

468.240 Supervisors of county over two hundred thousand may establish.

The board of a county with a population of two hundred thousand persons or more that has established a drainage district located partly within the corporate limits of a city may expend federal grants or revenue sharing money or other funds not derived from local tax levies in amounts as the board deems proper to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The board may issue general obligation bonds to pay any part of the cost of improvements authorized in this subchapter, parts 1 through 5. The bonds shall be issued according to the provisions of chapter 384, subchapter III, relating to general obligation bonds for essential corporate purposes.

[C77, 79, 81, §455.225]

89 Acts, ch 126, §2
CS89, §468.240
2018 Acts, ch 1041, §127

468.241 through 468.249 Reserved.

PART 6

DISSOLUTION OF DRAINAGE OR LEVEE DISTRICTS

Referred to in §468.263

468.250 Jurisdiction to dissolve districts and abandon or transfer improvements.

Drainage or levee districts may be dissolved and abandoned or assimilated by the procedures prescribed by this part.

1. When any drainage or levee district is free from indebtedness and it shall appear that the necessity therefor no longer exists or that the expense of the continued maintenance of the ditch or levee is in excess of the benefits to be derived therefrom, the board of supervisors or board of trustees, as the case may be, shall have power and jurisdiction, upon petition of a majority of the landowners, who, in the aggregate, own sixty percent of all land in such district, to abandon the same and dissolve and discontinue such districts in the manner prescribed by sections 468.251 through 468.255. Nothing in this subsection shall prevent the board from eliminating land from a drainage district as permitted under section 468.188.

2. When one drainage or levee district, either intracounty or intercounty, includes within its territory all of the territory of one or more other drainage or levee districts, and it appears that one assessment and one governing body would be to the benefit of the owners and occupants of the land within the mutual jurisdiction of the overlying and the contained districts, the board of supervisors or board of trustees may effect the dissolution of a contained district and the transfer of jurisdiction and control over that contained district's improvements to the overlying district, in the manner prescribed by sections 468.256 through 468.261.

[C35, §7598-g1; C39, §**7598.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.1]
89 Acts, ch 126, §2
CS89, §468.250
Referred to in §468.255, 468.256

468.251 Notice of hearing.

Upon the filing of such petition the board shall enter an order fixing the date for hearing thereon not less than forty days from the date of the filing thereof and shall enter an order directing the county auditor, if such district is under the control of the board of supervisors, or the clerk of the board, if under the control of a board of trustees, to immediately cause notice of hearing thereon to be served on the owners of lands in such district as may then be provided by law in proceedings for the establishment of a drainage or levee district.

[C35, §7598-g2; C39, §**7598.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.2]
89 Acts, ch 126, §2
CS89, §468.251
Referred to in §468.250, 468.255

468.252 Hearing on petition.

The petition may be amended at any time before final action on the petition. At the time set for hearing on the petition, the board shall hear and determine the sufficiency of the petition as to form and substance and all objections filed against the abandonment and dissolution of such district. If the board finds that such district is free from indebtedness and that the necessity for the continued maintenance thereof no longer exists or that the expense of the continued maintenance of such district is not commensurate with the benefits derived therefrom, the board shall enter an order abandoning and dissolving such district, which

order shall be filed with the county auditor of the county or counties in which such district is situated and noted on the drainage record.

[C35, §7598-g3; C39, §**7598.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.3]
89 Acts, ch 126, §2
CS89, §468.252
2013 Acts, ch 90, §141
Referred to in §468.250, 468.255

468.253 Appeal.

Appeal may be taken from the order of the board to the district court of the county in which such district or a part thereof is situated, in the same time and manner as appeal may be taken from an order of the board of supervisors establishing a district.

[C35, §7598-g4; C39, §**7598.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.4]
89 Acts, ch 126, §2
CS89, §468.253
Referred to in §468.250, 468.255
Appeals, §468.83 et seq.

468.254 Expense — refund.

In case there are sufficient funds on hand in such district, or there are unpaid assessments outstanding or other property belonging to such district in an amount sufficient to pay such expense, the expense of abandonment and dissolution shall be paid out of such funds or out of funds realized by the sale of such property. Where such district is free of indebtedness but there are not sufficient funds on hand or unpaid assessments outstanding or other assets to pay such expense the board shall assess such expense against the property in the district in the same proportions as the last preceding assessments of benefits. Any excess remaining to the credit of such district after sale of its assets and after payment of such expenses shall be prorated back to the property owners in the district in the proportions according to class and benefits as last assessed. If the petition is denied, the costs of said proceedings shall be paid by the petitioning owners.

[C35, §7598-g5; C39, §**7598.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.5]
89 Acts, ch 126, §2
CS89, §468.254
Referred to in §468.250, 468.255

468.255 Abandonment of rights-of-way.

If a dissolution is effected pursuant to section 468.250, subsection 1, and sections 468.251 through 468.254, the rights-of-way of the district for all purposes of the district shall be deemed abandoned.

[C35, §7598-g6; C39, §**7598.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §456.6]
89 Acts, ch 126, §2
CS89, §468.255
Referred to in §468.250

468.256 Initiating dissolution of contained district.

To initiate the dissolution of a contained district under the circumstances described in section 468.250, subsection 2:

1. The board of supervisors or board of trustees of the district proposed to be dissolved shall enter an order for the proposed dissolution of that district and the surrender of its improvements and rights-of-way to the overlying district.

2. The board of supervisors or board of trustees of the overlying district shall enter an order approving the proposed acceptance of those improvements and rights-of-way.

[C81, §456.11]
89 Acts, ch 126, §2
CS89, §468.256
Referred to in §468.250, 468.257, 468.260, 468.261, 468.500, 468.538

468.257 Procedure for notice of hearing.

1. The board of the overlying district shall enter an order fixing a place and a time, not less than forty days after the date of the later of the two orders required by section 468.256, for a hearing on the proposals described in the two orders.

2. The auditor, or auditors if the overlying district includes land lying in two or more counties, shall cause notice of the proposals and of the hearing to be given immediately upon the entry of an order under subsection 1. The notice must:

a. Include the texts of the orders entered pursuant to section 468.256, the date, time and place of the hearing, and a statement that all objections to the proposals embodied in the orders must be made in writing and filed in the office of the auditor at or before the time set for the hearing.

b. Be directed to all of the following:

(1) The owner of each tract of land or lot within the overlying district, as shown by the transfer books of the auditor's office, including railway companies having right-of-way in the district.

(2) All lienholders or encumbrancers of land within the overlying district, without naming them.

(3) All actual occupants of land in the overlying district, without naming individuals.

(4) All other persons whom it may concern.

3. Except as otherwise required by section 468.16, the notice required by this section shall be served by publication once in a newspaper of general circulation in each county in which the overlying district's land is situated. The publication shall be made not less than twenty days prior to the day set for the hearing. Proof of service shall be made by affidavit of the publisher.

[C81, §456.12]
89 Acts, ch 126, §2
CS89, §468.257
Referred to in §468.250, 468.258, 468.260, 468.261, 468.500, 468.538

468.258 Procedure at hearing.

The hearing shall be convened at the time and place fixed in accordance with section 468.257, subsection 1, and the procedure at the hearing shall be as prescribed by this section.

1. The board of the contained district shall first hear all objections filed against the dissolution of the district and the surrender of its improvements to the overlying district. If, at the conclusion of that portion of the hearing, that board finds that the contained district is free of debt, that the economic benefits of the continued maintenance of that district would not be commensurate with its cost, and that it would be advantageous to dissolve and discontinue the contained district and surrender its improvements and rights-of-way to the overlying district, it shall enter an order dissolving the contained district and directing the surrender of its improvements and rights-of-way, conditioned on acceptance by the overlying district.

2. Immediately thereafter, the board of the overlying district shall hear all objections filed against the acceptance of the contained district's improvements and their maintenance. If it finds that the improvements are conducive to the drainage of surface waters from agricultural lands and all other lands in the overlying district or the protection of the lands from overflow, it shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

4. If at or before the time set for the hearing there have been filed with the county auditor or auditors, if either the contained or overlying district extends into more than one county, or with the board of either district, one or more remonstrances or objections to the dissolution of the contained district, or to the acceptance of that district's improvements and rights-of-way by the overlying district, signed by owners of land and land improvements in either district aggregating sixty percent of the total assessed value of the land in that district as shown by

the taxing records in the county or counties in which that district is located, the board to which the remonstrances or objections have been made shall abandon its proposed action.

[C81, §456.13]
89 Acts, ch 126, §2
CS89, §468.258
Referred to in §468.250, 468.259, 468.260, 468.261, 468.265, 468.500, 468.538

468.259 Election in lieu of hearings.

In lieu of the hearings provided for in section 468.258, the board of either district may call an election for the purpose of determining the dissolution of the contained district or the acceptance of that district's improvements and rights-of-way by the overlying district. The questions may be submitted at a regular election of the district or at a special election called for that purpose. It is not mandatory for the county commissioner of elections to conduct the elections, however the provisions of sections 49.43 to 49.47, and of subchapter III of this chapter, as they are applicable, shall govern the elections, and the question to be submitted shall be set forth in the notice of election.

1. If sixty percent or more of the votes cast are in favor of the proposed dissolution of the contained district involved, the board of that district shall enter an order dissolving the contained district and directing the surrender of its improvements and rights-of-way, conditioned on acceptance by the overlying district.

2. If sixty percent or more of the votes cast in the overlying district are in favor of the proposed acceptance by that district of the contained district's improvements and rights-of-way, the board of the overlying district shall enter an order accepting the improvements and rights-of-way of the contained district.

3. Orders issued pursuant to subsections 1 and 2 shall be filed with the county auditor of the county or counties in which the affected districts are situated and noted on the drainage record.

[C81, §456.14]
89 Acts, ch 126, §2
CS89, §468.259
Referred to in §468.250, 468.260, 468.261, 468.500, 468.538

468.260 Effect of dissolution, surrender, and acceptance.

When a contained district dissolves and surrenders its improvements and rights-of-way to the jurisdiction and control of an overlying district, and the overlying district accepts those improvements and rights-of-way, in accordance with sections 468.256 through 468.259:

1. It is presumed that the classification of the lands which were included in the dissolved district, as previously determined by the commissioners in the classification of those lands as a part of the overlying district, remains equitable and no reclassification of the overlying district or any part of it is necessary.

2. The improvements surrendered and accepted are at all times under the supervision of the board of the overlying district, and it is the duty of that board to keep the improvements in repair as provided in section 468.126 as fully and completely as though the improvements were a part of the original construction or improvements in the overlying district.

3. It is presumed that:

a. The improvements surrendered and accepted are an integral part of the overlying district's improvements, and are a public benefit and conducive to the public health, convenience and welfare.

b. No value is taken into consideration for the existing improvements nor is credit given to the parties owning them, and they shall not be considered an asset of the district that is dissolved.

4. The original cost and the subsequent cost of improvements in the district that has been

dissolved are added to and become a part of the original cost and the subsequent cost of improvements in the overlying district.

[C81, §456.15]
89 Acts, ch 126, §2
CS89, §468.260
Referred to in §468.250

468.261 Costs borne by overlying district.

The overlying district shall pay all costs of the proceedings held pursuant to sections 468.256 through 468.259.

[C81, §456.16]
89 Acts, ch 126, §2
CS89, §468.261
Referred to in §468.250

PART 7

MERGER OF DRAINAGE OR LEVEE DISTRICTS

Referred to in §468.3, 468.49

468.262 Purpose.

The provisions of this part apply to drainage or levee districts when such districts participate in a merger.

2014 Acts, ch 1075, §1; 2015 Acts, ch 30, §148

468.263 General.

1. A merger must involve two or more voluntarily participating drainage or levee districts including all of the following:

a. One participating dominant district whose board would survive the merger to govern the merged district.

b. One or more participating servient districts whose boards would be dissolved by the merger.

2. *a.* The merger must be proposed by the board of each participating drainage or levee district as provided in this part.

b. The proposed merger must be approved by the board of the participating dominant district and one or more boards of the participating servient districts, as provided in this part.

3. *a.* The boundary of a participating drainage or levee district must adjoin all or part of the boundary of another participating drainage or levee district.

b. Notwithstanding paragraph *"a"* two participating drainage or levee districts may be separated by land not part of any drainage or levee district if the proposed merger is contingent upon the annexation of such land pursuant to sections 468.119 through 468.121.

4. A merger may occur notwithstanding that a drainage or levee district participating in a merger is not otherwise eligible for dissolution as provided in part 6 of this subchapter.

2014 Acts, ch 1075, §2

468.264 Board participation initiated.

1. In order to participate in a proposed merger the board of a drainage or levee district must determine that the merger will substantially benefit the owners of land situated in the drainage or levee district.

2. A board making the determination described in subsection 1 shall enter an order to conduct a public hearing regarding a proposed merger as provided in section 468.265. The board shall enter the order with the auditor of each county where the drainage or levee district is situated.

2014 Acts, ch 1075, §3
Referred to in §468.265

468.265 Public hearing.

1. A public hearing must be conducted within forty-five days from the last date that the board enters an order with the auditor of each county where the drainage or levee district is situated as provided in section 468.264. The auditor of each county where the participating drainage or levee district is located shall provide notice of a public hearing regarding the proposed merger. However, the board may designate the auditor of the county with the greatest portion of the district's territory to provide the notice. The notice must include all of the following:

a. A description of the proposed merger.

b. The determination made by the board under section 468.264.

c. Whether land in the participating drainage or levee district may be subject to any special assessment as provided in section 468.269.

d. The date, time, and place of the public hearing.

e. That all written objections to the proposed merger must be filed in the office of the county auditor.

2. *a.* The auditor of the county where a participating drainage or levee district is situated or the auditor designated by the board shall deliver the notice required in subsection 1 to all landowners in the district in the same manner as provided in sections 468.14 through 468.18, as the auditor deems appropriate.

b. If land is to be annexed as a condition of the merger, as provided in this part, the auditor of the county where the land to be annexed is situated or the auditor designated by the board shall deliver the notice to the owners of such land by ordinary mail.

3. The boards of one or more participating drainage or levee districts may conduct the public hearing jointly.

4. This section shall not be construed to prevent the board of a participating drainage or levee district from convening and conducting a public hearing in a manner consistent with section 468.258.

2014 Acts, ch 1075, §4; 2015 Acts, ch 51, §1, 2

Referred to in §468.264, 468.266, 468.269

468.266 Meeting and vote.

1. Each board of a participating drainage or levee district shall meet to vote on a resolution which includes the question whether or not to approve the proposed merger. A board must vote on the resolution within forty-five days of the last public hearing conducted pursuant to section 468.265.

2. The board shall only consider written objections to the proposed merger as filed in the office of the county auditor as provided in the notice for a public hearing or comments made at a public hearing conducted pursuant to section 468.265.

3. Two or more boards may approve a joint meeting and vote upon a joint resolution. If the board for the participating dominant district votes at the joint meeting, the dominant board shall pay any costs associated with conducting the joint meeting, regardless of the vote's outcome.

2014 Acts, ch 1075, §5

Referred to in §468.267

468.267 Joint order.

1. A resolution to merge participating drainage or levee districts approved by their respective boards as provided in section 468.266 shall be effectuated according to the terms and conditions of a joint order for merger entered by those boards.

2. Each board shall file the joint order with the auditors of their respective counties. Upon receipt of a joint order, the auditor shall include the joint order as part of the drainage record.

3. The auditor shall not file an order unless all territory within the merged drainage or levee district is contiguous, and includes any land required to be annexed as a condition of the merger.

4. Upon the filing of the joint order with the county auditor as provided in subsection 2, title to all real estate, other property, improvement, and any right-of-way held by the

participating drainage or levee district is vested in the merged drainage or levee district, subject to any condition which applied immediately prior to the merger.

5. The auditor of a county designated by the board governing the merged drainage or levee district shall prepare and file with the recorder of each county where the merged district is situated all conveyances and other documentation necessary to effect the transfers referenced in the joint order.

6. The merged drainage or levee district assumes all existing obligations of a participating drainage or levee district subject to the joint order.

2014 Acts, ch 1075, §6
Referred to in §468.269

468.268 Effect of the merger.

1. *a.* Except as provided in this subsection, a legal or equitable proceeding pending against a participating drainage or levee district prior to a merger shall continue as if the merger did not occur.

b. The merged drainage or levee district shall be substituted for the participating drainage or levee district standing as a party.

c. The board governing the merged drainage or levee district may apportion the costs of a legal or equitable proceeding against the landowners of the participating drainage or levee district based upon the classification of land and assessments applicable to the participating drainage or levee district prior to the merger.

2. Except as provided in section 468.269, the merger does not affect the classification of land or the levy of an assessment.

3. The original cost and the subsequent cost of improvements in a participating drainage or levee district under this part shall be added to and become a part of the original cost and the subsequent cost of improvements in the merged drainage or levee district.

4. The surviving board of a merged drainage or levee district shall pay any remaining costs associated with the merger.

2014 Acts, ch 1075, §7

468.269 Special assessment — merged land.

1. In addition to assessments imposed pursuant to sections 468.49 and 468.50, the surviving board of a merged drainage or levee district may impose a special assessment on land situated in the merged district which was a participating servient district prior to the merger.

2. The special assessment shall apply to costs of improvements made within the participating dominant district prior to the merger for not longer than five years prior to the date that the joint order was filed with the county auditor by the surviving board for the participating dominant district pursuant to section 468.267.

3. In order to impose a special assessment under this section all of the following must apply:

a. The board must approve a report by an engineer appointed by the board as provided in part 1 stating those improvements directly benefiting land situated in the participating servient district were made within the five-year period provided in subsection 2.

b. The notice for a public hearing required in section 468.265 must have stated that the board may impose a special assessment under this section.

4. The board shall not impose the special assessment under this section on land that was annexed as part of the merger. However, such land is subject to a special assessment pursuant to sections 468.119 through 468.121.

2014 Acts, ch 1075, §8; 2015 Acts, ch 30, §149
Referred to in §468.265, 468.268

SUBCHAPTER II

JURISDICTIONS

Referred to in §331.382, 468.215

PART 1

INTERCOUNTY DRAINAGE OR LEVEE DISTRICTS

Referred to in §331.502, 331.552, 350.4, 468.3, 468.345, 468.397

468.270 Petition and bond.

When the levee or drainage district embraces land in two or more counties, a duplicate of the petition of any owner of land to be affected or benefited by such improvement shall be filed with the county auditor of each county into which said levee or drainage district will extend, accompanied by a duplicate bond to be filed with the auditor of each of the said counties as provided when the district is wholly within one county, in an amount and with sureties approved by the auditor of the county in which the largest acreage of the district is situated, which bond shall run in favor of the several counties in which it is filed.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7599;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.1]

89 Acts, ch 126, §2

CS89, §468.270

Referred to in §468.305

Procedure for converting several intracounty districts into one intercounty district, see subchapter II, part 2

468.271 Commissioners.

Upon the filing of such petition in each county and the approval of such duplicate bond by the proper auditor, the board of each of such counties shall appoint a commissioner and the joint boards shall appoint a competent engineer who shall also act as a commissioner.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7600;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.2]

89 Acts, ch 126, §2

CS89, §468.271

Referred to in §468.305

468.272 Examination and report.

The commissioners thus appointed shall examine the application and make an inspection of all the lands embraced in the proposed district and shall determine what improvements in the way of levees, ditches, drains, settling basins, or change of natural watercourse are necessary for the drainage of the lands described in the petition. Such commissioners, including the engineer, shall file a detailed report of their examination and their findings and file a duplicate thereof in the office of the auditor of each of said counties.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7601;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.3]

89 Acts, ch 126, §2

CS89, §468.272

468.273 Duty of engineer.

In addition to the report of the commissioners as a whole, the engineer so appointed shall perform the same duties and in the same manner required of the engineer by subchapter I, parts 1 through 5 when the proposed district is located wholly within one county, and the engineer's surveys, plats, profiles, field notes, and reports of the engineer's surveys shall be made and filed in duplicate in each county.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7602;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.4]

89 Acts, ch 126, §2

CS89, §468.273

468.274 Notice.

Immediately upon the filing of the report of the commissioners and the engineer, if the same recommends the establishment of such district, notice shall be given by the auditor of each county to the owners of all the lots and tracts of land in the auditor's own county respectively embraced within such district as recommended by the commissioners as shown by the transfer books in the office of the auditor of each of said counties, and also to the persons in actual occupancy of all the lots or tracts of land in such district, and also to each lienholder or encumbrancer of any of such lots or tracts as shown by the records of the respective counties.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7603;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.5]

89 Acts, ch 126, §2

CS89, §468.274

468.275 Contents of notice — service.

Such notice shall state the time and place, when and where the boards of the several counties will meet in joint session for the consideration of said petition and the report of the commissioners and engineer thereon, and shall in other respects be the same and served in the same time and manner as required when the district is wholly within one county, except that the auditor of each county shall give notice only to the owners, occupants, encumbrancers, and lienholders of the lots and tracts of land embraced within the proposed district in the auditor's own county as shown by the records of such county.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7604;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.6]

89 Acts, ch 126, §2

CS89, §468.275

Notice and service, §468.14 et seq.

468.276 Claims for damages — filing — waiver.

Any person filing objections or claiming damages or compensation on account of the construction of such improvement shall file the same in writing in the office of the auditor of the county in which the person's land is situated, at or before the time set for hearing. The person may, however, file it at the time and place of hearing. If the person shall fail to file such claim at the time specified the person shall be held to have waived the person's right thereto, but claims for land taken for right-of-way for any open ditch or for settling basins need not be filed.

[S13, §1989-a30; C24, 27, 31, 35, 39, §**7605;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.7]

89 Acts, ch 126, §2

CS89, §468.276

468.277 Organization and procedure — adjournments.

At the time set for hearing such petition, the boards of the several counties shall meet at the place designated in said notice. They shall organize by electing a chairperson and a secretary, and when deemed advisable may adjourn to meet at the call of such chairperson at such time and place as the chairperson may designate, or may adjourn to a time and place fixed by said joint boards. They shall sit jointly in considering the petition, the report and the recommendations of the engineer, in the same manner as if the district were wholly within one county.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7606;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.8]

89 Acts, ch 126, §2

CS89, §468.277

468.278 Tentative adoption of plans.

The said boards by their joint action may dismiss the petition and refuse to establish such district, or they may approve and tentatively adopt the plans and recommendations of the engineer for the said district.

[C24, 27, 31, 35, 39, §**7607;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.9]

89 Acts, ch 126, §2

CS89, §468.278

468.279 Appraisers.

If the said boards shall adopt a tentative plan for the district, the board of each county shall select an appraiser and the several boards by joint action shall employ an engineer, and the said appraisers and engineer shall constitute the appraisers to appraise the damages and value of all right-of-way required for open ditches and of all lands required for settling basins.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7608;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.10]

89 Acts, ch 126, §2

CS89, §468.279

468.280 Duty of appraisers — procedure.

The appraisers shall proceed in the same manner and make return of their findings and appraisement the same as when the district is wholly within one county, except that a duplicate thereof shall be filed in the auditor's office of each of the several counties. After the filing of the report of the appraisers, all further proceedings shall be the same as where the district is wholly within one county, except as otherwise provided.

[S13, §1989-a31; C24, 27, 31, 35, 39, §**7609;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.11]

89 Acts, ch 126, §2

CS89, §468.280

Procedure, §468.24 et seq.

468.281 Meetings of joint boards.

The board of supervisors of any county in which a petition for the establishment of a levee or drainage district to extend into or through two or more counties is on file, may meet with the board or boards of any other county or counties in which such petition is on file, for the purpose of acting jointly with such other board or boards in reference to said petition or any business relating to such district. Any such joint meetings held in either of the counties in which such petition is on file shall constitute a valid and legal meeting of said joint boards for the transaction of any business pertaining to said petition or to the business of such district.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7610;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.12]

89 Acts, ch 126, §2

CS89, §468.281

468.282 Equalizing voting power.

When the boards are of unequal membership, for the purpose of equalizing their voting power each member of the smallest board shall cast a full vote and each member of a larger board shall cast such fractional part of a vote as results from dividing the smallest number by such larger number.

[S13, §1989-a29; C24, 27, 31, 35, 39, §**7611;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.13]

89 Acts, ch 126, §2

CS89, §468.282

468.283 Commissioners to classify and assess.

If the boards of the several counties acting jointly shall establish the district, they shall appoint a commission consisting of one from each county, and in addition thereto a competent

engineer who shall within twenty days begin to inspect the premises and classify the lands in said district fixing the percentages and assessments of benefits and the apportionment of costs and expenses and shall complete said work within the time fixed by the boards. The qualifications of said commissioners, their classification of lands, fixing percentages and assessments of benefits and apportionment of costs and the report thereof in all details shall be governed in all respects by the provisions of subchapter I, parts 1 through 5, for districts wholly within one county.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7612;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.14]

89 Acts, ch 126, §2

CS89, §468.283

468.284 Notice and service thereof — objections.

Upon the filing of the report of the commissioners to classify lands, fix and assess benefits and apportion costs and expenses, the auditors of the several counties, acting jointly, shall cause notice to be served upon all interested parties of the time when and the place where the boards will meet and consider such report and make a final assessment of benefits and apportionment of costs, which notice shall be the same and served for the time and in the manner and all proceedings thereon shall be the same as provided in subchapter I, parts 1 through 5, in districts wholly within one county, except publication of notice as provided in section 468.15 shall be in each of the counties into which the district extends, and also except that said notice to be published in each of the several counties shall contain only the names of the owners of each tract of land or lot in the district located within the respective county in which said notice is to be published and the total amount of all proposed assessments on the lands located in each of the other counties into which the district extends, and except further that the objections not filed prior to the date of the hearing shall be filed with the boards at the time and place of such hearing.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7613;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.15]

89 Acts, ch 126, §2

CS89, §468.284

468.285 Levies — certificates and bonds.

After the amount to be assessed and levied against the several tracts of land shall have been finally determined, the several boards, acting separately, and within their own counties, shall levy and collect the taxes apportioned and levied in their respective counties. They may issue warrants, improvement certificates, or bonds for the payment of the cost of such improvement within their respective counties, with the same right of landowners to pay without interest or in installments all as provided where the district is wholly within one county.

[S13, §1989-a32; C24, 27, 31, 35, 39, §**7614;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.16]

89 Acts, ch 126, §2

CS89, §468.285

Referred to in §468.286

Payment, §468.56 et seq.

468.286 Bonds or proceeds made available.

When drainage bonds are to be issued under the provisions of section 468.285 they shall be issued at such time that they or the proceeds thereof shall be available for the use of the district at a date not later than ninety days after the actual commencement of the work on the improvement as provided in relation to districts wholly within one county.

[C24, 27, 31, 35, 39, §**7615;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.17]

89 Acts, ch 126, §2

CS89, §468.286

468.287 Supervising engineer.

At the time of finally establishing the district, the boards of the several counties, acting jointly, shall employ a competent engineer to have charge and supervision of the construction of the improvement and they shall fix the engineer's compensation and the engineer shall, before entering upon said work, give a bond running to the several counties for the use and benefit of the district in the same amounts and of like tenor and effect as is provided in districts wholly within one county. A duplicate of such bond shall be filed with the auditor of each of said counties.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7616;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.18]

89 Acts, ch 126, §2

CS89, §468.287

Bond, §468.33

468.288 Duty of engineer.

The duties of the supervising engineer shall be the same in all respects as is provided by subchapter I, parts 1 through 5, for districts wholly within one county.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7617;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.19]

89 Acts, ch 126, §2

CS89, §468.288

468.289 Notice of letting work — applicable procedure.

If the boards, acting jointly, shall establish such district, the auditors of the several counties shall immediately thereafter, acting jointly, cause notice to be given of the time and place of the meeting of the boards for letting contracts for the construction of the improvement. The notices, bids, bonds, and all other proceedings in relation to letting contracts shall be the same as provided where the district is wholly within one county, but duplicates of contractors' bonds shall be filed with the auditor of each county.

[S13, §1989-a33; C24, 27, 31, 35, 39, §**7618;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.20]

89 Acts, ch 126, §2

CS89, §468.289

468.290 Contracts.

All contracts made for engineering work and the work of constructing improvements of an intercounty district shall be made by written contract executed by the contractor and such person as may be authorized by the boards of the several counties and by joint resolution and shall specify the work to be done, the amount of compensation therefor and the times and manner of payment, all as provided in relation to districts wholly within one county.

[S13, §1989-a33; C24, 27, 31, 35, 39, §**7619;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.21]

89 Acts, ch 126, §2

CS89, §468.290

468.291 Monthly estimate — payment.

The engineer in charge of the work shall furnish the contractor a monthly statement estimating the amount of work done on each section and in each county. A duplicate copy of the statement shall be filed with the auditor of each county where the work is done. When the auditor files the statement, the auditor shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, in favor of the contractor for ninety percent of the amount due from the auditor's county. Drainage warrants, bonds, or

improvement certificates when so issued shall be in such amounts as the auditor determines, but shall not be in amounts in excess of five thousand dollars.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7620;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.22]

89 Acts, ch 126, §2

CS89, §468.291

94 Acts, ch 1051, §12; 2014 Acts, ch 1022, §2

468.292 Final settlement.

When the work to be done on any contract is completed to the satisfaction of the supervising engineer the engineer shall so report and certify to the boards of the several counties, and the auditors of the county shall fix a day to consider said report, and all the provisions shall apply in relation to objections to said report and the approval of the same and the completion of any unfinished or abandoned work as is provided in subchapter I, parts 1 through 5, relating to completion of work and final settlement in districts wholly within one county, except that, when the completed work is accepted by the joint action of the boards of supervisors of the several counties into which the district extends such acceptance shall be certified to the auditor of each county who shall draw a warrant for the contractor or give the contractor an order directing the treasurer to deliver to the contractor improvement certificates or drainage bonds, as the case may be, for the balance due from the portion of the district in such county.

[S13, §1989-a34; C24, 27, 31, 35, 39, §**7621;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.23]

89 Acts, ch 126, §2

CS89, §468.292

Referred to in §468.299

468.293 Failure of board to act.

When the establishment of a district, extending into two or more counties, is petitioned for as hereinbefore provided and one or more of such boards fails to take action thereon, the petitioners may cause notice in writing to be served upon the chairperson of each board demanding that action be taken upon the petition within twenty days from and after the service of such notice.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7622;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.24]

89 Acts, ch 126, §2

CS89, §468.293

468.294 Transfer to district court.

If such boards shall fail to take action thereon within the time named, or fail to agree, the petitioners may cause such proceedings to be transferred to the district court of any of the counties into which such proposed district extends by serving notice upon the auditors of the several counties within ten days after the expiration of said twenty days' notice, or after the failure of such boards to agree.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7623;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.25]

89 Acts, ch 126, §2

CS89, §468.294

468.295 Transcript, docket, and trial.

Within thirty days after completion of notice, the auditor shall, acting jointly, prepare and certify to the clerk of the district court a full and complete transcript of all proceedings had

in such case. The clerk of the district court shall thereupon docket the case and same shall be triable in equity at any time after the expiration of twenty days thereafter.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7624;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.26]

89 Acts, ch 126, §2

CS89, §468.295

468.296 Decree.

The court shall enter judgment and decree dismissing the case or establishing such district and may by proper orders and writs enforce the same.

[S13, §1989-a36; C24, 27, 31, 35, 39, §**7625;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.27]

89 Acts, ch 126, §2

CS89, §468.296

468.297 Law applicable.

Except as otherwise stipulated in this part the provisions and procedure set forth in subchapter I, parts 1 through 5, shall govern and apply to the formation, establishment, and conduct of every levee or drainage district extending into two or more counties, the petition therefor, the giving or publication or service of notice therein, the appointment and duties of all officers or appraisers or commissioners, the making or filing of waivers, reports, plats, profiles, recommendations, notices, contracts, and papers, the classification and apportionment and assessment of lands and all other property, the taking and hearing of appeals, the issuance and delivery of warrants, bonds and assessment certificates, the payment of taxes and assessments, the making of improvements, ditches, drains, settling basins, changes, enlargements, extensions, and repairs, the inclusion of lands, and the making or performance of every other matter or thing whatsoever relevant to or in any wise connected with such joint drainage or levee district, and the rights, privileges, and duties of all persons, landowners, officers, appellants, and courts.

[S13, §1989-a37; C24, 27, 31, 35, 39, §**7626;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §457.28]

89 Acts, ch 126, §2

CS89, §468.297

468.298 Records of intercounty districts.

A record of all proceedings of an intercounty levee or drainage district shall be maintained by the auditor of each county in which a portion of the district lies, as provided by sections 468.172 and 468.173, but the records in the office of the auditor of the county having the largest acreage in the district shall be the official records of said district.

[C71, 73, 75, 77, 79, 81, §457.29]

89 Acts, ch 126, §2

CS89, §468.298

468.299 County with largest acreage to keep funds.

When an intercounty district has been finally established and original construction completed and final settlement made with the contractor, as provided by section 468.292, the treasurer of the county having the largest acreage of the district shall be the depository for all funds of the district and the treasurer of the other counties in which the district is situated shall periodically, at least annually, pay over all district funds received within said period to the treasurer of the county with the largest acreage, except that funds payable on improvement certificates or bonds shall be disbursed to the holders of the certificates or bonds by the treasurer of the county in which the land encumbered is located.

[C71, 73, 75, 77, 79, 81, §457.30]

89 Acts, ch 126, §2

CS89, §468.299

468.300 through 468.304 Reserved.

PART 2

CONVERTING INTRACOUNTY DISTRICTS INTO INTERCOUNTY DISTRICT

Referred to in §468.345, 468.397, 468.500

468.305 Intracounty districts converted into intercounty district.

Whenever one or more drainage districts in one county outlet into a ditch, drain, or natural watercourse, which ditch, drain, or natural watercourse is the common carrying outlet for one or more drainage districts in another county, the boards of supervisors of such counties acting jointly may by resolution, and on petition of the trustees of any one of such districts or one or more landowners therein, in either case such petition to be accompanied by a bond as provided in section 468.270, must initiate proceedings for the establishment of an intercounty drainage district by appointing commissioners as provided in section 468.271 and by requiring a bond as provided in section 468.270 and by proceeding as provided by subchapter II, part 1, and all powers, duties, limitations, and provisions of this part and subchapter II, part 1, shall be applicable thereto.

[C27, 31, 35, §7626-a1; C39, §**7626.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.1]
89 Acts, ch 126, §2
CS89, §468.305

468.306 Benefited land only included.

Neither any land nor any previously organized drainage district shall be included within, or assessed for, the proposed new intercounty district unless such land or unless such previously organized district shall receive special benefits from the improvements in the proposed new intercounty district.

[C27, 31, 35, §7626-a2; C39, §**7626.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.2]
89 Acts, ch 126, §2
CS89, §468.306

468.307 Appeal by landowner.

Any landowner affected by the establishment of the new intercounty district may appeal to the district court of the county where the owner's land lies from the action of the joint boards in establishing the new district or in including the owner's land within it.

[C27, 31, 35, §7626-a3; C39, §**7626.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.3]
89 Acts, ch 126, §2
CS89, §468.307

468.308 Procedure on appeal.

The procedure for taking such appeal and for hearing and determining it shall be that provided for similar appeals in subchapter I, parts 1 through 5.

[C27, 31, 35, §7626-a4; C39, §**7626.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.4]
89 Acts, ch 126, §2
CS89, §468.308

468.309 Appeal by trustees or boards.

Trustees or boards of supervisors having charge of any previously organized district which is proposed to be included either in whole or in part within the new intercounty district may, in the same manner and under the same procedure, appeal to the district court from the action of the joint boards in establishing the new district or in including therein the previously organized district or any part thereof.

[C27, 31, 35, §7626-a5; C39, §**7626.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §458.5]
89 Acts, ch 126, §2

CS89, §468.309
2013 Acts, ch 30, §111

468.310 through 468.314 Reserved.

PART 3

DRAINAGE OR LEVEE DISTRICTS EMBRACING PART OR WHOLE OF CITY

Referred to in §331.502, 468.345, 468.397, 468.500, 468.506

468.315 Authority to include city.

A county board of supervisors has the same power to establish a drainage or levee district that includes the whole or any part of a city as the county board does to establish a district located wholly outside a city, including providing for the assessment of damages and benefits within a city. However, a county board of supervisors shall not do any of the following:

1. Establish a drainage or levee district located wholly within the corporate limits of a city, unless the city consents by resolution adopted by its city council.
2. Establish a district for sanitary sewer purposes.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7627;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.1]
89 Acts, ch 126, §2
CS89, §468.315
2004 Acts, ch 1075, §1, 2

468.316 Inclusion of city — notice.

Notice of the filing of the petition for such district and the time of hearing thereon, shall set forth the boundaries of the territory included within such city and directed to the city clerk and the owners and lienholders of the property within such boundaries without naming individuals, to be served in the same manner as notices where the district is wholly outside of such city.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7628;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.2]
89 Acts, ch 126, §2
CS89, §468.316
Service of notice, §468.15 et seq.

468.317 Assessments — notice.

When the streets, alleys, public ways, or parks or lots or parcels including railroad rights-of-way of any city, or city under special charter, so included within a levee or drainage district, will be beneficially affected by the construction of any improvement in such district, it shall be the duty of the commissioners appointed to classify and assess benefits to estimate and return in their report the percentage and assessment of benefits to such streets, alleys, public ways, and parks, or lots or parcels including railroad rights-of-way and notice thereof shall be served upon the clerk of such city, irrespective of the form of government, and upon owners of lots, parcels, and railroad rights-of-way so assessed.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7629;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.3]
89 Acts, ch 126, §2
CS89, §468.317

468.318 Objections — appeal.

The council or clerk of such city or individual owners may file objections to such percentage and assessment of benefits in the time and manner provided in case of landowners outside

such city, and they shall have the same right to appeal from the finding of the board with reference to such assessment.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7630;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.4]

89 Acts, ch 126, §2

CS89, §468.318

Objections, §468.45; appeals, §468.83 et seq.

468.319 Assessments — interest.

Such assessment as finally made shall draw interest at the same rate and from the same time as assessment against lands.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7631;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.5]

89 Acts, ch 126, §2

CS89, §468.319

468.320 Bonds, certificates, and waivers.

The board of supervisors and the city council shall have the same power in reference to issuing improvement certificates or drainage bonds and executing waivers on account of such assessment for benefits to streets, alleys, public ways, parks, and other lands as is herein conferred upon the board of supervisors in reference to assessment for benefits to highways.

[S13, §1989-a38; C24, 27, 31, 35, 39, §**7632;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.6]

89 Acts, ch 126, §2

CS89, §468.320

Certificates and bonds, §468.70 et seq.

468.321 Funding bonds.

Such cities may issue their funding bonds for the purpose of securing money to pay any assessment against it as provided by law.

[C24, 27, 31, 35, 39, §**7633;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.7]

89 Acts, ch 126, §2

CS89, §468.321

468.322 Jurisdiction relinquished.

If the board of supervisors of any county at any time finds that twenty-five percent or more of the total area of any established drainage district is located within the corporate limits of any city, that the district's drains are wholly or partially constructed of sewer tile, and that the district's drain or drains are needed or being used by the city for storm sewer or drainage purposes, the board may by resolution transfer to the city control of the entire drainage district, including the portion outside the corporate limits of the city.

[C24, 27, 31, 35, 39, §**7634;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.8]

89 Acts, ch 126, §2

CS89, §468.322

Referred to in §468.323

468.323 Request for relinquishment.

When a county board of supervisors elects to transfer control of a drainage district to a city, as provided in section 468.322, the resolution effecting the transfer shall state a time not less than thirty nor more than ninety days after adoption of the resolution when the transfer of control shall take effect. The resolution shall be certified to the governing body of the city and a copy thereof filed by the county auditor, who shall spread the same upon the records of the drainage district.

[C24, 27, 31, 35, 39, §**7635;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.9]

89 Acts, ch 126, §2

CS89, §468.323

Referred to in §468.324

468.324 Duty to accept.

It shall be the duty of the governing body of any city to accept control of and thereafter to administer a drainage district properly transferred to the city, commencing on the date specified in the resolution of the county board of supervisors certified to the governing body as provided in section 468.323, or at such later date as may be agreed to by the county board upon request of the governing body.

[C24, 27, 31, 35, 39, §**7636;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.10]
89 Acts, ch 126, §2
CS89, §468.324

468.325 Jurisdiction of municipality.

After the drainage district has been taken over by the city, it shall have complete control thereof, and may use the same for any purpose that said city through its city council deems proper and necessary for the advancement of the city or its health or welfare, and the city shall be responsible for the maintenance and upkeep of said drainage district only from and after its relinquishment by the board of supervisors to the city.

[C24, 27, 31, 35, 39, §**7637;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.11]
89 Acts, ch 126, §2
CS89, §468.325

468.326 City council to control district.

The council of any city acting under the provisions of this part shall have control, supervision and management of the district, and shall be vested with all of the powers which are now or may hereafter be conferred on the board of supervisors for the control, supervision and management of drainage districts under the laws of this state within the said district unless otherwise specifically provided.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §459.12]
89 Acts, ch 126, §2
CS89, §468.326

468.327 Trustee control.

A district formed pursuant to this part, under the control of a city council, may be placed under the control and management of a board of trustees as provided in subchapter III of this chapter. Each trustee shall be a citizen of the United States not less than eighteen years of age and a bona fide owner of benefited land in the district for which the trustee is elected. If the owner is a family farm corporation as defined by section 9H.1, subsection 9, a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

84 Acts, ch 1040, §1
C85, §459.13
89 Acts, ch 126, §2
CS89, §468.327
90 Acts, ch 1205, §14; 93 Acts, ch 126, §4

468.328 through 468.334 Reserved.

PART 4

HIGHWAY DRAINAGE DISTRICTS

Referred to in §468.3, 468.397

468.335 Establishment.

Whenever, in the opinion of the board of supervisors, it is necessary to drain any part of any public highway under its jurisdiction, and any land abutting upon or adjacent thereto, it

may proceed without petition or bond to establish a highway drainage district by proceeding in all other respects as provided in subchapter I, parts 1 through 5.

[SS15, §1989-b, -b2 – b6, -b8, -b12, -b13; C24, 27, 31, 35, 39, §**7638;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.1]

89 Acts, ch 126, §2

CS89, §468.335

468.336 Powers.

Such district, when established, shall have the powers granted to drainage and levee districts, and all parties interested shall have the same rights so far as applicable.

[SS15, §1989-b, -b2 – b6, -b8, -b12, -b13; C24, 27, 31, 35, 39, §**7639;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.2]

89 Acts, ch 126, §2

CS89, §468.336

468.337 Initiation without petition.

When the board of supervisors determines on its own action to proceed to the establishment of a highway drainage district, it shall do so by the adoption of a resolution of necessity to be placed upon its records, in which it shall describe in a general way the portion of any highway or highways to be included in such district, together with the description of abutting or adjacent land and railroad rights-of-way to be included in such district and made subject to assessment for such improvement.

[SS15, §1989-b; C24, 27, 31, 35, 39, §**7640;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.3]

89 Acts, ch 126, §2

CS89, §468.337

468.338 Engineer.

The board shall appoint a competent engineer for the district. If the county engineer is appointed, the engineer shall serve without additional compensation. In no case shall the county engineer act as a member of the assessment commission in a drainage district provided for in this part.

[SS15, §1989-b, -b11; C24, 27, 31, 35, 39, §**7641;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.4]

89 Acts, ch 126, §2

CS89, §468.338

468.339 Survey and report.

The engineer shall make a survey of the proposed district and report the same to the board, being governed in all respects as provided by sections 468.11 and 468.12 and designate particularly any portion of the secondary road system, or the primary road system, or any portion of either or both of said systems, as well as all lands adjoining and adjacent thereto, including lands and rights-of-way of railway companies which in the engineer's judgment will be benefited by drainage of highways in such district, and which should be embraced within the boundaries of such district.

[SS15, §1989-b1; C24, 27, 31, 35, 39, §**7642;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.5]

89 Acts, ch 126, §2

CS89, §468.339

468.340 Assessment — report.

The commission for assessment of benefits and classification of the property assessed shall determine and report:

1. The separate amount which shall be paid by the county on account of the secondary road system.

2. The separate amount which shall be paid by the state on account of the primary road system.

3. The amounts which shall be assessed against the right-of-way or other real estate of each railway company within such district.

4. The amounts which shall be assessed against each forty-acre tract or less within such district.

[SS15, §1989-b5; C24, 27, 31, 35, 39, §**7643;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.6]

89 Acts, ch 126, §2

CS89, §468.340

468.341 Advanced payments.

The board on construction of the improvement may advance that portion to be collected by special assessment, the amount so advanced to be replaced as the first special assessments are collected. The board may in lieu of making advancements, issue warrants to be known as "Drainage Warrants", the warrants to bear interest at a rate not exceeding that permitted by chapter 74A payable annually from the date of issue and to be paid out of the special assessments levied, when they are collected.

[SS15, §1989-b7; C24, 27, 31, 35, 39, §**7644;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.7]

83 Acts, ch 123, §186, 209; 89 Acts, ch 126, §2

CS89, §468.341

Referred to in §331.429

468.342 Payment from road funds.

The amount fixed by the final order of the board of supervisors to be paid:

1. On account of the primary road system, shall be payable by the state department of transportation on due certification of the amount by the county treasurer to the state department of transportation out of the primary road fund.

2. On account of the secondary road system, is payable from county funds.

[SS15, §1989-b5; C24, 27, 31, 35, 39, §**7645;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.8]

83 Acts, ch 123, §187, 209; 89 Acts, ch 126, §2

CS89, §468.342

Referred to in §331.429

468.343 Dismissal — costs.

If such proceedings are dismissed or said improvement abandoned, all costs of such proceedings shall be paid out of the fund of the road system for the benefit of which said proceeding was initiated.

[SS15, §1989-b10; C24, 27, 31, 35, 39, §**7646;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.9]

89 Acts, ch 126, §2

CS89, §468.343

468.344 Condemnation of right-of-way.

When in the judgment of the board of supervisors, it is inadvisable to establish a drainage district but necessary to acquire right-of-way through private lands for the construction of ditches or drains as outlets for the drainage of highways, the board of supervisors may cause such right-of-way to be condemned by proceedings in the manner required for the exercise of the right of eminent domain as for works of internal improvement, except that no attorney

fee shall be taxed, and pay the costs and expense of such condemnation from either or both of said secondary road funds.

[S13, §1989-a43; C24, 27, 31, 35, 39, §**7647;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.10]

89 Acts, ch 126, §2

CS89, §468.344

Condemnation procedure, chapter 6B

468.345 Laws applicable.

All proceedings for the construction and maintenance of highway drainage districts except as provided for in this chapter shall be as provided for in subchapter I, parts 1 through 5, and subchapter II, parts 1 through 3.

[C24, 27, 31, 35, 39, §**7648;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.11]

83 Acts, ch 101, §98; 89 Acts, ch 126, §2

CS89, §468.345

468.346 Removal of trees from highway.

When the roots of trees located within a highway obstruct the ditches or tile drains of such highway, the board of supervisors shall remove such trees from highways, except shade or ornamental trees adjacent to a dwelling house or other farm buildings or feedlots, or any tree or trees for windbreaks upon cultivated lands consisting of sandy or other light soils.

[C24, 27, 31, 35, 39, §**7649;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.12]

89 Acts, ch 126, §2

CS89, §468.346

468.347 Trees outside of highways.

When the roots of trees and hedges growing outside a highway obstruct the ditches or tile drains of any highway, the board of supervisors may acquire the right to destroy such trees in the manner provided for taking private property for public use. Ornamental trees adjacent to any dwelling, orchard trees and trees used as windbreaks for a dwelling house, outbuildings, barn or feedlots, shall be exempt from the provisions of this section.

[C24, 27, 31, 35, 39, §**7650;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §460.13]

89 Acts, ch 126, §2

CS89, §468.347

Condemnation procedure, chapter 6B

Similar provision, §468.139

468.348 through 468.354 Reserved.

PART 5

DRAINAGE AND LEVEE DISTRICTS WITH PUMPING STATIONS

Referred to in §331.552, 350.4, 468.3, 468.397

468.355 Authorization.

The board of supervisors of any county or counties in which a drainage or levee district has been organized as by law provided, may establish and maintain a pumping station or stations, when and where the same may be necessary to secure a proper outlet for the drainage of the land comprising the district or any portion thereof, and the cost of construction and maintenance of said pumping station or stations shall be levied upon and collected from the

lands in the district benefited by such pumping station or stations, in the same manner as provided for in the construction and maintenance of said districts.

[S13, §1989-a49, -a52; C24, 27, 31, 35, 39, §**7651;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.1]

89 Acts, ch 126, §2

CS89, §468.355

468.356 Petition — procedure — emergency pumping station.

1. A pumping station shall not be established or maintained unless a petition shall be presented to the board signed by not less than one-third of the owners of lands benefited by the establishment of a pumping station. The lands benefited by a pumping station shall be determined by the board on the petition and report of the engineer, and such other evidence as the board may hear. No additional land shall be taken into any such drainage district after the improvements in the district have been substantially completed, unless one-third of the owners of the land proposed to be annexed have petitioned or consented in writing to the annexation.

2. However, the board of supervisors may install a temporary portable pumping station to remove flood waters in an emergency. The board of supervisors shall levy and collect the cost of the purchase, operation, and maintenance of the pumping station from the lands in the district benefited by the pumping station in the same manner as provided for in the construction and maintenance of a drainage or levee district. For the purpose of this subsection, an emergency occurs when ponded or standing water does not freely flow to the outlet ditch and the capacity of the outlet ditch is not fully used.

[S13, §1989-a49; C24, 27, 31, 35, 39, §**7652;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.2]

85 Acts, ch 166, §1; 89 Acts, ch 126, §2

CS89, §468.356

2019 Acts, ch 59, §162

Section amended

468.357 Additional pumping station.

After the establishment of a drainage district, including a pumping plant, and before the completion of the improvement therein, the board or boards may, if deemed necessary to fully accomplish the purposes of said improvement, by resolution authorize the establishment and maintenance of such additional pumping station or stations as the engineer may recommend, and if a petition is filed by one-third of the owners of land within such district asking the establishment of such pumping plant or plants, the board or boards must direct the engineer to investigate the advisability of the establishment thereof and upon the report of said engineer the board or boards shall determine whether such additional pumping plant or plants shall be established.

[C24, 27, 31, 35, 39, §**7653;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.3]

89 Acts, ch 126, §2

CS89, §468.357

468.358 Transfer of pumps.

If the board or boards determine that additional pumping plant or plants shall be established and maintained, a pump or pumps may be removed from any pumping station already established and may be installed in any such additional plant, if such removal can be made without injuring the efficient operation of the plant from which removed.

[C24, 27, 31, 35, 39, §**7654;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.4]

89 Acts, ch 126, §2

CS89, §468.358

468.359 Costs.

1. The cost of the establishment of such additional pumping plant or plants shall be

paid in the same manner and upon the same basis as is provided for the cost of the original improvement.

2. The board of supervisors or the board of trustees, as the case may be, where the district has been established and the original improvement constructed, may proceed with the further improvement of the original project in the manner provided in section 468.126, provided, however, that the cost of such further improvement does not exceed twenty-five percent of the sum of the original cost to the district and the cost of subsequent improvements, including all federal contributions.

3. For the purpose of this section the word *"improvement"* shall include the construction, reconstruction, enlargement and relocation of levees and acquisition of rights-of-way therefor.

[C24, 27, 31, 35, 39, §**7655;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.5]
89 Acts, ch 126, §2
CS89, §468.359
2011 Acts, ch 25, §124

468.360 Dividing districts.

When a drainage district has been created and more than one pumping plant is established therein, the board or boards of supervisors may, and upon petition of one-third of the owners of land within said district shall, appoint an engineer to investigate the advisability of dividing said district into two or more districts so as to include at least one pumping plant in each of such districts.

[C24, 27, 31, 35, 39, §**7656;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.6]
89 Acts, ch 126, §2
CS89, §468.360

468.361 Notice — publication.

If the engineer recommends such division the board of supervisors shall fix a time for hearing upon the question of such division and shall publish notice directed to all whom it may concern of the time and place of such hearing, for the time and in the manner as is required for the publication of notice of the establishment of said district, except that said notice need not name the owners and lienholders.

[C24, 27, 31, 35, 39, §**7657;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.7]
89 Acts, ch 126, §2
CS89, §468.361

468.362 Hearing — jurisdiction of divided districts.

At the time fixed, the board shall determine the advisability of such division and shall make such order with reference thereto as shall be deemed proper, having consideration for the interests of all concerned. If such division is made, the board or boards having jurisdiction of the original district shall retain jurisdiction of the new districts created by such division for the purpose of collecting assessments theretofore made and making such additional assessments as are necessary to pay the obligations theretofore contracted. For all other purposes, each division shall be under the jurisdiction of the board or boards of supervisors which would have had jurisdiction thereof if originally established as an independent district.

[C24, 27, 31, 35, 39, §**7658;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.8]
89 Acts, ch 126, §2
CS89, §468.362

468.363 Division in other cases.

After a levee or drainage district operating a pumping plant shall have been established and the improvement constructed and accepted, if it shall become apparent that the lands can be more effectually drained, managed, or controlled by a division thereof, then the said

board or boards, or trustees, may, and if the district is divided by a stream, they shall, divide the district.

[C24, 27, 31, 35, 39, §**7659;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.9]
89 Acts, ch 126, §2
CS89, §468.363

468.364 Assessments not affected — maintenance tax.

Each district after the division shall be conducted as though established originally as a district. Nothing herein shall affect the legality or collection of any assessments levied before the division; but the maintenance tax, if any, shall be divided in proportion to the amount paid in by each district.

[C24, 27, 31, 35, 39, §**7660;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.10]
89 Acts, ch 126, §2
CS89, §468.364

468.365 Election and apportionment of trustees.

If said district, before the division was made, was under the control and management of trustees, then each trustee shall continue to serve in the district in which the trustee is situated, and other trustees shall be elected in each new district. The election for said new trustees shall be called by the old board of trustees in each district within ten days after said division is made and shall be conducted as provided for the election of trustees.

[C24, 27, 31, 35, 39, §**7661;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.11]
89 Acts, ch 126, §2
CS89, §468.365
Election of trustees and management of districts, subchapter III

468.366 Settling basin — condemnation.

If, before a district operating a pumping plant is completed and accepted, it appears that portions of the lands within said district are wet or nonproductive by reason of the floods or overflow waters from one or more streams running into, through, or along said district and that said district or some other district of which such district shall have formed a part, shall have provided a settling basin to care for the said floods and overflow waters of said stream or watercourse, but no channel to said settling basin has been provided, said board or boards are hereby empowered to lease, buy, or condemn the necessary lands within or without the district for such channel. Proceedings to condemn shall be as provided in chapter 6B for the exercise of the right of eminent domain.

[C24, 27, 31, 35, 39, §**7662;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.12]
89 Acts, ch 126, §2
CS89, §468.366
2006 Acts, 1st Ex, ch 1001, §46, 49

468.367 Funding bonds.

When the owners of ten percent of the land in a drainage or levee district having and operating a pumping station shall petition the board of supervisors to extend the time of payment of the taxes assessed against the lands within said district for a period not exceeding twenty years, under such rules and regulations as said board may direct, the interest on such assessments to be paid annually the same as other taxes levied against the property, not less than one-twentieth of the principal of said extended tax to be paid each year until the entire tax is paid, and the lien of such tax to continue until fully paid, the board of supervisors may settle, adjust, renew, or extend the legal indebtedness of such district as shown by the assessments levied against the lands therein whether evidenced by certificates, warrants, bonds, or judgments by refunding all such indebtedness and issuing coupon bonds

therefor when such indebtedness amounts to one thousand dollars or upwards, but for no other purpose.

[C24, 27, 31, 35, 39, §**7663;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.13]
89 Acts, ch 126, §2
CS89, §468.367
Referred to in §468.80
Refunding bonds, subchapter IV, part 1

468.368 Form of bonds.

Such bonds shall be issued in sums of not less than one hundred dollars or more than one thousand dollars each, running not more than twenty years, bearing interest not exceeding that permitted by chapter 74A, payable annually or semiannually, and shall be substantially in the form provided by law for funding bonds issued for drainage purposes.

[C24, 27, 31, 35, 39, §**7664;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.14]
89 Acts, ch 126, §2
CS89, §468.368
Form of bond, §468.75

468.369 Formal execution.

Such bonds shall be numbered consecutively, signed by the chairperson of the board of supervisors, attested by the county auditor. The interest coupons attached thereto shall be executed in the same manner.

[C24, 27, 31, 35, 39, §**7665;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.15]
89 Acts, ch 126, §2
CS89, §468.369

468.370 Resolution — requisites — record.

All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors, which shall specify the amount authorized to be issued, the purpose for which issued, the rate of interest they shall bear and whether payable annually or semiannually, the place where the principal and interest shall be payable and when it becomes due, and such other provisions not inconsistent with law in reference thereto as the board of supervisors shall think proper, which resolution shall be entered of record upon the minutes of the proceedings of the said board and a complete copy thereof printed on the back of each bond, which resolution shall constitute a contract between the drainage district and the purchasers or holders of said bonds.

[C24, 27, 31, 35, 39, §**7666;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.16]
89 Acts, ch 126, §2
CS89, §468.370

468.371 Registration.

When bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The county treasurer shall register the same in a book provided for that purpose, which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of debt were received therefor, which record shall at all times be open to the inspection of the owners of property within the district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this .....
day of ..... (month), ... (year).
.....
Treasurer of the County of
.....

[C24, 27, 31, 35, 39, §**7667;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.17]
89 Acts, ch 126, §2

CS89, §468.371
2000 Acts, ch 1058, §56

468.372 Liability of treasurer — reports.

The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board of supervisors, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.

[C24, 27, 31, 35, 39, §**7668;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.18]
89 Acts, ch 126, §2
CS89, §468.372

468.373 Sale — application of proceeds.

The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for a legal indebtedness of the said district evidenced by bonds, warrants, or judgments outstanding at the date of the passage of the resolution authorizing the issue thereof, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued at the date of sale or exchange. After registration the treasurer shall deliver said bonds to the purchaser thereof and when exchanged for indebtedness of said district shall at once cancel all warrants or bonds or secure proper credits therefor on judgments.

[C24, 27, 31, 35, 39, §**7669;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.19]
89 Acts, ch 126, §2
CS89, §468.373

468.374 Levy.

Drainage districts issuing funding or refunding bonds under this part shall levy taxes for the payment of the principal and interest thereof, where there has not been a prior levy covering same, in accordance with the provisions of the law relating to taxation.

[C24, 27, 31, 35, 39, §**7670;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.20]
89 Acts, ch 126, §2
CS89, §468.374

468.375 Refunding bonds.

Refunding bonds for the purposes set out in this part may be issued to pay off and take up bonds issued in payment for drainage improvements under prior laws or to refund any part thereof. Bonds thus issued shall substantially conform to the provisions of the law relating to drainage bonds and the face amount thereof shall be limited to the amount of the unpaid assessments, with interest thereon, applicable to the payment of the bonds so taken up.

[C24, 27, 31, 35, 39, §**7671;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.21]
89 Acts, ch 126, §2
CS89, §468.375
2016 Acts, ch 1073, §135

468.376 Funds available to pay bonds.

1. When refunding bonds shall be issued to pay for drainage improvements under the provisions of this part, all special assessments, taxes, and sinking funds applicable to the payment of such bonds previously issued shall be applicable in the same manner and the same extent to the payment of the refunding bonds issued under this part, and all the powers and duties to levy and collect special assessments and taxes or create liens upon property shall continue until all refunding bonds shall be paid.

2. The drainage district shall collect the special assessments out of which the said bonds are payable and hold the special assessments separate and apart in trust for the payment of

the refunding bonds but the provisions of this part shall not apply to assessments or bonds adjudicated to be void.

[C24, 27, 31, 35, 39, §**7672;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.22]
89 Acts, ch 126, §2
CS89, §468.376
2019 Acts, ch 59, §163
Section amended

468.377 Limitation of actions.

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

[C24, 27, 31, 35, 39, §**7673;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.23]
89 Acts, ch 126, §2
CS89, §468.377

468.378 Bankruptcy proceedings.

All drainage districts with pumping plant and levee, which have power to incur indebtedness, through action of their own governing bodies are hereby authorized to proceed under and take advantage of all laws enacted by the Congress of the United States under the federal bankruptcy powers, which laws have for their object the relief of municipal indebtedness, including 48 Stat. 345, entitled "An Act To Amend An Act Entitled 'An Act To Establish A Uniform System Of Bankruptcy Throughout The United States', Approved July 1, 1898, And Acts Amendatory Thereof And Supplementary Thereto", approved May 24, 1934, and the officials and governing bodies of such drainage, pumping plant, and levee districts are authorized to adopt all proceedings and to do any and all acts necessary or convenient to fully avail such drainage, pumping plant, and levee districts of the provisions of such Acts of Congress.

[C35, §7673-g1; C39, §**7673.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §461.24]
89 Acts, ch 126, §2
CS89, §468.378
2006 Acts, ch 1010, §122

468.379 Part applicable to districts with pumping stations.

The provisions of this part so far as applicable shall apply to all levee districts maintaining levees for the protection of any drainage district or districts having pumping stations.

[C58, 62, 66, 71, 73, 75, 77, 79, 81, §461.25]
89 Acts, ch 126, §2
CS89, §468.379

468.380 Construction near levee prohibited.

No person, firm or corporation shall hereafter erect, alter, or maintain any building or other structure, except necessary public utility structures, or construct, alter, or maintain any ditch, or remove any earth within three hundred feet of the center line of any levee maintained by a drainage or levee district with pumping stations without first securing permission to so do from the governing board of said drainage or levee district with pumping stations. Such permission may be granted at any regular meeting thereof, and after written application is made therefor upon the form prescribed by said governing board.

[C62, 66, 71, 73, 75, 77, 79, 81, §461.26]
89 Acts, ch 126, §2
CS89, §468.380

468.381 Penalty.

Every person who shall violate any provisions of this part shall be guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, and in default of payment thereof, by imprisonment in the county jail for not more than thirty days.

[C62, 66, 71, 73, 75, 77, 79, 81, §461.27]
89 Acts, ch 126, §2
CS89, §468.381

468.382 Action to restrain or abate.

In the event that any building or other structure, or any ditch is constructed, altered or maintained, or any earth removed in violation of any provisions of this part, the governing board of said drainage or levee district with pumping stations maintaining said levee, may institute an appropriate action or proceeding to prevent such unlawful construction, alteration, or maintenance, or earth removal and to restrain, correct, or abate such violation, and may by petition duly verified, setting forth the facts, apply to the district court for an order enjoining all persons, firms or corporations from such construction, alteration, maintenance, or earth removal, until the entry of the final judgment or order.

[C62, 66, 71, 73, 75, 77, 79, 81, §461.28]
89 Acts, ch 126, §2
CS89, §468.382

468.383 Liability for damage.

In addition to all other penalties contained herein, any person, firm or corporation who shall construct, alter or maintain any building, other structure, or any ditch, or remove earth, in violation of this part, shall be liable to the drainage or levee district with pumping stations maintaining said levee, for all damage sustained by the drainage or levee district resulting from the violation, and in the event of flood, or other emergency so declared by resolution of the governing body, any building or other structure, or ditch so constructed without permission of the governing board, as required herein, and within three hundred feet of the center line of any levee, may be removed, or the ditch filled in, without prior notice thereof to the owner.

[C62, 66, 71, 73, 75, 77, 79, 81, §461.29]
89 Acts, ch 126, §2
CS89, §468.383

468.384 through 468.389 Reserved.

PART 6

DRAINAGE DISTRICTS IN CONNECTION WITH UNITED STATES LEVEES

Referred to in §331.502, 331.552, 350.4, 468.3

468.390 United States levees — cooperation of board.

In any case where the United States has built or shall build a levee along or near the bank of a navigable stream forming a part of the boundary of this state, the board of supervisors of any county through which the same may pass shall have the power to aid in procuring the right-of-way for and maintaining said levee, and providing a system of internal drainage made necessary or advisable by the construction thereof. Such improvement shall be presumed to be conducive to the public health, convenience, welfare, or utility.

[C97, §1975; C24, 27, 31, 35, 39, §**7744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.1]
89 Acts, ch 126, §2
CS89, §468.390
Referred to in §468.391, 468.396

468.391 Manner of cooperation.

Any United States government levee under the conditions mentioned in section 468.390 may be taken into consideration by the board as a part of the plan of any levee or drainage district and improvements therein, and such board may, by agreement with the proper authorities of the United States government, provide for payment of such just and equitable portion of the costs of procuring the right-of-way and maintenance of such levee as shall be conducive to the public welfare, health, convenience, or utility.

[C97, §1975; C24, 27, 31, 35, 39, §**7745;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.2]
89 Acts, ch 126, §2
CS89, §468.391
Referred to in §468.396

468.392 Report of engineer — payment authorized.

In the proceedings to establish such a district the engineer shall set forth in the engineer's report, separately from other items, the amount of the cost for the right-of-way of such levee, of constructing and maintaining the same; and if the plan is approved and the district finally established in connection with such levee, the board shall make a record of any such cooperative arrangement and may use such part of the funds of the district as may be necessary to pay the amount so agreed upon toward the right-of-way and maintenance of such levee.

[C97, §1976; C24, 27, 31, 35, 39, §**7746;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.3]
89 Acts, ch 126, §2
CS89, §468.392
Referred to in §468.396

468.393 Costs assessed.

If said district is established, the entire costs and expenses incurred under this part shall be assessed against and collected from the lands lying within such district, by the levy of a rate upon the assessable value of the land and improvements within such district, sufficient to raise the required sum; provided the board may, in their discretion, classify the land within such district and graduate the tax thereon, as provided in subchapter I.

[C97, §1982; S13, §1982; C24, 27, 31, 35, 39, §**7747;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.4]
89 Acts, ch 126, §2
CS89, §468.393
Referred to in §468.395, 468.396

468.394 Annual installments.

If the proposed improvement is the maintenance of a levee, the amount collected in any one year shall not exceed three dollars and thirty-seven and one-half cents per thousand dollars of the assessment valuation, which said assessment shall be levied at a level rate on the assessable value of the said lands, improvements, easements, and railroads within the district. If the amount necessary to pay for the improvement exceeds said sum, it shall be levied and collected in annual installments of twenty or less. For all other improvements, the board shall levy a rate sufficient to pay for the same, and may, at their discretion, make the same payable in annual installments of twenty or less.

[C97, §1984; C24, 27, 31, 35, 39, §**7748;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.5]
89 Acts, ch 126, §2
CS89, §468.394
Referred to in §468.395, 468.396

468.395 Collection of tax.

The assessment required under sections 468.393 and 468.394 shall be made by the board of supervisors at the time of levying general taxes, after the work has been authorized, and the assessment shall be entered on the records of the board of supervisors, then entered on the tax books by the county auditor as drainage taxes, and shall be collected by the county treasurer at the same time, in the same manner, and with the same interest, as general taxes. If the

assessment is not paid the treasurer shall sell all lands upon which the assessment remains unpaid, at the same time, and in the same manner, as is now by law provided for the sale of lands for delinquent taxes, including all steps up to the execution and delivery of the tax deed. The landowners shall take notice of and pay the assessments without other or further notice than as is provided for in this part. The funds realized from the assessments shall constitute the drainage fund, as contemplated in this part, and shall be disbursed on warrants drawn against that fund by the county auditor, on the order of the board of supervisors.

[C97, §1983; C24, 27, 31, 35, 39, §**7749;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.6]
89 Acts, ch 126, §2
CS89, §468.395
92 Acts, ch 1016, §38
Referred to in §468.396

468.396 Cost of maintaining.

The board of supervisors shall have the right and power to keep and maintain any such levee, ditches, drains, or system of drainage, either in whole or in part, established under sections 468.390 through 468.395, as may in their judgment be required, and to levy the expense thereof upon the real estate within such drainage district as herein provided for, and collect and expend the same; provided, however, that no such work which shall impose a tax exceeding three dollars and thirty-seven and one-half cents per thousand dollars on the assessable value of the lands and improvements within the district shall be authorized by them, unless the same is first petitioned for and authorized in substantially the manner required by this part for the inauguration of new work except that if such work is of the kinds contemplated by section 468.126, and the cost thereof is within the limitations of said section, or is of the kinds contemplated by section 468.188, and the cost thereof is within the limitations of said section, then the provisions of section 468.126 or section 468.188 shall supersede the limitations of this section.

[C97, §1986; C24, 27, 31, 35, 39, §**7750;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.7]
89 Acts, ch 126, §2
CS89, §468.396

468.397 Laws applicable.

In the establishment and maintenance of levee and drainage districts in cooperation with the United States as in this part provided, all the proceedings in the filing and the form and substance of the petition, assessment of damages, appointment of an engineer, the engineer's surveys, plats, profiles, and report, notice of hearings, filing of claims and objections, hearings, appointment of commissioners to classify lands, assess benefits, and apportion costs and expenses, report, notice and hearing on the report, the appointment of a supervising engineer, the engineer's duties, the letting of work and making contracts, payment for work, levy and collection of drainage or levee assessments and taxes, the issue of improvement certificates and drainage or levee bonds, the taking of appeals and the manner of trial of appeals, and all other proceedings relating to the district shall be as provided in subchapter I, subchapter II, parts 1 through 5, subchapter III, subchapter IV, parts 1 and 2, and subchapter V except as otherwise in this part provided.

[C97, §1976 – 1989; S13, §1976, 1977, 1979, 1981, 1982, 1984, 1985, 1985-a, 1986, 1989; C24, 27, 31, 35, 39, §**7751;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §466.8]
83 Acts, ch 101, §101; 89 Acts, ch 126, §2
CS89, §468.397

468.398 and 468.399 Reserved.

PART 7

INTERSTATE DRAINAGE DISTRICTS

468.400 Cooperation — procedure.

When proceedings for the drainage of lands bordering upon the state line are had and the total cost of constructing the improvement in this state, including all damage, has been ascertained, and the engineer in charge, before the final establishment of the district, reports that the establishment and construction of such improvement ought to be jointly done with like proceedings for the drainage of lands in the same drainage area in such an adjoining state and that drainage proceedings are pending in such state for the drainage of such lands, the said authorities of this state may enter an order continuing the hearing on the establishment of such district to a fixed date, of which all parties shall take notice.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7752;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.1]

89 Acts, ch 126, §2

CS89, §468.400

468.401 Agreement as to costs.

The board shall have power, when the total cost, including damages, of constructing the improvement in such other state has been ascertained by the authorities of such other state, to enter into an agreement as to the separate amounts which the property owners of each state should in equity pay toward the construction of the joint undertaking. When such amount is thus determined, the board or boards having jurisdiction in this state shall enter the same in the minutes of their proceedings and shall proceed therewith as though such amount to be paid by the portion of the district in this state had been originally determined by them as the cost of constructing the improvement in this state.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7753;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.2]

89 Acts, ch 126, §2

CS89, §468.401

468.402 Contracts let by joint agreement.

When the bids for construction are opened, unless the construction work on each side of the line can go forward independently, no contract shall be let by the authorities in this state, unless the acceptance of a bid or bids for the construction of the whole project is first jointly agreed upon by the authorities of both states.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7754;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.3]

89 Acts, ch 126, §2

CS89, §468.402

468.403 Separate contracts.

The contract or contracts for the construction of that portion of the improvement within this state shall be entirely distinct and separate from the contract or contracts let by the authorities of the neighboring state; but the aggregate amount of the contract or contracts for the construction of the work within this state shall not exceed an amount equal to the amount of the benefits assessed in this state including damages and other expenses.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7755;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.4]

89 Acts, ch 126, §2

CS89, §468.403

468.404 Conditions precedent.

No contract shall be let until the improvement shall be finally established in both states, and after the final adjustment in both states of damages and benefits. No bonds shall be issued

until all litigation in both states arising out of said proceedings has been finally terminated by actual trial or agreements, or the expiration of all right of appeal.

[SS15, §1989-a78; C24, 27, 31, 35, 39, §**7756;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.5]

89 Acts, ch 126, §2

CS89, §468.404

468.405 Assessments, bonds, and costs — limitation.

All proceedings except as provided in this part in relation to the establishment, construction, and management of interstate drainage districts shall be as provided for the establishment and construction of districts wholly within this state as provided in subchapter I. All such proceedings shall relate only to the lands of such district which are located wholly within this state. Boards having jurisdiction in this state may make just and equitable agreements with like authorities in such adjoining state for the joint management, repair, and maintenance of the entire improvement, after the establishment and completed construction thereof.

[SS15, §1989-a77; C24, 27, 31, 35, 39, §**7757;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §467.6]

89 Acts, ch 126, §2

CS89, §468.405

468.406 through 468.499 Reserved.

SUBCHAPTER III

MANAGEMENT OF DRAINAGE OR LEVEE DISTRICTS BY TRUSTEES

Referred to in §331.382, 331.502, 331.552, 468.184, 468.215, 468.216, 468.230, 468.259, 468.327, 468.397

PART 1

AUTHORIZATION OF TRUSTEES

468.500 Trustees authorized.

1. *a.* In the manner provided in this subchapter, any drainage or levee district in which the original construction has been completed and paid for by bond issue or otherwise, may be placed under the control and management of a board of trustees to be elected by the persons owning land in the district that has been assessed for benefits.

b. A drainage or levee district under the control of a city council as provided in subchapter II, part 3, may be placed under the control and management of a board of trustees by the city council following the procedures provided in subchapter II, part 2, for the county board of supervisors.

2. An overlying drainage or levee district that controls and manages improvements and rights-of-way surrendered by a board of supervisors or board of trustees of a contained district, in accordance with sections 468.256 through 468.259, shall continue to be controlled and managed by a board of trustees as provided in subchapter II, part 3.

[SS15, §1989-a52a, -a61; C24, 27, 31, 35, 39, §**7674;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.1]

83 Acts, ch 163, §1; 89 Acts, ch 126, §2

CS89, §468.500

2013 Acts, ch 86, §2, 6; 2014 Acts, ch 1026, §107, 108

PART 2

TRUSTEES — GENERAL PROVISIONS

Referred to in §468.539

468.501 Petition.

A petition shall be filed in the office of the auditor signed by a majority of the persons including corporations owning land within the district assessed for benefits.

[S13, §1989-a52b; SS15, §1989-a52a; C24, 27, 31, 35, 39, §**7675;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.2]

89 Acts, ch 126, §2

CS89, §468.501

Referred to in §468.539

468.502 Election.

The board, at the next regular, adjourned, or special session shall canvass the petition and if signed by the requisite number of landowners, it shall order an election to be held at some convenient place in the district not less than forty nor more than sixty days from the date of such order, for the election of three trustees of such district. It shall appoint from the freeholders of the district who reside in the county or counties, three judges and two clerks of election. It shall not be mandatory for the county commissioner of elections to conduct elections held pursuant to this subchapter, but they shall be conducted in accordance with the provisions of chapter 49 where not in conflict with this subchapter.

[S13, §1989-a52b; SS15, §1989-a63; C24, 27, 31, 35, 39, §**7676;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.3]

89 Acts, ch 126, §2

CS89, §468.502

Referred to in §468.503, 468.539

468.503 Intercounty district.

If the district extends into two or more counties, a duplicate of the petition shall be filed in the office of the auditor of each county. The boards of supervisors shall, within thirty days after the filing of such petition, meet in joint session and canvass the same, and if found to be signed by a majority of the owners of land in the district assessed for benefits, they shall by joint action order such election and appoint judges and clerks of election as provided in section 468.502.

[S13, §1989-a52b; SS15, §1989-a62, -a63; C24, 27, 31, 35, 39, §**7677;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.4]

89 Acts, ch 126, §2

CS89, §468.503

Referred to in §468.539

468.504 Election districts.

When a petition has been filed for the election of trustees to manage a district containing twenty thousand acres or more, the board, or, if the district extends into more than one county, the boards of the counties by joint action, shall, before the election, divide the district into three election districts for the purpose of securing a proper distribution of trustees in the district, and the division shall be so made that each election district will have substantially equal voting power and acreage, as nearly as may be. After the division is made there shall be elected one trustee for each of the election districts, but at the election all the qualified voters for the entire district shall be entitled to vote for each trustee. The division here provided for shall be for the purposes only of a proper distribution of trustees in the district and shall not otherwise affect the district or its management and control.

[C24, 27, 31, 35, 39, §**7678;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.5]

89 Acts, ch 126, §2

CS89, §468.504
2001 Acts, ch 89, §1
Referred to in §468.505, 468.539

468.505 Record and plat of election districts.

At the time of making a division into election districts, as provided in section 468.504, the board or boards shall designate by congressional divisions, subdivisions, metes and bounds, or other intelligible description, the lands embraced in each election district, and the auditor, or auditors if more than one county shall make a plat thereof in the drainage record of the district indicating thereon the boundary lines of each election district, numbering them, one, two, and three, respectively.

[C24, 27, 31, 35, 39, §**7679;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.6]
89 Acts, ch 126, §2
CS89, §468.505
Referred to in §468.539

468.506 Eligibility of trustees.

Each trustee shall be a citizen of the United States not less than eighteen years of age, and one of the following:

1. The bona fide owner of agricultural land in the election district for which the trustee is elected, and a resident of the county in which that district is located or of a county which is contiguous to or corners on that county.

2. The bona fide owner of nonagricultural land in the election district for which the trustee is elected, and a resident of that district. This subsection applies only when the election district is wholly within the corporate limits of a city.

3. An individual who has a legal or equitable interest in an entity that holds an interest in agricultural land located in the election district for which the trustee is elected, including as a bona fide owner. In addition, all of the following must apply:

a. The entity must be a general partnership formed under section 486A.202 or a person who holds the agricultural land under chapter 9H as a family farm corporation, authorized corporation, family farm limited liability company, authorized limited liability company, family farm limited partnership, limited partnership, family farm unincorporated nonprofit association, authorized unincorporated nonprofit association, family trust, or authorized trust.

b. The individual must hold the legal or equitable interest in the entity described in paragraph *"a"* as a partner in the general partnership, shareholder in the corporation, member in the limited liability company, general or limited partner in the limited partnership, member in the unincorporated nonprofit association, or beneficiary in the trust.

c. The individual must be a resident of the county in which the election district is located or of a county that is contiguous to or corners on that county.

4. *a.* A bona fide owner of benefited land in a drainage or levee district in which eighty-five percent of its acreage is situated within the corporate limits of a city and has been under the control of a city under subchapter II, part 3.

b. (1) For nonagricultural land, if the bona fide owner is a business corporation organized and existing under chapter 490 or 491, or a partnership, a stockholder or officer authorized by the corporation or a general partner may be elected as a trustee of the district.

(2) For agricultural land, if the bona fide owner is an entity described in subsection 3, paragraph "*a*", an individual holding a legal or equitable interest in that entity may be elected as trustee.

[C24, 27, 31, 35, 39, §**7680;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.7]
83 Acts, ch 163, §2; 89 Acts, ch 126, §2
CS89, §468.506
90 Acts, ch 1205, §15; 93 Acts, ch 126, §5; 2014 Acts, ch 1064, §1, 2

468.507 Notice of election.

The board, or, if in more than one county, the boards acting jointly, shall cause notice of said election to be given, setting forth the time and place of holding the same and the hours

when the polls will open and close. Such notice shall be published for two consecutive weeks in a newspaper in which the official proceedings of the board are published in the county, or if the district extends into more than one county, then in such newspaper of each county. The last of such publications shall not be less than ten days before the date of said election.

[S13, §1989-a52b; SS15, §1989-a63; C24, 27, 31, 35, 39, §**7681;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.8]

89 Acts, ch 126, §2

CS89, §468.507

468.508 Assessment to determine right to vote.

Before any election is held, the election board shall obtain from the county auditor or auditors a certified copy of so much of the record of the establishment of such district as will show the lands embraced therein, the assessment and classification of each tract, and the name of the person against whom the same was assessed for benefits, and the present record owner, and such certified record shall be kept by the trustees after they are elected, for use in subsequent elections. They shall, preceding each subsequent election, procure from the county auditor or auditors additional certificates showing changes of title of land assessed for benefits and the names of the new owners.

[SS15, §1989-a75; C24, 27, 31, 35, 39, §**7682;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.9]

89 Acts, ch 126, §2

CS89, §468.508

468.509 New owner entitled to vote.

Anyone who has acquired ownership of assessed lands since the latest certificate from the auditor shall be entitled to vote at any election if the person presents to the election board for its inspection at the time the person demands the right to vote evidence showing that the person has title.

[SS15, §1989-a75; C24, 27, 31, 35, 39, §**7683;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.10]

89 Acts, ch 126, §2

CS89, §468.509

468.510 Qualifications of voters.

Each landowner eighteen years of age or over without regard to sex and any railway or other corporation owning land in said district assessed for benefits shall be entitled to one vote only, except as provided in section 468.511.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7684;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.11]

89 Acts, ch 126, §2

CS89, §468.510

Referred to in §468.539

468.511 Votes determined by assessment.

1. When a petition asking for the right to vote in proportion to assessment of benefits at all elections for any purpose thereafter to be held within said district, signed by a majority of the landowners owning land within said district assessed for benefits, is filed with the board of trustees, then, in all elections of trustees thereafter held within said district, any person whose land is assessed for benefits without regard to age, sex, or condition shall be entitled to one vote for each ten dollars or fraction thereof of the original assessment under the current classification against the land actually owned by the person in said district at the time of the election, but in order to have such ballot counted for more than one vote the voter shall write the voter's name upon the ballot. The vote of any landowner of the district may be cast by absent voters ballot as provided in chapter 53 except that the form of the applications for ballots, the voters' affidavits on the envelopes, and the endorsement of the carrier envelope for preserving the ballot shall be substantially in the form provided in

subsections 2, 3, and 4, below. Application blanks, envelopes, and ballots shall be provided by and submitted to the office of the county auditor in which the election is held. The cost of such blanks, envelopes, ballots, and postage shall be paid by the district. For the purpose of this subchapter all landowners of the district shall be considered qualified voters, regardless of their place of residence.

2. For the purpose of this subchapter, applications for ballots shall be made on blanks substantially in the following form:

Application for ballot to be voted at the
..... (Name of District) District Election
on ..... (Date)

State of .....)
..... County) ss.

I, ... (Applicant), do solemnly swear that I am a landowner in the ..... (Name of District) District and that I am a duly qualified voter entitled to vote in said election, and I hereby make application for an official ballot or ballots to be voted by me at such election, and that I will return said ballot or ballots to the officer issuing same before the day of said election.

Signed .....
Date .....
Residence (street number if any) .....
City ..... State .....

Subscribed and sworn to before me this ..... day of ..... (month), ... (year)

3. For the purpose of this subchapter, the affidavit on the reverse side of the envelopes used for enclosing the marked ballots shall be substantially as follows:

State of .....)
..... County) ss.

I, ... (Applicant), do solemnly swear that I am a landowner in the ..... (Name of District) District and that I am a duly qualified voter to vote in the election of trustees of said district and that I have marked the enclosed ballot in secret.

Signed .....

Subscribed and sworn to before me this ..... day of ..... (month), ... (year), and that I hereby certify that the affiant exhibited the enclosed ballot to me unmarked; that the affiant then in my presence and in the presence of no other person and in such manner that I could not see the affiant's vote, marked such ballot, enclosed and sealed the same in this envelope; and that the affiant was not solicited or advertised by me for or against any candidate or measure.

.....
.....
(Official Title)

4. For the purposes of this subchapter, upon receipt of the ballot, the auditor shall at once enclose the same, unopened, together with the application made by the voter in a large carrier envelope, securely seal the same, and endorse thereon over the auditor's official signature, the following:

a. Name of the district in which the voter is a landowner.

b. Date of the election for which the ballot is cast.

c. Location of the polling place at which the ballot would be legally and properly cast if voted in person.

d. Names of the judges of the election of that polling place, and the statement that this

envelope contains an absent voters ballot and must be opened only at the polls on election day while said polls are open.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7685;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.12]

89 Acts, ch 126, §2

CS89, §468.511

2000 Acts, ch 1058, §63; 2009 Acts, ch 57, §95

Referred to in §468.510, 468.512, 468.539

468.512 Vote by agent.

Except where the provisions of section 468.511, providing for vote in proportion to assessment are invoked, any person or corporation owning land or right-of-way within the district and assessed for benefits may have the person's or the corporation's vote cast by the person's or the corporation's agent or proxy authorized to cast such vote by a power of attorney signed and acknowledged by such person or corporation, and filed before such vote is cast in the auditor's office of the county in which such election is held. Every such power of attorney shall specify the particular election for which it is to be used, indicating the day, month, and year of such election, and shall be void for all elections subsequently held. The vote of the owner of any land in a drainage or levee district in any election, where the vote is not determined by assessment, may be cast by absent voters ballot in the same manner and form and subject to the same rights and restrictions as is provided in section 468.511 relating to vote by absentee ballot when votes are determined by assessment.

[SS15, §1989-a73; C24, 27, 31, 35, 39, §**7686;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.13]

89 Acts, ch 126, §2

CS89, §468.512

468.513 Vote of minor or person under legal incompetency.

The vote of any person who is a minor or under legal incompetency shall be cast by the parent, guardian, or other legal representative of the person. The person casting the vote shall deliver to the judges and clerks of election a written sworn statement giving the name, age, and place of residence of the minor or person under legal incompetency, and any false statement knowingly made to secure permission to cast such vote shall render the party so making it guilty of the crime of perjury.

[C24, 27, 31, 35, 39, §**7687;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.14]

89 Acts, ch 126, §2

CS89, §468.513

96 Acts, ch 1129, §95

Perjury, punishment, §720.2

468.514 Ballots — petition for printed ballots.

Candidates for drainage district trustee shall have their names placed on printed ballots provided a petition therefor is signed by ten qualified voters of the district and filed with the clerk of the board at least twenty-five days but not more than sixty-five days before the election. Space shall also be provided on the ballot for write-in votes.

[C24, 27, 31, 35, 39, §**7688;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.15]

86 Acts, ch 1099, §3; 89 Acts, ch 126, §2

CS89, §468.514

2001 Acts, ch 56, §36

468.515 Candidates voted for.

Each qualified voter for the whole district shall be entitled to vote for one candidate for each district for which a trustee is to be elected.

[C24, 27, 31, 35, 39, §**7689;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.16]

89 Acts, ch 126, §2

CS89, §468.515

468.516 Election — canvass of votes — returns.

On the day designated for said election the polls shall open at 1:00 p.m. and remain open until 5:00 p.m. unless otherwise provided under section 468.522. If no convenient polling place is to be found within the district, the election may be held at some convenient place outside the district. The judges of election shall canvass the vote and certify the result, and deposit with the auditor the ballots cast, together with the pollbooks showing the names of the voters; but if there is more than one county in the district, the returns shall be filed with the auditor of the county having the greatest acreage of said district.

[S13, §1989-a52c; SS15, §1989-a64; C24, 27, 31, 35, 39, §**7690;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.17]

89 Acts, ch 126, §2

CS89, §468.516

91 Acts, ch 54, §1

Referred to in §468.522

468.517 Canvass — certificates of election.

The canvass of the returns by the board or boards of supervisors shall be on the next Monday following the election. If the district is in more than one county, the board of supervisors of the county with the greatest acreage in the district shall canvass the vote. The board of supervisors of the other counties in which the district is located may attend and participate in the canvass of the returns. It or they shall make a return of the results of the canvass to the auditor, who shall issue certificates to the trustees elected, and when the district extends into more than one county, then the auditor with whom the election returns were filed shall issue the certificates and certify an abstract of the canvass to each other county in which the district is located.

[S13, §1989-a52c; SS15, §1989-a64; C24, 27, 31, 35, 39, §**7691;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.18]

85 Acts, ch 163, §11; 89 Acts, ch 126, §2

CS89, §468.517

468.518 Tenure of office.

The trustees so elected shall hold office until the fourth Saturday in January next succeeding their election and until their successors are elected and qualify. On the third Saturday in the January next succeeding their original election, an election shall be held at which three trustees shall be chosen, one for one year, one for two years, and one for three years, and each shall qualify and enter upon the duties of the office on the fourth Saturday of the same January. On the third Saturday in each succeeding January, an election shall be held to choose a successor to the trustee whose term is about to expire, and the term of the trustee's office shall be for three years and until a successor has qualified.

[SS15, §1989-a52d, -a65 – a67; C24, 27, 31, 35, 39, §**7692;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.19]

89 Acts, ch 126, §2

CS89, §468.518

Referred to in §468.539

468.519 Levee and pumping station districts.

In levee and drainage districts having pumping stations trustees shall hold office until the fourth Saturday in January three years after election. On the third Saturday in January of each year a trustee shall be elected for a term of three years to succeed the member of the board whose term will expire on the following Saturday. At the election there shall also be elected, if necessary, a trustee to fill any vacancy which occurred before the election.

[S13, §1989-a52e; SS15, §1989-a52d; C24, 27, 31, 35, 39, §**7693;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.20]

83 Acts, ch 101, §99; 89 Acts, ch 126, §2

CS89, §468.519

468.520 Division of districts under trustees.

When a trustee is to be elected, it shall be for a specified election district within the district.

[C24, 27, 31, 35, 39, §**7694;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.21]

83 Acts, ch 101, §100; 89 Acts, ch 126, §2

CS89, §468.520

468.521 Elections — how conducted.

1. After the first election of trustees, the board of trustees shall act as judges of election; however, a trustee standing for election shall not serve as a judge.

2. The clerk of the board shall act as one of the clerks and an owner of land in the district shall be appointed by the board to act as another clerk.

3. The board shall fill any vacancy of an acting election judge by appointing a person who resides in the county where all or part of the drainage or levee district is located and who is eligible to vote in a general election in that county.

4. The result of each election shall be certified to the auditor or the several county auditors if the district is located in more than one county.

[SS15, §1989-a69; C24, 27, 31, 35, 39, §**7695;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.22]

85 Acts, ch 163, §12; 89 Acts, ch 126, §2

CS89, §468.521

2015 Acts, ch 51, §13

Referred to in §468.539

468.522 Change of date and time.

The date on which the annual election shall be held and the polling hours may be changed by the choice of a majority of electors of the district expressed by ballot at any annual election, and the return of the vote shall be certified in the same manner as the returns for election of trustees. The polling hours may vary from the requirements of section 468.516, but the polls shall be open for at least three consecutive hours between the hours of 8:00 a.m. and 5:00 p.m. on the election day.

[S13, §1989-a52e; C24, 27, 31, 35, 39, §**7696;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.23]

89 Acts, ch 126, §2

CS89, §468.522

91 Acts, ch 54, §2

Referred to in §468.516

468.523 Vacancies.

If any vacancy occurs in the membership of the board of trustees between the annual elections, the remaining members of the board shall have power to fill such vacancies by appointment of persons having the same qualifications as themselves. The persons so appointed shall qualify in the same manner and hold office until the next annual election when their successors shall be elected. In the event that all places on the board become vacant, then a new board shall be appointed by the auditor, or if more than one county, then by the auditor of the county in which the greater acreage of the district is located. The persons so appointed shall hold office until the next annual election and until their successors are elected and qualify.

[SS15, §1989-a68; C24, 27, 31, 35, 39, §**7697;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.24]

89 Acts, ch 126, §2

CS89, §468.523

468.524 Bonds.

The trustees shall qualify by giving a bond in the sum of not less than one thousand dollars or more than five thousand dollars each, conditioned for the faithful discharge of their duties,

said bond to be fixed and approved by the auditor of the county, and if more than one, then of the county in which the greater acreage of the district is located.

[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7698;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.25]

89 Acts, ch 126, §2

CS89, §468.524

468.525 Organization.

As soon as the trustees have qualified, they shall organize by electing one of their own number as chairperson and may select some other competent person as clerk of the board who shall serve during the pleasure of the board of trustees.

[SS15, §1989-a70; C24, 27, 31, 35, 39, §**7699;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.26]

89 Acts, ch 126, §2

CS89, §468.525

468.526 Powers and duties of trustees.

Trustees shall have control, supervision, and management of the district for which they are elected and shall be clothed with all of the powers now conferred on the board or boards of supervisors for the control, management, and supervision of drainage and levee districts under the laws of the state, including the power to acquire lands by conveyance, lease, or by the exercise of the power of eminent domain as provided for in chapter 6B for right-of-way for levees, ditches and settling basins within or without the district and to annex lands to the district, except as provided in section 468.527. Such authority shall extend only to the district for which they are elected.

[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7700;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.27]

89 Acts, ch 126, §2

CS89, §468.526

468.526A Liability.

A trustee is not personally liable for a claim which is exempted under section 670.4, except a claim for punitive damages. A trustee is not liable for punitive damages as a result of acts in the performance of a duty under this chapter, unless actual malice or willful, wanton, and reckless misconduct is proven.

2014 Acts, ch 1075, §10

468.527 Costs and expenses.

All costs and expenses necessary to discharge the duties by this subchapter conferred upon trustees shall be levied and collected as provided by law and such levy shall be upon certificate by the trustees to the board or boards of supervisors of the amount necessary for such levy.

[SS15, §1989-a52f, -a71; C24, 27, 31, 35, 39, §**7701;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.28]

89 Acts, ch 126, §2

CS89, §468.527

Referred to in §468.216, 468.526

468.528 Disbursement of funds.

Drainage and levee taxes when so levied and collected shall be kept by the treasurer of the county in a separate fund to the credit of the district for which it is collected. The county treasurer shall disburse the moneys in the fund only upon any of the following:

1. The orders of the board of trustees, signed by the president of the board, upon which warrants shall be drawn by the auditor upon the treasurer.

2. For drainage and levee districts with pumping stations, by orders of the board of trustees directing the treasurer to place all or any part of the moneys into a checking account established by the board in a bank or credit union as defined in section 12C.1.

a. The treasurer shall disburse the moneys only upon resolution duly adopted by the board. The board shall not expend moneys in the account for a purpose if the board could not order the county treasurer to expend moneys from the county's separate fund for that same purpose.

b. The board shall file with the county auditor an annual financial statement that is accompanied by an unqualified opinion based upon an audit of the account performed by a certified public accountant licensed in this state. Notwithstanding paragraph "*a*", the board shall pay the costs associated with performing the audit out of the district's moneys.

[SS15, §1989-a52f; C24, 27, 31, 35, 39, §**7702;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.29]

89 Acts, ch 126, §2

CS89, §468.528

2011 Acts, ch 94, §2

Referred to in §468.54

468.529 Certificates and bonds.

The board of trustees of any district shall have the same power to issue improvement certificates and levee and drainage bonds under the same conditions and with like tenor and effect as is provided by subchapter I, parts 1 through 5, for such issuance by the board of supervisors, except that in case of the issue of levee or drainage bonds, the same shall be approved by a judge of the district court in and for the county or counties in which such district lies, which approval shall be printed upon such bonds before the same are negotiated.

[SS15, §1989-a52f; C24, 27, 31, 35, 39, §**7703;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.30]

89 Acts, ch 126, §2

CS89, §468.529

468.530 Report to auditor.

Such trustees shall, from time to time, and with reasonable promptness, furnish the auditor of each county in which any part of said district is situated, with a correct report of their acts and proceedings, which report shall be signed by the chairperson and the clerk of the board and shall be recorded by the auditor in the drainage record, and shall be published in one official paper in the county having a general circulation in the district.

[S13, §1989-a52g; SS15, §1989-a72; C24, 27, 31, 35, 39, §**7707;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.34]

89 Acts, ch 126, §2

CS89, §468.530

468.531 Compensation — statements required.

The compensation of the trustees and the clerk of the board is hereby fixed at an amount not to exceed two hundred dollars per day each and necessary expenses, to be paid out of the funds of the drainage or levee district for each day necessarily expended in the transaction of the business of the district, but no one shall draw compensation for services as trustee and as clerk at the same time. The board of trustees of a district may by resolution establish for themselves and for the clerk of the district a lower rate of pay than is fixed by this section. They shall file with the auditor or auditors, if more than one county, itemized, verified statements of their time devoted to the business of the district and of the expenses incurred.

[SS15, §1989-a52f, -a74; C24, 27, 31, 35, 39, §**7708;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.35]

89 Acts, ch 126, §2

CS89, §468.531

2011 Acts, ch 94, §3

468.532 Change to supervisor management.

Any district which has been placed under the management of trustees may be placed back under the management of the board or boards of supervisors in the manner provided in section 468.533.

[C24, 27, 31, 35, 39, §**7709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.36]
89 Acts, ch 126, §2
CS89, §468.532

468.533 Petition — canvass.

1. A petition requesting that a district placed under the management of trustees be placed back under the management of a board or boards of supervisors, that is signed by a majority of persons, including corporations, owning land within the district assessed for benefits and who in the aggregate own more than one-half the acreage of such lands, may be filed in the office of the auditor and, if the district is situated in more than one county, then a duplicate shall be filed in the office of the auditor of each county.

2. The trustees shall fix a date not less than ten nor more than thirty days from the date the petition is filed for the canvass of such petition, and the trustees and auditor or auditors shall canvass the petition and certify and record in the drainage record the result.

[C24, 27, 31, 35, 39, §**7710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.37]
89 Acts, ch 126, §2
CS89, §468.533
2019 Acts, ch 59, §164
Referred to in §468.532
Section amended

468.534 Remonstrance.

Remonstrances signed by the same persons who are qualified to sign the petition may be filed in the office of the auditor and if the same persons petition and remonstrate they shall be counted on the remonstrance only. Such remonstrances shall be filed not less than five days before the time set for hearing.

[C24, 27, 31, 35, 39, §**7711;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.38]
89 Acts, ch 126, §2
CS89, §468.534

468.535 When change effective.

If the result of the canvass shows a majority in favor of such change, then it shall become effectual on the date at which the next annual election of trustees would be held, and on such date the trustees shall surrender and turn over to the board or boards of supervisors the full and complete management and control of such district, together with all books, contracts, and other documents relating thereto.

[C24, 27, 31, 35, 39, §**7712;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.39]
89 Acts, ch 126, §2
CS89, §468.535

468.536 Final report of trustees.

On or before the date such change becomes effective, the said trustees shall make and file with the auditor, or if more than one county, a duplicate with each auditor, a final report setting forth:

1. The amount of cash funds on hand or to the credit of the district.

2. The amount of outstanding indebtedness of the district, and the form thereof, whether in warrants, improvement certificates, or bonds and the amount of each.

3. Any outstanding contracts for repairs or other work to be done.

4. A statement showing the condition of the improvements of the district, and specifying any portion thereof in need of repair.

[C24, 27, 31, 35, 39, §**7713;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.40]
89 Acts, ch 126, §2
CS89, §468.536

468.537 Management by supervisors.

After such change is made it shall be the duty of the board or boards of supervisors to manage and control the affairs of said district as fully and to the same extent as if it had never been under trustee management. They shall carry out any pending contracts lawfully made by the trustees as fully as if made by the board.

[C24, 27, 31, 35, 39, §**7714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §462.41]
89 Acts, ch 126, §2
CS89, §468.537

PART 3

ESTABLISHMENT OF OVERLYING DISTRICT AS NEW DRAINAGE OR LEVEE DISTRICT

468.538 Scope.

This part applies when the board of trustees of an overlying district accepts all improvements and rights-of-way surrendered by a board of supervisors or board of trustees of a contained district, in accordance with sections 468.256 through 468.259. In addition, after such acceptance, the overlying district must include at least thirty-five thousand acres with a pumping station, regardless of whether the drainage or levee district is located in more than one county. Such a district shall continue to be controlled and managed by a board of trustees elected as provided in this part.

2013 Acts, ch 86, §3, 6
Referred to in §468.539

468.539 Qualified application.

Part 2 of this subchapter shall also apply to this part, except as follows:

1. The trustees of the overlying district serving on the board at the time of acceptance as described in section 468.538 shall be considered initially elected as the trustees of the drainage or levee district as provided in sections 468.502, 468.503, and 468.521.

2. *a.* The board of trustees described in subsection 1 shall do all of the following:

(1) Establish the overlying district as a new drainage or levee district, which must include all improvements and rights-of-way surrendered by a board of supervisors or board of trustees of the contained district.

(2) Divide the new drainage or levee district into three election districts in the same manner as a board of supervisors acting pursuant to sections 468.504 and 468.505.

b. The petition described in section 468.501 is not required to be filed or considered under this subsection.

3. Each of the three persons elected as trustee to serve on a new drainage or levee district established pursuant to an election held by the board of trustees described in subsection 1 shall hold office for a staggered term as provided in section 468.518. A person elected as a trustee of the new drainage or levee district shall be elected from a specified election district, unless the person is elected at large as provided in subsection 4.

4. The board of trustees described in subsection 1 or a subsequent board of trustees of the new drainage or levee district may provide for the election of two additional persons to serve as trustees. The two additional persons shall be elected at large by all qualified voters for the entire drainage or levee district. Of the five persons elected as trustees of the new drainage or levee district, not more than two persons shall be elected from the same specified election district. One person's initial term shall be for one year and the second person's initial term shall be for two years in the same manner as provided in section 468.518.

5. Votes shall be determined as provided pursuant to either section 468.510 or 468.511 in the same manner as was determined for the overlying district.

2013 Acts, ch 86, §4, 6

SUBCHAPTER IV

FINANCING

PART 1

DRAINAGE REFUNDING BONDS

Referred to in §331.382, 331.552, 468.397

468.540 Refunding bonds.

The board of supervisors of any county may extend the time of the payment of any of its outstanding drainage bonds issued in anticipation of the collection of drainage assessments levied upon property within a drainage district, and may extend the time of payment of any unpaid assessment, or any installment or installments thereof. The board may renew or extend the time of payment of such legal bonded indebtedness, or any part thereof, for account of such drainage district, and may refund the same and issue drainage refunding bonds therefor subject to the limitation and in the manner provided in this part.

[C27, 31, 35, §7714-b1; C39, §**7714.01;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.1]
89 Acts, ch 126, §2
CS89, §468.540
2015 Acts, ch 30, §150; 2016 Acts, ch 1073, §136
Similar provision, §468.367

468.541 Petition for refunding.

Before the time of payment of said assessments or any installment or installments thereof shall be extended and before the board shall institute proceedings for the issuance of drainage refunding bonds, the owners of not less than fifteen percent of the land within a drainage district as shown by the transfer books in the auditor's office upon which drainage assessments are unpaid, shall file a petition with the board requesting the extension of the time of payment of assessments levied in said drainage district or of any installment or installments thereof, setting forth the date said assessments to be extended were levied, the aggregate amount thereof unpaid, and requesting the issuance of drainage refunding bonds, stating the amount and purpose of said bonds.

[C27, 31, 35, §7714-b2; C39, §**7714.02;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.2]
89 Acts, ch 126, §2
CS89, §468.541

468.542 Sufficiency of petition — hearing.

Upon the receipt of any such petition the board shall, at the next regular meeting or regular adjourned meeting, determine the sufficiency thereof and fix a date of meeting of the board at which it is proposed to extend the time of payment of said unpaid assessments and to take action for the issuance of drainage refunding bonds.

[C27, 31, 35, §7714-b3; C39, §**7714.03;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.3]
89 Acts, ch 126, §2
CS89, §468.542
Referred to in §468.543

468.543 Notice.

The board shall give ten days' notice of the meeting described under section 468.542 in the same manner as required in relation to the issuance of bonds under chapter 73A.

[C27, 31, 35, §7714-b4; C39, §**7714.04;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.4]
89 Acts, ch 126, §2
CS89, §468.543
2019 Acts, ch 59, §165
Referred to in §468.567
Section amended

468.544 Requirements of notice.

The notice shall be directed to each person whose name appears upon the transfer books in the auditor's office as owner of lands within the drainage district upon which the drainage assessments are unpaid, naming the owner, and also to the person or persons in actual occupancy of any of the tracts of land without naming them. The notice shall also state all of the following:

1. The amount of unpaid assessments upon each forty-acre tract of land or less.
2. That all of the unpaid assessments, installment or installments thereof as proposed to be extended, may be paid on or before the time fixed for the hearing.
3. That after the expiration of such time no assessments may be paid except in the manner and at the times fixed by the board in the resolution authorizing the issuance of the drainage refunding bonds.

[C27, 31, 35, §7714-b5; C39, §**7714.05;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.5]
89 Acts, ch 126, §2
CS89, §468.544
2014 Acts, ch 1110, §9; 2015 Acts, ch 30, §151
Referred to in §468.567

468.545 Extending payment of assessments.

If no appeal is taken to the issuance of bonds, as provided by chapter 73A, the board may extend the time of payment of the unpaid assessment or an installment or installments of it as requested in the petition and may issue drainage refunding bonds, or, in case of an appeal, the board may issue the bonds in accordance with the decision of the appeal board provided the assessments, installment, or installments have not been entered on the delinquent tax lists and have not been previously extended.

[C27, 31, 35, §7714-b6; C39, §**7714.06;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.6]
88 Acts, ch 1158, §76; 89 Acts, ch 126, §2
CS89, §468.545
Referred to in §468.567

468.546 Appeal.

Any person aggrieved by the final action of the board extending the time of payment of said unpaid assessment, installment or installments thereof may appeal therefrom to the district court of the county in which such action was taken.

[C27, 31, 35, §7714-b7; C39, §**7714.07;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.7]
89 Acts, ch 126, §2
CS89, §468.546

468.547 Time and manner of appeal.

All appeals shall be taken in the manner provided in section 468.84 except that said appeal shall be taken within ten days after the date of the final action of the board.

[C27, 31, 35, §7714-b8; C39, §**7714.08;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.8]
89 Acts, ch 126, §2
CS89, §468.547

468.548 Maximum extension.

The unpaid assessments against said lands within said drainage district shall not be extended for a period exceeding forty years from the time any assessment, installment or installments thereof to be extended become due. The board shall fix the amount that shall be levied and collected each year and may issue drainage refunding bonds covering all said unpaid assessments.

[C27, 31, 35, §7714-b9; C39, §**7714.09;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.9]
89 Acts, ch 126, §2
CS89, §468.548

468.549 Form of bonds.

Drainage refunding bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars, each, running not more than forty years, bearing interest at a rate not exceeding that permitted by chapter 74A, payable semiannually, and shall be substantially in the form provided by law relating to drainage bonds, with such changes as shall be necessary to conform with this part.

[C27, 31, 35, §7714-b10; C39, §**7714.10;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.10]
89 Acts, ch 126, §2
CS89, §468.549

468.550 Numbering, signing, and attestation.

Said bonds shall be numbered consecutively, signed by the chairperson of the board and attested by the county auditor with the seal of the county affixed. The interest coupons attached thereto shall be executed by the county auditor.

[C27, 31, 35, §7714-b11; C39, §**7714.11;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.11]
89 Acts, ch 126, §2
CS89, §468.550

468.551 Resolution required.

All bonds issued under the provisions of this part shall be issued pursuant to and in conformity with a resolution adopted by the board of supervisors which shall specify the amount of unpaid assessments to be extended, the times when the installment or installments of extended assessments shall become due, the amount of drainage refunding bonds authorized to be issued, the purpose for which issued, the rate of interest they shall bear, the place where the principal and interest shall be payable and the time or times when they shall become due, and such other provisions not inconsistent with law in reference thereto, as the board shall deem proper.

[C27, 31, 35, §7714-b12; C39, §**7714.12;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.12]
89 Acts, ch 126, §2
CS89, §468.551

468.552 Record of resolution.

Said resolution shall be entered of record upon the minutes of proceedings of said board and shall constitute a contract between the drainage district and the purchasers or holders of said bonds and shall be full authority for the revision of the tax rolls to accord therewith.

[C27, 31, 35, §7714-b13; C39, §**7714.13;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.13]
89 Acts, ch 126, §2
CS89, §468.552

468.553 Record of bonds.

When the bonds have been executed as aforesaid they shall be delivered to the county treasurer and the treasurer's receipt taken therefor. The treasurer shall register said bonds in a book provided for that purpose which shall show the number of each bond, its date, date of sale, amount, date of maturity, and the name and address of the purchaser, and if exchanged what evidences of indebtedness were received therefor, which record shall at all times be open to the inspection of the owners of property within said drainage district. The treasurer shall thereupon certify on the back of each bond as follows:

This bond duly and properly registered in my office this .....
day of ..... (month), ... (year).
.....
Treasurer of the County of
.....

[C27, 31, 35, §7714-b14; C39, §**7714.14;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.14]
89 Acts, ch 126, §2

CS89, §468.553
2000 Acts, ch 1058, §56

468.554 Liability of treasurer — reports.
The treasurer shall stand charged on the treasurer's official bond with all bonds so delivered to the treasurer and the proceeds thereof. The treasurer shall report under oath to the board, at each first regular session thereof in each month, a statement of all such bonds sold or exchanged by the treasurer since the treasurer's last report and the date of such sale or exchange and when exchanged a description of the indebtedness for which exchanged.
[C27, 31, 35, §7714-b15; C39, §**7714.15;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.15]
89 Acts, ch 126, §2
CS89, §468.554

468.555 Sale, exchange, and cancellation.
The county treasurer shall, under a resolution and the direction of the said county board of supervisors, sell the bonds for cash on the best available terms or exchange them on like terms for the legal indebtedness of the said drainage district evidenced by the outstanding drainage bonds, authorized to be refunded by the resolution authorizing the issue of said refunding bonds, and the proceeds shall be applied and exclusively used for the purpose for which said bonds are issued. In no case shall they be sold or exchanged for a less sum than their face value and all interest accrued. After registration the treasurer shall deliver said refunding bonds to the purchaser thereof and when exchanged for said bonded indebtedness of said district, shall at once cancel a like amount of said drainage bonds.
[C27, 31, 35, §7714-b16; C39, §**7714.16;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.16]
89 Acts, ch 126, §2
CS89, §468.555

468.556 Redemption from tax sale.
In case any land within such drainage district shall have been sold at tax sale for failure of the owner thereof to pay any drainage assessments levied thereon, and before any tax deed has been issued, then on application of the owner of such land, the board of supervisors may effect a redemption thereof for such owner out of the proceeds of any refunding bond issue and add the cost of such redemption to the amount of the unpaid assessments against such land, payment thereof to be extended in manner and as a part of the remaining unpaid assessments thereon.
[C35, §7714-f1; C39, §**7714.17;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.17]
89 Acts, ch 126, §2
CS89, §468.556

468.557 Effect of extension.
The extension of the time of payment of any unpaid assessments or installment or installments thereof, in the manner aforesaid shall in no way impair the lien of said assessments as originally levied or the priority thereof, nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds thereof to the payment of said drainage refunding bonds.
[C27, 31, 35, §7714-b17; C39, §**7714.18;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.18]
89 Acts, ch 126, §2
CS89, §468.557

468.558 Additional assessments.
If said assessments should for any reason be insufficient to meet the interest and principal of said drainage refunding bonds additional assessments shall be made to provide for such deficiency.
[C27, 31, 35, §7714-b18; C39, §**7714.19;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.19]
89 Acts, ch 126, §2
CS89, §468.558

468.559 Applicability of funds.

All special assessments, taxes, and sinking funds applicable to the payment of the indebtedness refunded by drainage bonds shall be applicable in the same manner and to the same extent to the payment of refunding bonds issued under this part, and the powers, rights, and duties to levy and collect special assessments or taxes, or create liens upon property shall continue until all refunding bonds shall be paid.

[C27, 31, 35, §7714-b19; C39, §**7714.20;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.20]
89 Acts, ch 126, §2
CS89, §468.559
2019 Acts, ch 59, §166
Section amended

468.560 Trust fund.

The special assessments out of which said bonds are payable shall be collected and held separate and apart in trust for the payment of said refunding bonds.

[C27, 31, 35, §7714-b20; C39, §**7714.21;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.21]
89 Acts, ch 126, §2
CS89, §468.560

468.561 Liens unimpaired.

When drainage refunding bonds are issued, nothing in this part shall be construed as impairing the lien of any unpaid drainage assessments or installments in the drainage district, the time of payment of which is not extended, nor shall this part be construed as impairing the priority of the lien of any unpaid drainage assessments or installments nor the right, duty, and power of the officers authorized by law to levy, collect, and apply the proceeds of the assessments or installments to the payment of outstanding drainage bonds issued in anticipation of the collection of the assessments or installments.

[C27, 31, 35, §7714-b21; C39, §**7714.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.22]
89 Acts, ch 126, §2
CS89, §468.561
2019 Acts, ch 59, §167
Section amended

468.562 Limitation of action.

No action shall be brought questioning the validity of any of the bonds authorized by this part from and after three months from the time the same are ordered issued by the proper authorities.

[C27, 31, 35, §7714-b22; C39, §**7714.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.23]
89 Acts, ch 126, §2
CS89, §468.562

468.563 Void bonds or assessments.

The provisions of this part shall not apply to bonds or assessments adjudicated to be void.

[C27, 31, 35, §7714-b23; C39, §**7714.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.24]
89 Acts, ch 126, §2
CS89, §468.563

468.564 Interpretative clause.

This part shall be construed as granting additional power without limiting the power already existing for the extension of the time of payment of drainage assessments and the issuance of drainage bonds.

[C27, 31, 35, §7714-b24; C39, §**7714.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.25]
89 Acts, ch 126, §2
CS89, §468.564

468.565 Composition with creditors — federal loans.

For the purpose of refinancing, adjusting, composing and refunding in such adjusted amount the indebtedness of any drainage districts or levee districts, found to be in financial distress, the governing body thereof, or board of supervisors as the case may be, upon its own motion, is authorized to enter into agreements with the creditors of said district, for the reduction and composition of its outstanding indebtedness, and to make application for and negotiate with the reconstruction finance corporation, or any other loaning agency, for the borrowing of funds for such purposes.

[C35, §7714-g1; C39, §**7714.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.26]
89 Acts, ch 126, §2
CS89, §468.565
Referred to in §468.566

468.566 Refinancing powers.

1. In order to effect a loan under section 468.565, the governing body of a district, or board of supervisors, is authorized to execute such agreements and contracts, and to fulfill such requirements of the loaning agency as are not inconsistent with this part; and to issue, and pledge or sell the bonds at their face value to the reconstruction finance corporation, or other loaning agency, furnishing the funds for the debt readjustment, in the amount required for the adjustment.

2. The governing body, or board of supervisors, shall also have the authority as a part of the plan of refinancing, adjusting, composing, and refunding of the district's indebtedness, to cancel the old assessments collectible against the land within the district, pledged to the payment of the district's outstanding indebtedness and proportionately and equitably to relevy the assessments, with interest, over the period covered by the new bonds, in an amount sufficient to pay the new bonds and interest on the bonds. However, the new assessments created against any tract of land within the district shall not be in excess of the unpaid assessments against the tract before the readjustment or composition is made, and the new and extended assessment against the tract shall fully replace the old assessment.

[C35, §7714-g2; C39, §**7714.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.27]
89 Acts, ch 126, §2
CS89, §468.566
2019 Acts, ch 59, §168
Section amended

468.567 Report and hearing — appeal.

1. At the direction of the governing board of such district, or board of supervisors, the county auditor of the county within which the land on which the indebtedness is being adjusted is situated, shall compile a tabulated report as to the lands within the said district, setting forth:

a. The name of the owner of each assessed tract as shown by the transfer books in the county auditor's office.

b. The amount of the unpaid old assessments against each of said tracts.

c. The amount of the new assessment required to pay the new bonds to be issued, together with the installments to be paid thereon annually of principal and interest, and the maximum period of time over which such assessments shall be paid.

2. After such report is tabulated and filed, a hearing upon the contemplated action of the governing body of such district, or board of supervisors, to make the proposed adjustment, composition, renewal and refunding in such adjusted amount of its outstanding indebtedness, together with the issuance of bonds and the levying of assessments therefor, shall be had in the manner and upon the same notice as is prescribed in sections 468.543 through 468.545 and appeal may be made therefrom as provided in this part.

[C35, §7714-g3; C39, §**7714.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §463.28]
89 Acts, ch 126, §2
CS89, §468.567
2011 Acts, ch 25, §143

468.568 and 468.569 Reserved.

PART 2

DEFAULTED DRAINAGE BONDS

Referred to in §331.382, 331.552, 468.397

468.570 Extension of payment — application.

When drainage district bonds have been issued in anticipation of the collection of drainage district assessments levied on real estate within such drainage district are in default, either for failure to pay principal installments or accrued interest thereon, and funds are not on hand within thirty days after such default, ten owners of real estate in such district or the owners of not less than ten percent in amount of the outstanding drainage bonds of such district may make application to the district court of the county wherein said drainage district is located, asking for an extension of time of payment, and a reamortization of the assessments on the real estate within such drainage district, which was in default, and a new schedule of payments of the bonds and other indebtedness, and the issuance of new bonds as provided by this part.

[C35, §7714-f2; C39, §**7714.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.1]
89 Acts, ch 126, §2
CS89, §468.570
Referred to in §468.571

468.571 Petition.

Ten owners of real estate in such district, or the owners of not less than ten percent in amount of the outstanding drainage bonds of such drainage district, may institute proceedings in the district court of the county issuing such bonds wherein the drainage district is located, by filing a petition which shall set forth the names and addresses of the ten petitioning real estate owners or the names and addresses of the petitioning owners of ten percent in amount of the drainage bonds of said district, that said bonds are in default as defined in section 468.570, that the petitioners have good reason to believe that said default cannot, or will not, be removed by payment under the present schedule of said district, and asking that the matters herein presented be reviewed by the court, and determined as provided by this part.

[C35, §7714-f3; C39, §**7714.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.2]
89 Acts, ch 126, §2
CS89, §468.571

468.572 Hearing.

On the filing of such petition the court shall enter an order fixing the date for hearing, which date shall be at least four weeks subsequent to the date of the filing of the order.

[C35, §7714-f4; C39, §**7714.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.3]
89 Acts, ch 126, §2
CS89, §468.572

468.573 Parties — notice — service.

The board of supervisors of such county or counties wherein the drainage district is located, shall be notified of the proceeding and hearing by original notice served in the same manner as in civil actions; notice of said hearing shall be served upon all owners of each tract of land or lot within such drainage district, as shown by the transfer books in the county auditor's office, upon each lienholder or encumbrancer of any land within the said drainage district as shown by the county records, and upon all persons holding claims against said drainage district, as shown by the county records, and also upon all other persons whom it may concern, including bondholders and actual occupants of the land within said drainage district, without naming individuals, by publication thereof, once each week for two consecutive weeks, in some newspaper of general circulation in the county or counties where said drainage district

is located, the last of which publications shall be not less than twenty days prior to the date set for hearing on the said petition and a copy of such notice shall also be sent by ordinary mail to the person's last known address unless there is on file an affidavit of one of the petitioners or the petitioner's attorney stating that no mailing address is known and that diligent inquiry has been made to ascertain it. Such copy of notice shall be mailed not less than twenty days prior to the date set for hearing. Proof of publication and mailing shall be by affidavit and shall be included in the records of the proceedings.

[C35, §7714-f5; C39, §**7714.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.4]
89 Acts, ch 126, §2
CS89, §468.573
Service of original notice, R.C.P. 1.302 – 1.315

468.574 Jurisdiction of court.

The district court shall have jurisdiction and power to adjudicate all the rights and issues between the drainage district, and the landowners, bondholders, lienholders, encumbrancers, claimants and creditors of the drainage district, and in determining the rights of the parties, shall take into consideration, the maturity of the bonds, the interest rate of the bonds, the present schedule and classification of assessments on the real estate, the ratio between the amount in default, and the amount of unpaid assessments in the drainage district, the gross amount needed to retire the bonds now outstanding and in default, the current retirement schedule on other indebtedness of the drainage district, the general tax structure of the drainage district, the unpaid taxes in the drainage district, the default by the drainage district in the payment of its bonded indebtedness, and the current financial condition of the taxpayers.

[C35, §7714-f6; C39, §**7714.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.5]
89 Acts, ch 126, §2
CS89, §468.574

468.575 Conservator appointed.

If the court finds that the necessary parties have instituted the proceedings, and that all necessary parties have been properly served with notice, and the order of the court, and that the drainage district is in default in the payment of its installment assessments, or the interest thereon, the court shall enter an order appointing the county auditor of the county in which such drainage district is located, or if such drainage district is located in more than one county, the county auditor of the county wherein the greater portion of the lands within said drainage district are located, receiver for the said drainage district, said receiver being hereafter called "conservator", and the said conservator shall be under the court's direction. The conservator shall be allowed such compensation as may be determined by the court, and said conservator may employ, under the direction and approval of the court, an attorney, and such assistants as may be necessary to perform the duties required by the conservator under the law, and orders of court.

[C35, §7714-f7; C39, §**7714.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.6]
89 Acts, ch 126, §2
CS89, §468.575

468.576 Report — hearing thereon.

The conservator shall, within thirty days from the date of the conservator's appointment, prepare and file with the clerk of the district court, a full report, giving in detail, the bonded indebtedness of said drainage district, the accrued interest thereon, and any and all other indebtedness owing by said drainage district; a full and complete schedule of all lands sold at tax sale, including the amount of drainage assessments thereon; a list of all real estate within the drainage district, showing the unpaid assessments thereon; also said conservator shall set forth a schedule, under which the bonded indebtedness of said drainage district may be reamortized; also a schedule under which all other indebtedness of said drainage district may be paid or reamortized. Upon the filing of the report by the conservator, the court shall set

a date for hearing thereon, which date shall not be less than ten or more than fifteen days, from the filing thereof.

[C35, §7714-f8; C39, §**7714.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.7]
89 Acts, ch 126, §2
CS89, §468.576

468.577 Adjudication on report.

At the hearing of the conservator's report, the court shall fix and determine the amount of money in the hands of the county treasurer belonging to the drainage district; the amount of the indebtedness of the drainage district; and to whom the indebtedness is due, and shall fix and determine the time, manner, and priority of payment of the indebtedness. The court shall fix and determine the amount of unpaid assessment or assessments against each tract of land within the drainage district, and may extend the time of payment, and reamortize and reallocate the assessments upon each tract of land within the drainage district. If the court finds that the assessments as levied against each tract of land within the drainage district are not sufficient to pay the indebtedness due and owing by the drainage district, the court may order the board of supervisors of the county within which the drainage district is located, to levy an assessment against the lands within the drainage district, in an amount to pay the deficit. However, assessment for the payment of drainage bonds or improvement certificates shall not be levied against any tract of land if the owner of the land is not delinquent in payment of any assessment. The amount of the reassessment on a particular piece of land shall be in direct proportion to the amount of unpaid assessments on the land. The assessment or expenses incidental thereto, for the payment of drainage bonds or improvement certificates under this part, shall not be levied against any tract of land if the owner of the land had previously paid all of the owner's assessment. The assessment shall be assessed and levied by the board of supervisors upon the lands within the drainage district, in the same proportion as the original assessment. A copy of the order entered by the court shall be filed by the clerk of the district court with the county auditor, and the schedule of payments of the indebtedness of the drainage district as fixed and determined by the court shall be entered upon the drainage records of the drainage district and also spread upon the tax records of the county, and shall become due and payable at the same time as ordinary taxes, and shall be collected in the same manner with the same interest for delinquency, and the same manner of enforcing collection by tax sale. The court may apportion the costs between the creditors of the drainage district and the drainage district.

[C35, §7714-f9; C39, §**7714.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.8]
89 Acts, ch 126, §2
CS89, §468.577
92 Acts, ch 1016, §39
Referred to in §468.578

468.578 Refunding bonds.

The court shall direct the board of supervisors to issue bonds in lieu of the outstanding drainage bonds for said drainage district, and additional bonds for the accrued interest and other indebtedness of said drainage district. Said bonds shall be payable in amounts, and at the time and manner, and with priority of payments as has been determined by order of court, as provided by section 468.577, and shall be called "conservator's drainage district bonds". Each bond shall be numbered and shall state on its face that it is a conservator's drainage district bond; that it is issued in pursuance of a resolution adopted by the board of supervisors, under order of court, and giving the name of the court and the county where such court is held; that it is issued to pay indebtedness of the drainage district; shall state the county where such district is located, and the number of the drainage district for which it is issued; shall state the date of maturity of the bond, the rate of interest thereon, which rate shall not exceed that permitted by chapter 74A, and that the bond is to be paid only from taxes assessed, levied and collected on the lands within the drainage district for which the bond is issued subject to the provisions of section 468.577. All bonds shall be signed by the chairperson of the board of supervisors and countersigned by the conservator designated as

such. The interest coupons attached to said bonds shall be attested by the signature of the conservator or a facsimile thereof. When the bonds have been executed as herein required, the conservator may sell said bonds at not less than par with accrued interest thereon, and pay the indebtedness of said drainage district, or may exchange said bonds with the creditors of said drainage district in amounts as have been fixed and determined by the court, and the conservator shall cancel all drainage bonds, improvement certificates, warrants or other evidence of indebtedness received by the conservator in lieu of the conservator's bonds.

[C35, §7714-f10; C39, §**7714.37;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.9]
89 Acts, ch 126, §2
CS89, §468.578

468.579 Lien.

When conservator's drainage district bonds are issued under this part, nothing in this part shall be construed as impairing the lien of all unpaid assessments upon the real estate within the drainage district, nor shall this part be construed as impairing the priority of the lien of the unpaid assessments, nor the right, duty, and power of the officer authorized by law, to levy, collect, and apply the proceeds of the assessments, to the payment of outstanding drainage bonds issued in anticipation of the collection of the assessments.

[C35, §7714-f11; C39, §**7714.38;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.10]
89 Acts, ch 126, §2
CS89, §468.579
2019 Acts, ch 59, §169
Section amended

468.580 Trustees as parties.

Should a drainage district in default be managed by drainage district trustees, said trustees shall also be named as proper and necessary parties defendant.

[C35, §7714-f12; C39, §**7714.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.11]
89 Acts, ch 126, §2
CS89, §468.580

468.581 Limitation of action.

No action shall be brought, questioning the validity of any conservator's drainage district bond issued under this part from and after three months from the date of the order causing the said bonds to be issued.

[C35, §7714-f13; C39, §**7714.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §464.12]
89 Acts, ch 126, §2
CS89, §468.581

468.582 through 468.584 Reserved.

PART 3

FUNDING OF COUNTY DRAINAGE DISTRICTS

468.585 Definitions.

As used in this part, unless the context otherwise requires:

1. *"Drainage improvement"* includes the construction, improvement, or repair of the principal structures, works, component parts and accessories of a storm sewer, drainage conduit, channel, or levee for the collection, detention, or discharge of drainage or surface waters.

2. *"Urban drainage district"* or *"district"* means a district defined by a county and one or more cities within the county pursuant to an agreement entered into by the county and cities in accordance with chapter 28E and this part with respect to drainage improvements which

the county and cities determine benefit the property located in the cities and the designated unincorporated area of the county.

3. *"Cost"* means the same as defined in section 384.37, subsection 26.

85 Acts, ch 144, §1
CS85, §331.485
89 Acts, ch 126, §2
CS89, §468.585

468.586 Assessment of costs of drainage improvements.

A county may assess to property within an urban drainage district the cost of a drainage improvement within the county and drainage facilities extending outside the county. A county is empowered to proceed and construct and to assess the cost of a drainage improvement within a district in the same manner as a city may proceed under chapter 384, subchapter IV, and the provisions of chapter 384, subchapter IV, apply to counties with respect to drainage improvements, the assessment of their costs and the issuance of bonds for the improvements. A county may contract for a drainage improvement within a district under this part pursuant to chapter 331, subchapter III, part 3.

85 Acts, ch 144, §1
CS85, §331.486
89 Acts, ch 126, §2
CS89, §468.586
2011 Acts, ch 25, §59; 2018 Acts, ch 1041, §127

468.587 Special assessment bonds.

A county may issue special assessment bonds in anticipation of the collection of special assessments for the cost of drainage improvements within a district in the same manner as provided for cities under subchapter IV of chapter 384.

85 Acts, ch 144, §1
CS85, §331.487
89 Acts, ch 126, §2
CS89, §468.587
2018 Acts, ch 1041, §127

468.588 Chapter 28E agreement.

An agreement entered into between a city and a county in accordance with chapter 28E with respect to a drainage improvement may include among others the following provisions:

1. The sharing of the total cost of the drainage improvement between the city and the county.
2. The amount of total assessments against private property within the city and within the unincorporated area of the county included within the district.
3. The method of specially assessing and determining benefits.
4. The amount of funds, if any, to be contributed by the city and county to the project other than special assessments.
5. The rates to be established and imposed upon property within the drainage district to pay the expenses of operation and maintenance of the drainage improvements.
6. The reduction of the county's debt service tax levy rate against property within a city which is a party to the joint agreement.

85 Acts, ch 144, §1
CS85, §331.488
89 Acts, ch 126, §2
CS89, §468.588

468.589 Rates and charges for services and connection.

If a county and city have entered into an agreement pursuant to chapter 28E to create an urban drainage district, the county or city or both may, to the extent and in the manner provided in the agreement, establish, impose, adjust, and provide for the collection of rates to

produce gross revenues at least sufficient to pay the expenses of operation and maintenance of a drainage improvement against property within the district and establish, impose, adjust, and provide for the collection of charges for connection to a drainage improvement. Rates and charges must be established by ordinance of the governing body of the county or city imposing the rates or charges. Rates or charges for the services of and connection to the drainage improvement if not paid as provided by the ordinance of the governing body, are a lien upon the premises served or benefited by that improvement and may be certified to the county treasurer and collected in the same manner as other taxes.

85 Acts, ch 144, §1
CS85, §331.489
89 Acts, ch 126, §2
CS89, §468.589
93 Acts, ch 73, §13
Referred to in §445.1

468.590 Cities subject to debt service tax levy — rates.

1. If a county and city have entered into a joint agreement pursuant to chapter 28E to create a district and issue county general obligation bonds to fund the costs of a drainage improvement in that district, the county's debt service tax levy for the county general obligation bonds shall not be levied against property located in any city except a city which has entered into the joint agreement.

2. The county and the cities entering into the joint agreement may provide in the joint agreement for a different rate of the county's debt service tax levy against property in unincorporated areas of the county and property within those cities.

85 Acts, ch 144, §1
CS85, §331.490
89 Acts, ch 126, §2
CS89, §468.590
2019 Acts, ch 24, §104
Code editor directive applied

468.591 Authority.

The authority of a city or county under this part with respect to districts and the financing of drainage improvements is in addition to any other authority of a city or county to contract, and levy special assessments and issue bonds to fund the costs.

85 Acts, ch 144, §1
CS85, §331.491
89 Acts, ch 126, §2
CS89, §468.591

468.592 through 468.599 Reserved.

SUBCHAPTER V

INDIVIDUAL DRAINAGE RIGHTS

Referred to in §327G.81, 331.382, 331.502, 468.3, 468.397

468.600 Drainage through land of others — application.

When the owner of any land desires to construct any levee, open ditch, tile or other underground drain, for agricultural or mining purposes, or for the purposes of securing more complete drainage or a better outlet, across the lands of others or across the right-of-way of a railroad or highway, or when two or more landowners desire to construct a drain to serve their lands, the landowner or landowners may file with the auditor of the county in which any such land or right-of-way is situated, an application in writing, setting forth a description of the land or other property through which the landowner is desirous of constructing any such

levee, ditch, or drain, the starting point, route, terminus, character, size, and depth thereof. The auditor shall collect a fee of one dollar for filing each application for a ditch or drain.

[C73, §1217; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7715;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.1]

89 Acts, ch 126, §2

CS89, §468.600

468.601 Notice of hearing — service.

Upon the filing of any such application, the auditor shall forthwith fix a time and place for hearing thereon before the county board of supervisors, which hearing shall be not more than ninety days nor less than thirty days from the time of the filing of such application, and cause notice in writing to be served upon the owner of each tract of land across which any such levee, ditch, or drain is proposed to be located, as shown by the transfer books in the office of the county auditor, and also upon the person in actual occupancy of any such lands, of the pendency and prayer of such application and the time and place set for hearing on the same before the board of supervisors, which notice, as to residents of the county and railroad companies, shall be served not less than ten days before the time set for such hearing, in the manner that original notices are required to be served. Notice to a railroad company may be served upon any station agent.

[C73, §1218; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.2]

89 Acts, ch 126, §2

CS89, §468.601

Manner of service, R.C.P. 1.302 – 1.315

468.602 Service upon nonresident.

In case any such owner is a nonresident of the county the owner may be personally served in the manner required for original notices or, in lieu thereof, the owner may be given notice as provided in section 468.15.

[C73, §1218; C97, §1955; S13, §1955; C24, 27, 31, 35, 39, §**7717;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.3]

89 Acts, ch 126, §2

CS89, §468.602

468.603 Service on omitted parties — adjournment.

If at the hearing it should appear that any person entitled to notice has not been served with notice, the board may postpone such hearing and fix a new time for the same, and notice of such new time of hearing may be served on such omitted persons in the manner and for the time provided by law and by fixing such new time for hearing and by adjournment to such time, the board shall not lose jurisdiction of the subject matter of such proceeding nor of any persons previously served with notice.

[S13, §1955; C24, 27, 31, 35, 39, §**7718;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.4]

89 Acts, ch 126, §2

CS89, §468.603

468.604 Claims for damages — waiver.

Any person or corporation claiming damages or compensation for or on account of the construction of any such improvement, shall file a claim in writing therefor with the auditor at or before the time fixed for hearing on the application. A failure to file such claim at the time specified shall be deemed to be a waiver of the right to claim or recover such damage.

[S13, §1955; C24, 27, 31, 35, 39, §**7719;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.5]

89 Acts, ch 126, §2

CS89, §468.604

468.605 Hearing — sufficiency of application — damages.

At the time set for hearing on the application, if the board shall find that all necessary parties have been served with notice as required, they shall proceed to hear and determine the sufficiency of the application as to form and substance, which application may be amended both as to form and substance before final action thereon. They shall also determine the merits of the application, all objections thereto, and all claims filed for damages or compensation, and may view the premises. The board may adjourn the proceedings from day to day, but no adjournment shall be for a longer period than ten days.

[C73, §1219; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7720;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.6]

89 Acts, ch 126, §2

CS89, §468.605

468.606 Shall locate when — specifications.

If the supervisors find that the levee, ditch, or drain petitioned for will be beneficial for sanitary, agricultural, or mining purposes, they shall locate the same and fix the points of entrance and exit on such land or property, the course of the same through each tract of land, the size, character, and depth thereof, when and in what manner the same shall be constructed, how kept in repair, what connections may be made therewith, what compensation, if any, shall be made to the owners of such land or property for damages by reason of the construction of any such improvements, and any other question arising in connection therewith.

[C73, §1220; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7721;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.7]

89 Acts, ch 126, §2

CS89, §468.606

468.607 Findings — record.

The board shall reduce its findings, decision, and determination to writing, which shall be filed with the auditor, who shall record it in the official record of the board's proceedings, together with the application and all other papers filed in connection therewith, and the auditor shall cause the findings and decision of the board to be recorded in the office of the recorder of the county in which such land is situated and said decision shall be final unless appealed from as provided in section 468.608.

[C73, §1220; C97, §1956; S13, §1956; C24, 27, 31, 35, 39, §**7722;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.8]

89 Acts, ch 126, §2

CS89, §468.607

468.608 Appeal — notice.

Either party may appeal to the district court from any such decision by causing to be served, within ten days from the time it was filed with the auditor, a notice in writing upon the opposite party of the taking of such appeal, which notice shall be served in the same manner as is provided for the service of original notices. If the appellant is the party petitioning for the drain, the appellant shall also file a bond, conditioned to pay all costs of appeal that may be assessed against the appellant, which bond, if good and sufficient, shall be approved by the auditor.

[C73, §1223; C97, §1957; C24, 27, 31, 35, 39, §**7723;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.9]

89 Acts, ch 126, §2

CS89, §468.608

Referred to in §468.607, 468.631

Manner of service, R.C.P. 1.302 – 1.315

Presumption of approval of bond, §636.10

468.609 Transcript.

In case of appeal, the auditor shall certify to the district court a transcript of the proceedings before the board, which shall be filed in said court with the appeal bond, the party appealing paying for said transcript and the docketing of said appeal, as in other cases.

[C97, §1958; C24, 27, 31, 35, 39, §**7724;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.10]

89 Acts, ch 126, §2

CS89, §468.609

Referred to in §468.631

468.610 Appeal — how tried — costs.

The cause shall be tried in the district court by ordinary proceedings, upon such pleading as the court may direct, each party having the right to offer such testimony as shall be admissible under the rules of law. If the appellant does not recover a more favorable judgment in the district court than the appellant received in the decision of the board, the appellant shall pay all the costs of appeal.

[C97, §1957; C24, 27, 31, 35, 39, §**7725;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.11]

89 Acts, ch 126, §2

CS89, §468.610

Referred to in §468.631

468.611 Parties — judgment — orders.

The party claiming damages shall be the plaintiff and the applicant shall be the defendant; and the court shall render such judgment as shall be warranted by the verdict, the facts, and the law upon all the matters involved, and make such orders as will cause the same to be carried into effect.

[C73, §1224; C97, §1958; C24, 27, 31, 35, 39, §**7726;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.12]

89 Acts, ch 126, §2

CS89, §468.611

468.612 Costs and damages — payment.

The applicant shall pay the costs of the board and auditor and for the serving of notices for hearing, the fees of witnesses summoned by the board on said hearing, and the recording of the finding of the board by the county recorder.

[C73, §1221; C97, §1959; S13, §1959; C24, 27, 31, 35, 39, §**7727;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.13]

89 Acts, ch 126, §2

CS89, §468.612

Service of notice fees, §331.655, subsection 1

Witness fees, §622.69 – 622.75

468.613 Construction.

Before entering on the construction of the drain, the party applying therefor shall pay to the party through whose land said drain is to be constructed the damages awarded to that party, or shall pay the same to the board for that party's use. The applicant may proceed to construct said drain in accordance with the decision of the board, and the taking of an appeal shall not delay such work.

[C97, §1959; S13, §1959; C24, 27, 31, 35, 39, §**7728;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.14]

89 Acts, ch 126, §2

CS89, §468.613

468.614 Construction through railroad property.

If any such ditch or drain shall be located through or across the right-of-way or other land of a railroad company, the board shall determine the cost of constructing the same and the railroad company shall have the privilege of constructing such improvement through its property in accordance with the specifications made by the board and recover the costs

thereof as fixed by the board. Such railroad company before it may exercise such privilege shall file its election to that effect with the auditor within five days after the decision of the board is filed.

[S13, §1959; C24, 27, 31, 35, 39, §**7729;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.15]
89 Acts, ch 126, §2
CS89, §468.614

468.615 Deposit.

In case such election is filed the applicant shall within ten days thereafter pay to the auditor, for the use of the railroad company, the cost of constructing the drainage improvement through its property, in addition to the amount that may be allowed as damages, and when the railroad company shall have completed the improvement through its property in accordance with such specifications it shall be entitled to demand and receive from the auditor such cost.

[S13, §1959; C24, 27, 31, 35, 39, §**7730;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.16]
89 Acts, ch 126, §2
CS89, §468.615

468.616 Failure to construct.

If the railroad company shall fail to so construct the improvement for a period of thirty days after filing its election so to do, the applicant may proceed to do so and may have returned to the applicant the cost thereof deposited with the auditor.

[S13, §1959; C24, 27, 31, 35, 39, §**7731;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.17]
89 Acts, ch 126, §2
CS89, §468.616

468.617 Repairs.

In case any dispute shall thereafter arise as to the repair of any such drain, the same shall be determined by the county board of supervisors upon application in substantially the same manner as in the original construction thereof.

[C73, §1226; C97, §1960; C24, 27, 31, 35, 39, §**7732;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.18]
89 Acts, ch 126, §2
CS89, §468.617

468.618 Obstruction.

Any person who shall dam up, obstruct, or in any way injure any ditch or drain so constructed, shall be liable to pay to the person owning or possessing the swamp, marsh, or other lowlands, for the draining of which such ditch or ditches have been opened, double the damages that shall be sustained by the owner, and, in case of a second or subsequent offense by the same person, treble such damages.

[C73, §1227; C97, §1961; C24, 27, 31, 35, 39, §**7733;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.19]
89 Acts, ch 126, §2
CS89, §468.618

468.619 Drains on abutting boundary lines.

When any watercourse or natural drainage line crosses the boundary line between two adjoining landowners and both parties desire to drain their land along such watercourse or natural drainage line, but are unable to agree as to the junction of the lines of drainage at such boundary line, the board of supervisors of the county in which said land is located shall have full power and authority upon the application of either party to hear and determine all questions arising between such parties after giving due notice to each of the time and place

of such hearing, and may render such decision thereon as to said board shall seem just and equitable.

[C97, §1962; C24, 27, 31, 35, 39, §**7734;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.20]
89 Acts, ch 126, §2
CS89, §468.619
Referred to in §468.620

468.620 Boundary between two counties.

If any controversy referred to in section 468.619 relates to a boundary line between adjoining owners which is also the boundary line between two counties, then such controversy shall be determined by the joint action of the boards of supervisors in said two adjoining counties, and all the proceedings shall be the same as provided in section 468.619 except that it shall be by the joint action of the boards of the two counties.

[C24, 27, 31, 35, 39, §**7735;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.21]
89 Acts, ch 126, §2
CS89, §468.620

468.621 Drainage in course of natural drainage — reconstruction — damages.

Owners of land may drain the land in the general course of natural drainage by constructing or reconstructing open or covered drains, discharging the drains in any natural watercourse or depression so the water will be carried into some other natural watercourse, and if the drainage is wholly upon the owner's land the owner is not liable in damages for the drainage unless it increases the quantity of water or changes the manner of discharge on the land of another. An owner in constructing a replacement drain, wholly on the owner's land, and in the exercise of due care, is not liable in damages to another if a previously constructed drain on the owner's own land is rendered inoperative or less efficient by the new drain, unless in violation of the terms of a written contract. This section does not affect the rights or liabilities of proprietors in respect to running streams.

[S13, §1989-a53; C24, 27, 31, 35, 39, §**7736;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.22]
87 Acts, ch 225, §306; 89 Acts, ch 126, §2
CS89, §468.621

468.622 Drainage connection with highway.

1. When the course of natural drainage of any land runs to a public highway, the owner of such land shall have the right to enter upon the highway for the purpose of connecting the owner's drain or ditch with any drain or ditch constructed along or across the highway. In making the connections, the owner shall do so in accordance with specifications furnished by the highway authorities having jurisdiction over the highway, which specifications shall be furnished to the owner on application. The owner shall leave the highway in as good condition in every way as it was before the work was done.

2. If a tile line or drainage ditch must be projected across the right-of-way to a suitable outlet, the expense of both material and labor used in installing the tile line or drainage ditch across the highway and any subsequent repair of the tile line or drainage ditch shall be paid from funds available for the highways affected.

[C97, §1963; C24, 27, 31, 35, 39, §**7737;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.23]
89 Acts, ch 126, §2
CS89, §468.622
2019 Acts, ch 59, §170
Section amended

468.623 Private drainage system — record.

1. Any person who has provided a system of drainage on land owned by the person may have the same made a matter of record in the office of the county recorder of the county in which the drainage system is located, provided any drainage system constructed after July 1, 1969, shall be made a matter of record. The record shall contain the applicable entries specified in sections 558.49 and 558.52.

2. Records under subsection 1 may be used to give the owner's name, description of tracts of land drained, stating the time when the drainage system was established, the kind, quality, and brand of tile used, the name and place of the manufacturing plant, the name of contractors who laid the tile, the name of the engineer in charge of the survey and installation, the cost of tile, delivery, installation, and engineering expense, depths, grades, outlets, connections, contracts for agreements with adjoining landowners as to connections, and any other matters or information that may be considered of value, and such information may be furnished by the landowner or the engineer having charge of the installation and certified to under oath.

[C24, 27, 31, 35, 39, §**7738;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.24]
89 Acts, ch 126, §2
CS89, §468.623
2009 Acts, ch 27, §24
Referred to in §331.607, 468.628

468.624 and 468.625 Repealed by 2009 Acts, ch 27, §39.

468.626 Original plat filed.

In lieu of making the record as herein provided any landowner may file with the county recorder the original plat used in the establishment of the drainage system, or a copy of the plat, which shall be certified by the engineer having made the same. If practicable, a plat filed under this section shall be made a matter of record and shall contain the applicable entries specified in sections 558.49 and 558.52.

[C24, 27, 31, 35, 39, §**7741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.27]
89 Acts, ch 126, §2
CS89, §468.626
2009 Acts, ch 27, §25
Referred to in §468.628

468.627 Record not part of title.

The drainage records herein provided for shall not be construed as an essential part of the title to said lands, but may upon request be set out by abstracters as part of the record title of said lands.

[C24, 27, 31, 35, 39, §**7742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.28]
89 Acts, ch 126, §2
CS89, §468.627

468.628 Fees for recording.

When information is filed with the county recorder pursuant to section 468.623 or 468.626, the recorder shall collect recording fees in the amounts specified in section 331.604.

[C24, 27, 31, 35, 39, §**7743;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.29]
89 Acts, ch 126, §2
CS89, §468.628
2009 Acts, ch 27, §26

468.629 Lost records — hearing.

When the records of any mutual drain are incomplete or have been lost, or when the owner of any land affected by such mutual drain believes that the apportionment of costs or damages is inequitable or that repair or reconstruction is needed, such owner may petition the board of supervisors for relief. The board shall notify all affected parties of such petition, and set a date for a hearing on the petition. The board may adjourn the proceedings from day to day, but no adjournment shall be for more than ten days, and may order such engineering examinations, reclassifications of lands and appraisals of damages as they deem necessary. At the completion of the hearing the supervisors shall reestablish the original records or establish a revised record and basis for apportionment of costs and damages as they find equitable and advisable, and may order such repairs or reconstruction as they find to be

needed. All cost of such reestablishment or revisions of records, and of the needed repair or reconstruction shall be apportioned in accordance with the basis established.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.30]
89 Acts, ch 126, §2
CS89, §468.629
Referred to in §468.630

468.630 Mutual drains — establishment as district.

Whenever a landowner fails to pay the cost apportioned as provided in section 468.629, or whenever a repair or reconstruction ordered as provided in said section is not made within reasonable time, and in such other instances as the board of supervisors desires, the board by resolution shall establish such mutual drain as a drainage district; all proceedings thereafter shall be as provided for other legally established districts.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.31]
89 Acts, ch 126, §2
CS89, §468.630
Referred to in §468.631

468.631 Appeal.

The decisions and actions of the board of supervisors under section 468.630 may be appealed as provided in sections 468.608 through 468.610.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.32]
89 Acts, ch 126, §2
CS89, §468.631

468.632 Record filed with established district.

When the lands served by a mutual drain are within the boundary of an established drainage district, a complete record of the proceeding relating to such mutual drain shall be filed with and as a part of, the records of such established district.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.33]
89 Acts, ch 126, §2
CS89, §468.632
Referred to in §468.633

468.633 Lost or incomplete records.

If the records referred to in section 468.632 are incomplete or have been lost, the board may reestablish such records so as to proportion future costs and damages in proportion to the benefits and damages received because of the construction of such mutual drains and improvements thereof, and may order such surveys, engineering reports, reclassification of lands and appraisal of damages as they deem necessary. All costs of such proceedings shall be assessed against the benefited lands.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.34]
89 Acts, ch 126, §2
CS89, §468.633
Referred to in §468.634

468.634 Petition to combine with established district.

Upon receipt of a petition, signed by the owners of the lands served by a mutual drain, requesting that such drain be combined with an established drainage district, the board shall hold a hearing with due notice to the owners of all lands affected by said mutual drain, and if the board finds it desirable it may by resolution make such mutual drains a part of the established district. Such hearing and resolution may be continued as the board deems necessary for the collection of additional information as provided in section 468.633. Such combination with an established district shall constitute dissolution of the mutual drain, and

shall be so recorded, after which such mutual drain shall be a part of the district drain in all respects.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §465.35]
89 Acts, ch 126, §2
CS89, §468.634

SUBTITLE 4

ENERGY

CHAPTER 469

ENERGY INDEPENDENCE INITIATIVES

Repealed by 2011 Acts, ch 118, §49, 89
For provisions regarding transfer of funds under the control of the office of energy independence to the economic development authority, continuation of licenses, permits, or contracts by the economic development authority, continued administration of grants or loans awarded from the Iowa power fund, continued administration of federal grant funds by the economic development authority, and employment status of certain office of energy independence employees,
see 2011 Acts, ch 118, §51, 89

CHAPTER 469A

HYDROELECTRIC PLANTS

Referred to in §28F.14

469A.1 Certificate of convenience and necessity.
469A.2 Public hearing.
469A.3 Public welfare promoted.
469A.4 Rules imposed.
469A.5 Costs advanced.
469A.6 Amendment or revocation.
469A.7 Penalty.
469A.8 Unlawful combination — receivership.

469A.1 Certificate of convenience and necessity.

It shall be unlawful for any person, firm, association or corporation to engage in the business of constructing, maintaining or operating within this state any hydroelectric generating plant or project without first having obtained from the executive council of Iowa a certificate of convenience and necessity declaring that the public convenience and necessity require such construction, maintenance or operation.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.1]

Referred to in §469A.7

469A.2 Public hearing.

No certificate of convenience and necessity shall be issued by the executive council except after a public hearing thereon. The executive council shall, upon the filing of an application for such a certificate, fix the time of the public hearing thereon and shall prescribe the notice which shall be given by the applicant. Any interested person, firm, association, corporation, municipality, state board or commission may intervene and participate in such proceeding and at such hearing.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.2]

469A.3 Public welfare promoted.

Before the executive council shall issue a certificate of convenience and necessity, it shall first be satisfied that the public convenience and necessity will be promoted thereby, that the applicant has the financial ability to carry out the terms and conditions imposed, and the applicant has in writing agreed to accept, abide by and comply with such reasonable terms and conditions as the executive council may require and impose.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.3]

469A.4 Rules imposed.

The executive council shall prescribe such rules as it may determine necessary for the administration of the provisions of this chapter and may amend such rules at any time.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.4]

469A.5 Costs advanced.

The executive council shall, upon the filing of an application, require the applicant to deposit with the secretary of the executive council such amount as the council shall determine, to pay the expenses to be incurred by the executive council in its investigations and in conducting the proceedings, and the executive council may, from time to time as it deems necessary, require the deposit of additional amounts for such purpose.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.5]

469A.6 Amendment or revocation.

The executive council may at any time for just cause or upon the failure of the applicant to comply with and to obey the terms and conditions attached to the issuance of any certificate, or when the public convenience and necessity demands, alter, amend or revoke any certificate issued under the provisions of this chapter.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.6]

469A.7 Penalty.

Any person, firm, association or corporation who shall violate the provisions of section 469A.1, shall be guilty of a serious misdemeanor. Each separate day that a violation occurs shall constitute a separate offense.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §469A.7]

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, trusteed, 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.

90 Acts, ch 1108, §5

CHAPTER 470

LIFE CYCLE COST ANALYSIS OF PUBLIC FACILITIES

Referred to in §331.361, 473.15

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470.1 Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Addition"* means new construction equal to or greater than twenty thousand square

feet of usable floor space that is heated or cooled by a mechanical or electrical system and is joined to an existing facility.

2. *"Authority"* means the economic development authority created in section 15.105.

3. *"Commissioner"* means the state building code commissioner.

4. *"Director"* means the director of the economic development authority.

5. *"Economic life"* means the projected or anticipated useful life of a facility as expressed by a term of years.

6. *"Energy system"* includes but is not limited to the following equipment or measures:

a. Equipment used to heat or cool the facility.

b. Equipment used to heat water in the facility.

c. On-site equipment used to generate electricity for the major facility.

d. On-site equipment that uses the sun, wind, oil, natural gas, coal, or electricity as a power source.

e. Energy conservation measures in the facility design and construction that decrease the energy requirements of the facility.

7. *"Facility"* means a building having twenty thousand square feet or more of usable floor space that is heated or cooled by a mechanical or electrical system.

8. *"Initial cost"* means the moneys required for the capital construction or renovation of a facility or the construction of an addition.

9. *"Life cycle cost analysis"* means an analytical technique that considers certain costs of owning, using, and operating a facility over its economic life including but not limited to the following:

a. Initial costs.

b. System repair and replacement costs.

c. Maintenance costs.

d. Operating costs, including energy costs.

e. Salvage value.

10. *"Public agency"* means a state agency, political subdivision of the state, school district, area education agency, or community college.

11. *"Renovation"* means a project where alterations, that are not additions, to an existing facility exceed fifty percent of the value of a facility and will affect an energy system.

[C81, §470.1]

91 Acts, ch 253, §17, 18; 2009 Acts, ch 108, §23, 41; 2011 Acts, ch 118, §42 – 44, 89; 2016 Acts, ch 1109, §1, 2, 9

470.2 Policy — analysis required.

The general assembly declares that energy management is of primary importance in the design of publicly owned facilities. On or after May 26, 2016, a public agency responsible for the construction or renovation of a facility or the construction of an addition shall, in a design begun after that date, include as a design criterion the requirement that a life cycle cost analysis be conducted for the facility. The objectives of the life cycle cost analysis are to optimize energy efficiency at an acceptable life cycle cost. The life cycle cost analysis shall meet the requirements of section 470.3.

[C81, §470.2]

2016 Acts, ch 1109, §3, 9

470.3 Elements of analysis.

1. A life cycle cost analysis shall include but is not limited to the following elements:

a. Specification of energy management objectives and health, safety, and functional constraints. The facility design shall comply with applicable state or local building code requirements.

b. Identification of the energy needs of the facility and energy system alternatives to meet those needs.

c. Cost of the energy system alternatives identified in paragraph *"b"* of this subsection.

d. Determination of amounts and timing of cash flow.

e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.

f. Evaluation of design and system alternatives using a method such as, but not limited to, design matrixes, ranking tables, or network analysis.

2. A public agency or a person preparing a life cycle cost analysis for a public agency shall use the methodology set forth in the guidelines established, by rule, by the commissioner.

[C81, §470.3]

88 Acts, ch 1179, §6; 91 Acts, ch 253, §19; 2009 Acts, ch 108, §24, 41; 2011 Acts, ch 118, §50, 89; 2016 Acts, ch 1109, §4, 9

Referred to in §470.2

470.4 Analysis approved.

The life cycle cost analysis shall be approved by the public agency before contracts for the construction or renovation of a facility or the construction of an addition are let. A public agency may accept a facility design and shall meet the requirements of this chapter if the design meets the operational requirements of the agency and provides the optimum life cycle cost. The public agency shall retain a copy of the life cycle cost analysis and a statement justifying a design decision both of which shall be available for public inspection at reasonable hours.

[C81, §470.4]

2016 Acts, ch 1109, §5, 9

470.5 Exceptions.

This chapter does not apply to buildings used on January 1, 1980 by the division of adult corrections of the department of human services as maximum security detention facilities or to the renovation of property nominated to, or entered in the national register of historic places, designated by statute, or included in an established list of historic places compiled by the historical division of the department of cultural affairs.

[C81, §470.5; 82 Acts, ch 1238, §22]

83 Acts, ch 96, §157, 159

470.6 Restriction on use of public funds.

Public funds shall not be used for the construction or renovation of a facility or the construction of an addition unless the design for the work is prepared in accordance with this chapter and the actual construction or renovation of the facility or the construction of the addition meets the requirements of the design.

[C81, §470.6]

2016 Acts, ch 1109, §6, 9

470.7 Life cycle cost analysis — approval.

1. The public agency responsible for the new construction or renovation of a public facility or the construction of an addition to a public facility shall submit a copy of the life cycle cost analysis for review by the commissioner who shall consult with the authority. If the public agency is also a state agency under section 7D.34, comments by the authority or the commissioner, including any recommendation for changes in the analysis, shall, within thirty days of receipt of the analysis, be forwarded in writing to the public agency. If either the authority or the commissioner disagrees with any aspects of the life cycle cost analysis, the public agency affected shall timely respond in writing to the commissioner and the authority. The response shall indicate whether the agency intends to implement the recommendations and, if the agency does not intend to implement them, the public agency shall present its reasons. The reasons may include but are not limited to a description of the purpose of the facility or renovation, preservation of historical architectural features, architectural and site considerations, and health and safety concerns.

2. Within thirty days of receipt of the response of the public agency affected, the authority, the commissioner, or both, shall notify in writing the public agency affected of the authority's, the commissioner's, or both's agreement or disagreement with the response. In the event of

a disagreement, the authority, the commissioner, or both, shall at the same time transmit the notification of disagreement with response and related papers to the executive council for resolution pursuant to section 7D.34. The life cycle cost analysis process, including submittal and approval, and implementation exemption requests pursuant to section 470.8, shall be completed prior to the letting of contracts for the construction or renovation of a facility or the construction of an addition.

88 Acts, ch 1179, §7; 89 Acts, ch 315, §28; 91 Acts, ch 253, §20; 2009 Acts, ch 108, §25, 41; 2011 Acts, ch 118, §50, 89; 2016 Acts, ch 1109, §7, 9

Referred to in §7D.35

470.8 Life cycle cost analysis — implementation and exemptions.

1. The public agency responsible for the new construction or renovation of a public facility or the construction of an addition shall implement the recommendations of the life cycle cost analysis.

2. The commissioner shall adopt rules for the implementation and administration of the life cycle cost analysis. The commissioner, in consultation with the director, shall, by rule, develop criteria to exempt facilities from the implementation requirements of this section. Using the criteria, the commissioner, in cooperation with the director, shall exempt facilities on a case-by-case basis. Factors to be considered when developing the exemption criteria shall include, but not be limited to, a description of the purpose of the facility or renovation, the preservation of historical architectural features, site considerations, and health and safety concerns. The commissioner and the director shall grant or deny a request for exemption from the requirements of this section within thirty days of receipt of the request.

91 Acts, ch 253, §21; 2016 Acts, ch 1109, §8, 9

Referred to in §470.7

CHAPTERS 471 and 472

RESERVED

CHAPTER 473

ENERGY DEVELOPMENT AND CONSERVATION

Referred to in §455A.4, 455A.6

This chapter not enacted as a part of this title;
transferred from chapter 93 in Code 1993
For provisions regarding transfer of funds under the control of
the office of energy independence to the economic development authority,
continuation of licenses, permits, or contracts by the economic
development authority, continued administration of grants
or loans awarded from the Iowa power fund,
continued administration of federal grant funds
by the economic development authority, and employment status of
certain office of energy independence employees,
see 2011 Acts, ch 118, §51, 89

473.1 Definitions.
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473.10 Reserve required.
473.11 Energy conservation trust established — receipts and disbursements. Repealed by 2008 Acts, ch 1126, §32, 33.
473.12 Implementation of energy conservation measures — state board of regents. Repealed by 2005 Acts, ch 179, §160.

473.13 Implementation of energy conservation measures — state department of transportation. Repealed by 2008 Acts, ch 1126, §32, 33.
473.13A Energy management improvements identified and implemented.
473.14 Reserved.
473.15 Annual report.
473.16 and 473.17 Repealed by 2008 Acts, ch 1126, §32, 33.
473.18 Reserved.
473.19 Building energy management program.
473.19A Building energy management fund.
473.20 Energy loan program.
473.20A Self-liquidating financing.
473.21 through 473.39 Reserved.
473.40 Statewide building energy efficiency rating system. Repealed by 2006 Acts, ch 1014, §10.
473.41 Energy city designation program.
473.42 Exit signs — standards. Repealed by 2008 Acts, ch 1126, §32, 33.
473.43 Reserved.
473.44 Plumbing products efficiency standards — penalty. Repealed by 2008 Acts, ch 1126, §32, 33.

473.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Alternative and renewable energy"* means energy sources including but not limited to solar, wind turbine, waste management, resource recovery, recovered energy generation, refuse-derived fuel, hydroelectric, agricultural crops or residues, hydrogen produced using renewable fuel sources, and woodburning, or relating to renewable fuel development and distribution.

2. *"Authority"* means the economic development authority created in section 15.105.

3. *"Commission"* means the environmental protection commission of the department of natural resources.

4. *"Director"* means the director of the authority or a designee.

5. *"Energy"* or *"energy sources"* means gasoline, fuel oil, natural gas, propane, coal, special fuels, and electricity.

6. *"Renewable fuel"* means a fuel that is all of the following:

a. A motor vehicle fuel that is any of the following:

(1) Produced from grain; starch; oilseed; vegetable, animal, or fish materials, including but not limited to fats, greases, and oil; sugar components, grasses, or potatoes; or other biomass.

(2) Natural gas produced from a biogas source including but not limited to a landfill, sewage waste treatment plant, animal feeding operation, or other place where decaying organic material is found.

b. Used to replace or reduce the quantity of fossil fuel present in a motor fuel mixture used to operate a motor vehicle.

7. *"Supplier"* means any person engaged in the business of selling, importing, storing, or generating energy sources, alternative and renewable energy, or renewable fuel in Iowa.

[C75, 77, 79, 81, §93.1]

86 Acts, ch 1245, §1817 – 1819

C93, §473.1

2008 Acts, ch 1126, §18, 19, 33; 2009 Acts, ch 108, §26, 41; 2011 Acts, ch 118, §45 – 47, 89; 2012 Acts, ch 1021, §88

473.2 Findings.

The general assembly finds that the health, welfare, and prosperity of all Iowans require the provision of adequate, efficient, reliable, environmentally safe, and least-cost energy at prices which accurately reflect the long-term cost of using such energy resources and which are equitable to all Iowans. The goals and objectives of this policy are to ensure the following:

1. *Efficiency.* The provision of reliable energy at the least possible cost to Iowans in such manner that:

a. Physical, human, natural, and financial resources are allocated efficiently.

b. All supply and demand options are considered and evaluated using comparable terms

and methods in order to determine how best to meet consumers' demands for energy at the least cost.

2. *Environmental quality.* The protection of the environment from the adverse external costs of an energy resource utilization so that:

a. Environmental costs of proposed actions having a significant impact on the environment and the environmental impact of the alternatives are identified, documented, and considered in the resource development.

b. The prudently and reasonably incurred costs of environmental controls are recovered.

88 Acts, ch 1179, §1
C89, §93.2
C93, §473.2
2008 Acts, ch 1126, §20, 33
See also chapter 470 for life cycle cost analysis provisions

473.3 Energy resource management goal.

1. The goal of this state is to efficiently utilize energy resources to enhance the economy of the state by decreasing the state's dependence on nonrenewable energy resources from outside the state and by reducing the amount of energy used. This goal is to be implemented through the development of policies and programs that promote energy efficiency, energy conservation, and alternative and renewable energy use by all Iowans, through the development and enhancement of an energy efficiency and alternative and renewable energy industry, through the commercialization of energy resources and technologies that are economically and environmentally viable, and through the development and implementation of effective public information and education programs.

2. State government shall be a model and testing ground for the use of energy efficiency, energy conservation, and alternative and renewable energy systems.

90 Acts, ch 1252, §6
C91, §93.3
C93, §473.3
2008 Acts, ch 1126, §21, 33

473.4 through 473.6 Reserved.

473.7 Duties of the authority.

The authority shall:

1. Supply and annually update the following information:

a. The historical use and distribution of energy in Iowa.

b. The growth rate of energy consumption in Iowa, including rates of growth for each energy source.

c. A projection of Iowa's energy needs at a minimum through the year 2025.

d. The impact of meeting Iowa's energy needs on the economy of the state, including the impact of energy efficiency and renewable energy on employment and economic development.

e. The impact of meeting Iowa's energy needs on the environment of the state, including the impact of energy production and use on greenhouse gas emissions.

f. An evaluation of renewable energy sources, including the current and future technological potential for such sources.

2. Collect and analyze data to use in forecasting future energy demand and supply for the state. A supplier is required to provide information pertaining to the supply, storage, distribution, and sale of energy sources in this state when requested by the authority. The information shall be of a nature which directly relates to the supply, storage, distribution, and sale of energy sources, and shall not include any records, documents, books, or other data which relate to the financial position of the supplier. The authority, prior to requiring any supplier to furnish it with such information, shall make every reasonable effort to determine if such information is available from any other governmental source. If it finds such information is available, the authority shall not require submission of the information

from a supplier. Notwithstanding the provisions of chapter 22, information and reports obtained under this section shall be confidential except when used for statistical purposes without identifying a specific supplier and when release of the information will not give an advantage to competitors and serves a public purpose. The authority shall use this data to conduct energy forecasts.

3. Develop, recommend, and implement with appropriate agencies public and professional education and communication programs in energy efficiency, energy conservation, and conversion to alternative and renewable energy.

4. When necessary to carry out its duties under this chapter, enter into contracts with state agencies and other qualified contractors.

5. Receive and accept grants made available for programs relating to duties of the authority under this chapter.

6. Promulgate rules necessary to carry out the provisions of this chapter, subject to review in accordance with chapter 17A. Rules promulgated by the governor pursuant to a proclamation issued under the provisions of section 473.8 shall not be subject to review or a public hearing as required in chapter 17A; however, authority rules for implementation of the governor's proclamation are subject to the requirements of chapter 17A.

7. Assist in the implementation of public education and communications programs in energy development, use, and conservation, in cooperation with the department of education, the state university extension services, and other public or private agencies and organizations as deemed appropriate by the authority.

8. Develop a program to annually give public recognition to innovative methods of energy conservation, energy management, and alternative and renewable energy production.

9. Administer and coordinate federal funds for energy conservation, energy management, and alternative and renewable energy programs.

10. Administer and coordinate the state building energy management program including projects funded through private financing.

11. Provide information from monthly fuel surveys which establish a statistical average of motor fuel prices for various motor fuels provided throughout the state. Additionally, the authority shall provide statewide monthly fuel survey information which establishes a statistical average of motor fuel prices for various motor fuels provided in both metropolitan and rural areas of the state. The survey results shall be publicized in a monthly press release issued by the authority.

12. Conduct a study on activities related to energy production and use which contribute to global climate change, in conjunction with institutions under the control of the state board of regents. The study shall take the form of a climate change impacts review, to include the following:

a. Performance of an initial review of available climate change impacts studies relevant to this state.

b. Preparation of a summary of available data on recent changes in relevant climate conditions.

c. Identification of climate change impacts issues which require further research and an estimate of their cost.

d. Identification of important public policy issues relevant to climate change impacts.

[C75, 77, 79, 81, §93.7; 82 Acts, ch 1081, §1, 2, ch 1199, §92, 96]

86 Acts, ch 1245, §1820 – 1822; 88 Acts, ch 1179, §2; 88 Acts, ch 1281, §7; 89 Acts, ch 152, §1; 89 Acts, ch 297, §2; 90 Acts, ch 1252, §7 – 10

C93, §473.7

2007 Acts, ch 168, §15, 18; 2008 Acts, ch 1126, §22, 23, 33; 2009 Acts, ch 108, §27, 41; 2010 Acts, ch 1031, §260; 2011 Acts, ch 118, §50, 89; 2012 Acts, ch 1021, §89

473.8 Emergency powers.

1. If the authority by resolution determines the health, safety, or welfare of the people of this state is threatened by an actual or impending acute shortage of usable energy, it shall transmit the resolution to the governor together with its recommendation on the declaration of an emergency by the governor and recommended actions, if any, to be undertaken. Within

thirty days of the date of the resolution, the governor may issue a proclamation of emergency which shall be filed with the secretary of state. The proclamation shall state the facts relied upon and the reasons for the proclamation.

2. *a.* Pursuant to the proclamation of an emergency or in response to a declaration of an energy emergency by the president of the United States under the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102, the governor by executive order may:

(1) Regulate the operating hours of energy consuming instrumentalities of state government, political subdivisions, private institutions and business facilities to the extent the regulation is not hazardous or detrimental to the health, safety, or welfare of the people of this state. However, the governor shall have no authority to suspend, amend or nullify any service being provided by a public utility pursuant to an order or rule of a federal agency which has jurisdiction over the public utility.

(2) Establish a system for the distribution and supply of energy. The system shall not include a coupon rationing program, unless the program is federally mandated.

(3) Curtail public and private transportation utilizing energy sources. Curtailment may include measures designed to promote the use of car pools and mass transit systems.

(4) Delegate any administrative authority vested in the governor to the authority or the director.

(5) Provide for the temporary transfer of directors, personnel, or functions of state departments and agencies, for the purpose of performing or facilitating emergency measures pursuant to subparagraphs (1) and (2).

(6) Accept the delegation of other mandatory measures as allowed by the federal Emergency Energy Conservation Act of 1979, Pub. L. No. 96-102.

b. If the general assembly is in session, it may revoke by concurrent resolution any proclamation of emergency issued by the governor. If the general assembly is not in session, the proclamation of emergency by the governor may be revoked by a majority vote of the standing membership of the legislative council. Such revocation shall be effective upon receipt of notice of the revocation by the secretary of state and any functions being performed pursuant to the governor's proclamation shall cease immediately.

3. A violation of an executive order of the governor issued pursuant to this section is a scheduled violation as provided in section 805.8C, subsection 1. If the violation is continuous and stationary in its nature and subsequent compliance can easily be ascertained, an officer may issue a memorandum of warning in lieu of a citation providing a reasonable amount of time not exceeding fourteen days to correct the violation and to comply with the requirements of the executive order.

[C75, 77, 79, 81, §93.8]
86 Acts, ch 1245, §1822
C93, §473.8
2001 Acts, ch 137, §5; 2009 Acts, ch 108, §28, 29, 41; 2011 Acts, ch 118, §50, 89
Referred to in §473.7, 805.8C(1)

473.9 Set-aside definitions.

As used in section 473.10 unless the context otherwise requires:

1. *"Hardship"* means a situation involving or potentially involving substantial discomfort or danger or economic dislocation caused by a shortage or distribution imbalance of a liquid fossil fuel.

2. *"Liquid fossil fuel"* means heating oils, diesel oil, motor gasoline, propane, residual fuel oils, kerosene, and aviation fuels.

3. *"Prime supplier"* means an individual, trustee, agency, partnership, association, corporation, company, municipality, political subdivision or other legal entity that makes the first sale of a liquid fossil fuel into the state distribution system for consumption within the state.

[81 Acts, ch 32, §3]
C83, §93.9
C93, §473.9

473.10 Reserve required.

1. If the authority or the governor finds that an impending or actual shortage or distribution imbalance of liquid fossil fuels may cause hardship or pose a threat to the health and economic well-being of the people of the state or a significant segment of the state's population, the authority or the governor may authorize the director to operate a liquid fossil fuel set-aside program as provided in subsection 2.

2. Upon authorization by the authority or the governor the director may require a prime supplier to reserve a specified fraction of the prime supplier's projected total monthly release of liquid fossil fuel in Iowa. The director may release any or all of the fuel required to be reserved by a prime supplier to end-users or to distributors for release through normal retail distribution channels to retail customers. However, the specified fraction required to be reserved shall not exceed three percent for propane, aviation fuel and residual oil, and five percent for motor gasoline, heating oil, and diesel oil.

3. The authority shall periodically review and may terminate the operation of a set-aside program authorized by the authority under subsection 1 when the authority finds that the conditions that prompted the authorization no longer exist. The governor shall periodically review and may terminate the operation of a set-aside program authorized by the governor under subsection 1 when the governor finds that the conditions that prompted the authorization no longer exist.

4. The authority shall adopt rules to implement this section.

[81 Acts, ch 32, §4]
C83, §93.10
86 Acts, ch 1245, §1822
C93, §473.10
2009 Acts, ch 108, §30, 41; 2011 Acts, ch 118, §50, 89; 2012 Acts, ch 1021, §90
Referred to in §473.9

473.11 Energy conservation trust established — receipts and disbursements. Repealed by 2008 Acts, ch 1126, §32, 33.

473.12 Implementation of energy conservation measures — state board of regents. Repealed by 2005 Acts, ch 179, §160.

473.13 Implementation of energy conservation measures — state department of transportation. Repealed by 2008 Acts, ch 1126, §32, 33.

473.13A Energy management improvements identified and implemented.

The state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges shall identify and implement, through energy audits and engineering analyses, all energy management improvements identified for which financing is facilitated by the authority for the entity. The energy management improvement financings shall be supported through payments from energy savings.

89 Acts, ch 297, §3
CS89, §93.13A
90 Acts, ch 1252, §11; 91 Acts, ch 253, §6
C93, §473.13A
2009 Acts, ch 108, §31, 41; 2011 Acts, ch 118, §50, 89
Referred to in §12.28

473.14 Reserved.

473.15 Annual report.

The authority shall complete an annual report to assess the progress of state agencies in implementing energy management improvements, alternative and renewable energy systems, and life cycle cost analyses under chapter 470, and on the use of renewable fuels. The authority shall work with state agencies and with any entity, agency, or organization with which they are associated or involved in such implementation, to use available information

to minimize the cost of preparing the report. The authority shall also provide an assessment of the economic and environmental impact of the progress made by state agencies related to energy management and alternative and renewable energy, along with recommendations on technological opportunities and policies necessary for continued improvement in these areas.

88 Acts, ch 1179, §5
C89, §93.15
C93, §473.15
2008 Acts, ch 1126, §24, 33; 2009 Acts, ch 108, §32, 41; 2011 Acts, ch 118, §50, 89

473.16 and 473.17 Repealed by 2008 Acts, ch 1126, §32, 33.

473.18 Reserved.

473.19 Building energy management program.

1. The building energy management program is established by the authority. The building energy management program consists of the following forms of assistance for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations:

a. Promoting program availability.

b. Developing or identifying guidelines and model energy techniques for the completion of energy analyses for state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations.

c. Providing technical assistance for conducting or evaluating energy analyses for state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations.

d. Providing or facilitating loans, leases, and other methods of alternative financing under the energy loan program for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to implement energy management improvements or energy analyses.

e. Providing assistance for obtaining insurance on the energy savings expected to be realized from the implementation of energy management improvements.

f. Facilitating self-liquidating financing for the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations pursuant to section 473.20A.

g. Assisting the treasurer of state with financing agreements entered into by the treasurer of state on behalf of state agencies to finance energy management improvements pursuant to section 12.28.

2. For the purpose of this section, section 473.20, and section 473.20A, *"energy management improvement"* means construction, rehabilitation, acquisition, or modification of an installation in a facility or vehicle which is intended to reduce energy consumption, or energy costs, or both, or allow the use of alternative and renewable energy. *"Energy management improvement"* may include control and measurement devices. *"Nonprofit organization"* means an organization exempt from federal income taxation under section 501(c)(3) of the Internal Revenue Code.

3. The authority shall submit a report by January 1 annually to the governor and the general assembly detailing services provided and assistance rendered pursuant to the building energy management program and pursuant to sections 473.20 and 473.20A, and receipts and disbursements in relation to the building energy management fund created in section 473.19A.

4. Moneys awarded or allocated to the state, its citizens, or its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations attributable to or contained within the Stripper Well fund shall be allocated to and remain under the control of the authority for utilization for energy program-related staff support purposes.

86 Acts, ch 1167, §2

C87, §93.19
87 Acts, ch 209, §1; 90 Acts, ch 1253, §120, 121; 91 Acts, ch 253, §7
C93, §473.19
2008 Acts, ch 1126, §25, 33; 2009 Acts, ch 108, §33, 41; 2011 Acts, ch 118, §50, 89
Referred to in §12.28, 298.3, 473.19A

473.19A Building energy management fund.

1. The building energy management fund is created within the state treasury under the control of the authority. The fund shall be used for the operational expenses and administrative costs incurred by the authority in facilitating and administering the building energy management program established in section 473.19.

2. The building energy management fund shall consist of amounts deposited into the fund or allocated from the following sources:

a. Any moneys awarded or allocated to the state, its citizens, or its political subdivisions as a result of the federal court decisions and United States department of energy settlements resulting from alleged violations of federal petroleum pricing regulations attributable to or contained within the Exxon fund. Amounts remaining in the oil overcharge account established in section 455E.11, subsection 2, paragraph *"e"*, Code 2007, and the energy conservation trust established in section 473.11, Code 2007, as of June 30, 2008, shall be deposited into the building energy management fund pursuant to this paragraph, notwithstanding section 8.60, subsection 15, Code 2007.

b. (1) Moneys received in the form of fees imposed upon the state, state agencies, political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for services performed or assistance rendered pursuant to the building energy management program. Fees imposed pursuant to this paragraph shall be established by the authority in an amount corresponding to the operational expenses or administrative costs incurred by the authority in performing services or providing assistance authorized pursuant to the building energy management program, as follows:

(a) For a building of up to twenty-five thousand square feet, two thousand five hundred dollars.

(b) For a building in excess of twenty-five thousand square feet, an additional eight cents per square foot.

(c) A building that houses more energy intensive functions may be subject to a higher fee than the fees specified in subparagraph divisions (a) and (b) as determined by the authority.

(2) Any fees imposed shall be retained by the authority and are appropriated to the authority for purposes of providing services or assistance under the program.

c. Moneys appropriated by the general assembly and any other moneys, including grants and gifts from government and nonprofit organizations, available to and obtained or accepted by the authority for placement in the fund.

d. Moneys contained in the intermodal revolving loan fund administered by the department of transportation for the fiscal year beginning July 1, 2019, and succeeding fiscal years.

e. Moneys in the fund are not subject to section 8.33. Notwithstanding section 12C.7, interest or earnings on moneys in the fund shall be credited to the fund.

3. The building energy management fund shall be limited to a maximum of one million dollars. Amounts in excess of this maximum limitation shall be transferred to and deposited in the rebuild Iowa infrastructure fund created in section 8.57, subsection 5.

2008 Acts, ch 1126, §26, 33; 2009 Acts, ch 108, §34, 41; 2011 Acts, ch 118, §50, 89; 2012 Acts, ch 1021, §140
Referred to in §473.19

473.20 Energy loan program.

1. An energy loan program is established and shall be administered by the authority.

2. The authority may facilitate the loan process for political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations for implementation of energy management improvements identified in an energy analysis.

Loans shall be facilitated for all cost-effective energy management improvements. For political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations to receive loan assistance under the program, the authority shall require completion of an energy management plan including an energy analysis. The authority shall approve loans facilitated under this section.

3. *a.* Cities and counties shall repay the loans from moneys in their debt service funds. Area education agencies shall repay the loans from any moneys available to them.

b. School districts and community colleges may enter into financing arrangements with the authority or its duly authorized agents or representatives obligating the school district or community college to make payments on the loans beyond the current budget year of the school district or community college. Chapter 75 shall not be applicable. School districts shall repay the loans from moneys in either their general fund or debt service fund. Community colleges shall repay the loans from their general fund. Other entities receiving loans under this section shall repay the loans from any moneys available to them.

4. For the purpose of this section, *"loans"* means loans, leases, or alternative financing arrangements.

5. Political subdivisions of the state, school districts, area education agencies, and community colleges shall design and construct the most energy cost-effective facilities feasible and may use financing facilitated by the authority to cover the incremental costs above minimum building code energy efficiency standards of purchasing energy-efficient devices and materials unless other lower cost financing is available. As used in this section, "*facility*" means a structure that is heated or cooled by a mechanical or electrical system, or any system of physical operation that consumes energy to carry out a process.

6. The authority shall not require the state, state agencies, political subdivisions of the state, school districts, area education agencies, and community colleges to implement a specific energy management improvement identified in an energy analysis if the entity which prepared the analysis demonstrates to the authority that the facility which is the subject of the energy management improvement is unlikely to be used or operated for the full period of the expected savings payback of all costs associated with implementing the energy management improvement, including without limitation, any fees or charges of the authority, engineering firms, financial advisors, attorneys, and other third parties, and all financing costs including interest, if financed.

86 Acts, ch 1167, §3

C87, §93.20

87 Acts, ch 209, §2; 90 Acts, ch 1252, §12; 90 Acts, ch 1253, §120; 91 Acts, ch 253, §8

C93, §473.20

94 Acts, ch 1029, §30; 2001 Acts, ch 60, §1; 2008 Acts, ch 1126, §27 – 29, 33; 2009 Acts, ch 108, §35, 41; 2011 Acts, ch 118, §50, 89

Referred to in §279.53, 298.3, 473.19, 473.20A

473.20A Self-liquidating financing.

1. *a.* The authority may facilitate financing agreements that may be entered into with political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations to finance the costs of energy management improvements on a self-liquidating basis. The provisions of section 473.20 defining eligible energy management improvements apply to financings under this section.

b. The financing agreement may contain provisions, including interest, term, and obligations to make payments on the financing agreement beyond the current budget year, as may be acceptable to political subdivisions of the state, school districts, area education agencies, community colleges, or nonprofit organizations.

c. The authority shall assist the treasurer of state with financing agreements entered into by the treasurer of state on behalf of state agencies pursuant to section 12.28 to finance energy management improvements being implemented by state agencies.

2. Political subdivisions of the state, school districts, area education agencies, community colleges, and nonprofit organizations may enter into financing agreements and issue

obligations necessary to carry out the provisions of the chapter. Chapter 75 shall not be applicable.

87 Acts, ch 209, §3
CS87, §93.20A
90 Acts, ch 1253, §120; 91 Acts, ch 253, §9
C93, §473.20A
2008 Acts, ch 1126, §30, 33; 2009 Acts, ch 108, §36, 41; 2011 Acts, ch 118, §50, 89
Referred to in §298.3, 473.19

473.21 through 473.39 Reserved.

473.40 Statewide building energy efficiency rating system. Repealed by 2006 Acts, ch 1014, §10.

473.41 Energy city designation program.

1. The authority shall establish an energy city designation program, with the objective of encouraging cities to develop and implement innovative energy efficiency programs. To qualify for designation as an energy city, a city shall submit an application on forms prescribed by the authority by rule, indicating the following:

a. Submission of community-based plans for energy reduction projects, energy-efficient building construction and rehabilitation, and alternative or renewable energy production.

b. Efforts to secure local funding for community-based plans, and documentation of any state or federal grant or loan funding being pursued in connection therewith.

c. Involvement of local schools, civic organizations, chambers of commerce, and private groups in a community-based plan.

d. Existing or proposed ordinances encouraging energy efficiency and conservation, recycling efforts, and energy-efficient building code provisions and enforcement.

e. Organization of an energy day observance and proclamation with a commemorating event and awards ceremony for leading energy-efficient community businesses, groups, schools, or individuals.

2. The authority shall establish by rule criteria for awarding energy city designations. If more than one designation is awarded annually, the criteria shall include a requirement that the authority award the designations to cities of varying populations. Rules shall also be established identifying and publicizing state grant and loan programs relating to energy efficiency, and the development of a procedure whereby the authority shall coordinate with other state agencies preferences given in the awarding of grants or making of loans to energy city designated applicants.

2007 Acts, ch 157, §1; 2009 Acts, ch 108, §37, 41; 2011 Acts, ch 118, §50, 89

473.42 Exit signs — standards. Repealed by 2008 Acts, ch 1126, §32, 33.

473.43 Reserved.

473.44 Plumbing products efficiency standards — penalty. Repealed by 2008 Acts, ch 1126, §32, 33.

CHAPTER 473A

MIDWEST ENERGY COMPACT

This chapter not enacted as a part of this title;
transferred from chapter 93A in Code 1993

473A.1 Midwest energy compact.

473A.1 Midwest energy compact.

The midwest energy compact is enacted into law and entered into with all other states which legally join in the compact in substantially the following form:

1. *Article I — Purpose.* It is the purpose of this compact to protect, preserve, and enhance:

a. The economic and general welfare of citizens of the joining states by increasing energy efficiency and energy independence.

b. The economies and very existence of local communities in such states, the economies of which are dependent upon imported energy sources.

2. *Article II — Commission.*

a. Organization and management.

(1) There is hereby created an agency of the member states to be known as the interstate midwest energy commission, hereinafter called the commission. The commission shall consist of three residents of each member state who shall have a background in energy efficiency and who shall be appointed as follows: One member appointed by the governor, who shall serve at the pleasure of the governor; one senator appointed in the manner prescribed by the senate of the state, except that in Iowa the appointment shall be made by the president of the senate, after consultation with the majority leader and the minority leader of the senate, and except that two senators may be appointed by the governor of the state of Nebraska from the unicameral legislature of the state of Nebraska; and one member of the house of representatives appointed in the manner prescribed by the house of representatives of the state. The member first appointed by the governor shall serve for a term of one year and the senator and representative first appointed shall each serve for a term of two years. Thereafter all members appointed shall serve for two-year terms. The attorneys general of member states or assistants designated by the attorneys general shall be nonvoting members of the commission.

(2) Each member shall be entitled to one vote. A member must be present to vote and no voting by proxy shall be permitted. The commission shall not act unless a majority of the voting members are present, and no action shall be binding unless approved by a majority of the total number of voting members present.

(3) The commission shall be a body corporate of each member state and shall adopt an official seal to be used as it may provide.

(4) The commission shall hold an annual meeting and other regular meetings as its bylaws may provide and special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular, and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(5) The commission shall elect annually, from among its voting members, a chairperson, a vice chairperson, and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and shall fix the duties and compensation of the director. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of those of its officers and employees as it may deem appropriate.

(6) Irrespective of the civil service, personnel, or other merit system laws of any member state, the executive director shall appoint or discharge personnel as may be necessary for the performance of the functions of the commission and shall fix, with the approval of the commission, their duties and compensation. The commission bylaws shall provide for personnel policies and programs. The commission may establish and maintain, independently of or in conjunction with any one or more of the member states, a suitable

retirement system for its full-time employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivors insurance provided that the commission takes steps as may be necessary pursuant to federal law to participate in the program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in additional programs of employee benefits as may be appropriate. The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental entity.

(7) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(8) The commission may establish one or more offices for the transacting of its business.

(9) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the member states.

(10) The commission annually shall make to the governor and legislature of each member state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount, and conditions, if any, of the donation, gift, grant, or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

b. Committees. The commission may establish committees from its membership as its bylaws may provide for the carrying out of its functions.

3. *Article III — Powers and duties of commission.*

a. The commission shall conduct comprehensive and continuing studies and investigations of energy efficiency measures and their relationship to and effect upon the citizens and economies of the member states.

b. The commission shall make recommendations for the correction of weaknesses and solutions to problems in present energy efficiency measures or the development of alternatives thereto, including the development, drafting, and recommendation of proposed state or federal legislation.

c. The commission is hereby authorized to do all things necessary and incidental to the administration of its functions under this compact.

4. *Article IV — Finance.*

a. The commission shall submit to the governor of each member state a budget of its estimated expenditures for the period required by the laws of that state for presentation to the legislature of that state.

b. The moneys necessary to finance the general operations of the commission not otherwise provided for in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the commission by the member states, when authorized by the respective legislatures. Appropriations by member states for the financing of the operations of the commission in the initial biennium of the compact shall be in the amount of fifty thousand dollars for each member state. Thereafter the total amount of appropriations requested shall be apportioned among the member states in the manner determined by the commission. Failure of a member state to provide its share of financing is cause for the state to lose its membership in the compact.

c. The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same, nor shall the commission pledge the credit of any of the member states, except by and with the authority of the member state.

d. The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

e. The accounts of the commission shall be open for inspection at any reasonable time.

5. *Article V — Eligible parties, entry into force, withdrawal, and termination.*

a. Any state contiguous to Iowa may become a member of this compact.

b. This compact shall become effective initially when enacted into law by any five states and in additional states upon their enactment of the same into law.

c. Any member state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until one year after the enactment of the repealing statute and the notification of the commission thereof by the governor of the withdrawing state. A withdrawing state shall be liable for any obligations which it incurred on account of its membership up to the effective date of withdrawal, and if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of that obligation.

d. This compact shall terminate one year after the notification of withdrawal by the governor of any member state which reduces the total membership in the compact to less than five states.

91 Acts, ch 253, §12
CS91, §93A.1
C93, §473A.1
2008 Acts, ch 1032, §201

SUBTITLE 5

PUBLIC UTILITIES

CHAPTER 474

UTILITIES DIVISION

474.1	Creation of division and board — organization.	474.6	Appearances — record of votes — public hearings.
474.2	Certain persons barred from office.	474.7	Seal.
474.3	Proceedings.	474.8	Office — time employed — expenses.
474.4	Quorum — personal interest.	474.9	General jurisdiction of utilities board.
474.5	Rules, forms and service.	474.10	General counsel.

474.1 Creation of division and board — organization.

1. A utilities division is created within the department of commerce. The policymaking body for the division is the utilities board which is created within the division. The board is composed of three members appointed by the governor and subject to confirmation by the senate, not more than two of whom shall be from the same political party. Each member appointed shall serve for six-year staggered terms beginning and ending as provided by section 69.19. Vacancies shall be filled for the unexpired portion of the term in the same manner as full-term appointments are made.

2. *a.* Subject to confirmation by the senate, the governor shall appoint a member as the chairperson of the board. The chairperson shall be the administrator of the utilities division. The appointment as chairperson shall be for a two-year term which begins and ends as provided in section 69.19.

b. The board shall appoint a chief operating officer to manage the operations of the utilities division as directed by the board. The board shall set the salary of the chief operating officer within the limits of the pay plan for exempt positions provided for in section 8A.413, subsection 3, unless otherwise provided by the general assembly. The board may employ additional personnel as it finds necessary.

3. As used in this chapter and chapters 475A, 476, 476A, 478, 479, 479A, and 479B, "*division*" and "*utilities division*" mean the utilities division of the department of commerce.

[C97, §2111; C24, 27, 31, 35, 39, §**7866;** C46, 50, 54, 58, 62, 66, 71, 73, §474.2; C75, 77, 79, 81, §474.1]

83 Acts, ch 127, §6; 86 Acts, ch 1245, §740; 89 Acts, ch 296, §70; 95 Acts, ch 192, §3; 2003 Acts, ch 145, §265; 2008 Acts, ch 1031, §115; 2018 Acts, ch 1160, §1

Referred to in §34A.15, 437A.3, 437B.2, 477C.2, 546.7

Confirmation, see §2.32

474.2 Certain persons barred from office.

No person in the employ of any common carrier or other public utility, or owning any bonds, stock, or property in any public utility shall be eligible to hold the office of utilities board member or chief operating officer of the utilities board. The entering into the employ of any common carrier or other public utility or the acquiring of any stock or other interest in any common carrier or other public utility by such member or chief operating officer after appointment shall disqualify the member or chief operating officer to hold or perform the duties of the office.

[C97, §2111; C24, 27, 31, 35, 39, §**7865;** C46, 50, 54, 58, 62, 66, 71, 73, §474.1; C75, 77, 79, 81, §474.2]

2018 Acts, ch 1160, §2; 2019 Acts, ch 24, §65

Referred to in §475A.1

Section amended

474.3 Proceedings.

The utilities board may in all cases conduct its proceedings, when not otherwise prescribed by law, in such manner as will best conduce to the proper dispatch of business and the attainment of justice.

[C97, §2142; C24, 27, 31, 35, 39, §**7867;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.3]

474.4 Quorum — personal interest.

A majority of the utilities board shall constitute a quorum for the transaction of business, but no member shall participate in any hearing or proceeding in which the member has any pecuniary interest.

[C97, §2142; C24, 27, 31, 35, 39, §**7868;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.4]

474.5 Rules, forms and service.

1. The utilities board may from time to time make or amend its rules or orders as necessary for the preservation of order and the regulation of proceedings before it, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in the courts of the state.

2. The utilities board shall adopt rules approving the types of city-owned or utility-owned lighting which shall be used in providing energy-efficient exterior lighting under sections 364.23 and 476.62.

[C97, §2142; C24, 27, 31, 35, 39, §**7869;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.5]

89 Acts, ch 297, §8

Manner of commencing actions, chapter 617

474.6 Appearances — record of votes — public hearings.

Any party may appear before the utilities board and be heard in person or by attorney. Every vote and official action thereof shall be entered of record, and, upon the request of either party or person interested, its proceedings shall be public.

[C97, §2142; C24, 27, 31, 35, 39, §**7870;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.6]

474.7 Seal.

The utilities board shall have a seal, of which courts shall take judicial notice.

[C97, §2142; C24, 27, 31, 35, 39, §**7871;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.7]

474.8 Office — time employed — expenses.

The utilities board shall have an office at the seat of government. Each member shall devote the member's whole time to the duties of the office, and the members, chief operating officer, and other employees shall receive their actual necessary traveling expenses while in the discharge of their official duties away from the general offices.

[C97, §2121; SS15, §2121; C24, 27, 31, 35, 39, §**7872;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §474.8]

2018 Acts, ch 1160, §3; 2019 Acts, ch 24, §66

Section amended

474.9 General jurisdiction of utilities board.

The utilities board has general supervision of all pipelines and all lines for the transmission, sale, and distribution of electrical current for light, heat, and power pursuant to chapters 476, 476A, 478, 479, 479A, and 479B and has other duties as provided by law.

[S13, §2120-n; C24, 27, 31, 35, 39, §**7874;** C46, 50, 54, 58, 62, 66, 71, 73, §474.10; C75, 77, 79, 81, §474.9]

88 Acts, ch 1134, §90; 89 Acts, ch 296, §71; 95 Acts, ch 192, §4

474.10 General counsel.

The board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board and is exempt from the merit system provisions of chapter 8A, subchapter IV. Assistants to the general counsel are

subject to the merit system provisions of chapter 8A, subchapter IV. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and represent the board in all actions instituted in a state or federal court challenging the validity of a rule or order of the board. The existence of a fact which disqualifies a person from election or from acting as a utilities board member disqualifies the person from employment as general counsel or assistant general counsel. The general counsel shall devote full time to the duties of the office. During employment the counsel shall not be a member of a political committee, contribute to a political campaign fund other than through the income tax checkoff for contributions to the presidential election campaign fund, participate in a political campaign, or be a candidate for a political office.

83 Acts, ch 127, §7; 86 Acts, ch 1245, §741; 88 Acts, ch 1158, §77; 2003 Acts, ch 145, §266; 2017 Acts, ch 144, §10, 14

CHAPTER 475

RESERVED

CHAPTER 475A

CONSUMER ADVOCATE

Referred to in §474.1

475A.1	Consumer advocate.	475A.5	Service.
475A.2	Duties.	475A.6	Certification of expenses to utilities division.
475A.3	Office — employees — expenses.		
475A.4	Utilities division records.	475A.7	Consumer advisory panel.

475A.1 Consumer advocate.

1. *Appointment.* The attorney general shall appoint a competent attorney to the office of consumer advocate, subject to confirmation by the senate, in accordance with section 2.32. The consumer advocate is the chief administrator of the consumer advocate division of the department of justice. The advocate's term of office is for four years. The term begins and ends in the same manner as set forth in section 69.19.

2. *Vacancy.* If a vacancy occurs in the office of consumer advocate, the vacancy shall be filled for the unexpired term in the same manner as an original appointment under the procedures of section 2.32.

3. *Disqualification.* The existence of a fact which disqualifies a person from election or acting as utilities board member under section 474.2 disqualifies the person from appointment or acting as consumer advocate.

4. *Political activity prohibited.* The consumer advocate shall devote the advocate's entire time to the duties of the office. During the advocate's term of office the advocate shall not be a member of a political committee or contribute to a political campaign fund other than through the income tax checkoff for contributions to the presidential election campaign fund or take part in political campaigns or be a candidate for a political office.

5. *Removal.* The attorney general may remove the consumer advocate for malfeasance or nonfeasance in office, or for any cause which renders the advocate ineligible for appointment, or incapable or unfit to discharge the duties of the advocate's office; and the advocate's removal, when so made, is final.

83 Acts, ch 127, §8, 46; 86 Acts, ch 1245, §742, 743; 2017 Acts, ch 144, §11, 14

475A.2 Duties.

The consumer advocate shall:

1. Investigate the legality of all rates, charges, rules, regulations, and practices of all

persons under the jurisdiction of the utilities board, and institute civil proceedings before the board or any court to correct any illegality on the part of any such person. In any such investigation, the person acting for the office of the consumer advocate shall have the power to ask the board to issue subpoenas, compel the attendance and testimony of witnesses, and the production of papers, books, and documents, at the discretion of the board.

2. Act as attorney for and represent all consumers generally and the public generally in all proceedings before the utilities board.

3. Institute as a party judicial review of any decision of the utilities board, if the consumer advocate deems judicial review to be in the public interest.

4. Appear for all consumers generally and the public generally in all actions instituted in any state or federal court which involve the validity of a rule, regulation, or order of the utilities board.

5. Act as attorney for and represent all consumers generally and the public generally in proceedings before federal and state agencies and related judicial review proceedings and appeals, at the discretion of the consumer advocate.

6. Appear and participate as a party in the name of the office of consumer advocate in the performance of the duties of the office.

83 Acts, ch 127, §9

475A.3 Office — employees — expenses.

1. *Office.* The office of consumer advocate shall be a separate division of the department of justice and located at the same location as the utilities division of the department of commerce. Administrative support services may be provided to the consumer advocate division by the department of commerce.

2. *Employees.* The consumer advocate may employ attorneys, legal assistants, secretaries, clerks, and other employees the consumer advocate finds necessary for the full and efficient discharge of the duties and responsibilities of the office. The consumer advocate may employ consultants as expert witnesses or technical advisors pursuant to contract as the consumer advocate finds necessary for the full and efficient discharge of the duties of the office. Employees of the consumer advocate division, other than the consumer advocate, are subject to merit employment, except as provided in section 8A.412.

3. *Salaries, expenses, and appropriation.* The salary of the consumer advocate shall be fixed by the attorney general within the salary range set by the general assembly. The salaries of employees of the consumer advocate shall be at rates of compensation consistent with current standards in industry. The reimbursement of expenses for the employees and the consumer advocate is as provided by law. The appropriation for the office of consumer advocate shall be a separate line item contained in the appropriation from the department of commerce revolving fund created in section 546.12.

83 Acts, ch 127, §10, 46; 86 Acts, ch 1244, §59; 86 Acts, ch 1245, §744; 89 Acts, ch 158, §1; 94 Acts, ch 1107, §79; 2003 Acts, ch 145, §267; 2009 Acts, ch 181, §44

Referred to in §546.12

475A.4 Utilities division records.

The consumer advocate has free access to all the files, records, and documents in the office of the utilities division except:

1. Personal information in confidential personnel records of the utilities division.

2. Records which represent and constitute the work product of the general counsel of the utilities board, and records of confidential communications between utilities board members and their general counsel, where the records relate to a proceeding before the board in which the consumer advocate is a party or a proceeding in any state or federal court in which both the board and the consumer advocate are parties.

3. Customer information of a confidential nature which could jeopardize the customer's competitive status and is provided by the utility to the division. Such information shall be provided to the consumer advocate by the division, if the board determines it to be in the public interest.

83 Acts, ch 127, §11; 88 Acts, ch 1134, §91; 89 Acts, ch 158, §2

475A.5 Service.

The consumer advocate is entitled to service of all documents required by statute or rule to be served on parties in proceedings before the utilities board and all notices, petitions, applications, complaints, answers, motions, and other pleadings filed pursuant to statute or rule with the board.

83 Acts, ch 127, §12

475A.6 Certification of expenses to utilities division.

1. *a.* The consumer advocate shall determine the advocate's expenses, including a reasonable allocation of general office expenses, directly attributable to the performance of the advocate's duties involving specific persons subject to direct assessment, and shall certify the expenses to the utilities division not less than quarterly. The expenses shall then be includable in the expenses of the division subject to direct assessment under section 476.10.

b. The consumer advocate shall annually, within ninety days after the close of each fiscal year, determine the advocate's expenses, including a reasonable allocation of general office expenses, attributable to the performance of the advocate's duties generally, and shall certify the expenses to the utilities division. The expenses shall then be includable in the expenses of the division subject to remainder assessment under section 476.10.

2. The consumer advocate is entitled to notice and opportunity to be heard in any utilities board proceeding on objection to an assessment for expenses certified by the consumer advocate. Expenses assessed under this section shall not exceed the amount appropriated for the consumer advocate division of the department of justice.

3. The office of consumer advocate may expend additional funds, including funds for outside consultants, if those additional expenditures are actual expenses which exceed the funds budgeted for the performance of the advocate's duties. Before the office expends or encumbers an amount in excess of the funds budgeted, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the office of consumer advocate and that the office does not have other funds from which such expenses can be paid. Upon approval of the director of the department of management, the office may expend and encumber funds for excess expenses. The amounts necessary to fund the excess expenses shall be collected from those utilities or persons which caused the excess expenditures, and the collections shall be treated as repayment receipts as defined in section 8.2, subsection 8.

83 Acts, ch 127, §13; 90 Acts, ch 1247, §10; 99 Acts, ch 20, §1, 6; 2016 Acts, ch 1011, §84
Referred to in §476.10, 476.53

475A.7 Consumer advisory panel.

The attorney general shall appoint five members and the governor shall appoint four members to a consumer advisory panel to meet at the request of the consumer advocate for consultation regarding public utility regulation. A member shall be appointed from each congressional district with the appointee residing within the congressional district at the time of appointment. The remaining appointees shall be members at large. No more than five members shall belong to the same political party as provided in section 69.16. Not more than a simple majority of the members shall be of the same gender. The members appointed by the attorney general shall serve four-year terms at the pleasure of the attorney general and their appointments are not subject to confirmation. The members appointed by the governor shall serve four-year terms at the pleasure of the governor and their appointments are not subject to confirmation. The governor or attorney general shall fill a vacancy in the same manner as the original appointment for the unexpired portion of the member's term. Members of the consumer advisory panel shall serve without compensation, but shall be reimbursed for actual expenses from funds appropriated to the consumer advocate division.

83 Acts, ch 127, §14, 47; 86 Acts, ch 1244, §60; 86 Acts, ch 1245, §746

CHAPTER 476

PUBLIC UTILITY REGULATION

Referred to in §6B.42, 8D.13, 11.6, 89.14, 256.90, 318.9, 331.248, 331.261, 357A.11A, 368.1, 373.11, 388.2A, 388.9A, 423.3, 427.1(2), 433.12, 437A.3, 437B.2, 474.1, 474.9, 476C.1, 499.80, 546.7

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SUBCHAPTER I

REGULATION AUTHORITY

476.1 Applicability of authority.

1. The utilities board within the utilities division of the department of commerce shall regulate the rates and services of public utilities to the extent and in the manner hereinafter provided.

2. As used in this chapter, *"board"* or *"utilities board"* means the utilities board within the utilities division of the department of commerce.

3. As used in this chapter, *"public utility"* shall include any person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

a. Furnishing gas by piped distribution system or electricity to the public for compensation.

b. Furnishing communications services to the public for compensation.

c. Furnishing water by piped distribution system to the public for compensation.

d. Furnishing sanitary sewage or storm water drainage disposal by piped collection system to the public for compensation.

4. This chapter does not apply to municipally owned waterworks, waterworks having less than two thousand customers, joint water utilities established pursuant to chapter 389, rural water districts incorporated and organized pursuant to chapters 357A and 504, cooperative water associations incorporated and organized pursuant to chapter 499, municipally owned sanitary sewage or storm water drainage systems, sanitary districts incorporated and organized pursuant to chapter 358, districts organized pursuant to chapter 468, or a person furnishing electricity to five or fewer customers either by secondary line or from an alternate energy production facility or small hydro facility, from electricity that is produced primarily for the person's own use.

5. The jurisdiction of the board under this chapter shall include efforts designed to promote the use of energy efficiency strategies by gas and electric utilities required to be rate-regulated.

[C66, 71, 73, 75, §490A.1; C77, 79, 81, §476.1; 81 Acts, ch 156, §4]

83 Acts, ch 127, §15, 16; 84 Acts, ch 1031, §1; 88 Acts, ch 1172, §2; 90 Acts, ch 1252, §18; 91 Acts, ch 150, §1; 91 Acts, ch 168, §9; 96 Acts, ch 1196, §1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2012 Acts, ch 1023, §67; 2016 Acts, ch 1013, §1, 2; 2018 Acts, ch 1135, §3; 2018 Acts, ch 1160, §4

Referred to in §16.151, 306.46, 352.6, 388.2A, 423.3, 455H.304, 476.6, 476.20, 476.22, 476.27, 476.58, 476.84, 476.91, 499.30, 499.33, 714H.4, 716.6B, 716.7

476.1A Applicability of authority — certain electric utilities.

1. Electric public utilities having fewer than ten thousand customers and electric cooperative corporations and associations are not subject to the regulation authority of the board, except for regulatory action pertaining to all of the following:

a. Assessment of fees for the support of the division and the office of consumer advocate, pursuant to section 476.10.

b. Safety and engineering standards for equipment, operations, and procedures.

c. Assigned area of service.

d. Pilot projects of the board.

e. Assessment of fees for the support of the Iowa energy center created in section 15.120 and the center for global and regional environmental research established by the state board of regents. This paragraph *"e"* is repealed July 1, 2022.

f. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. However, sections 476.20, subsections 1 through 4, 476.21, 476.51, 476.56, 476.62, and 476.66 and chapters 476A and 478, to the extent applicable, apply to such electric utilities.

3. Electric cooperative corporations and associations and electric public utilities exempt from rate regulation under this section shall not make or grant any unreasonable preferences

or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

4. The board of directors or the membership of an electric cooperative corporation or association otherwise exempt from rate regulation may elect to have the cooperative's rates regulated by the board. The board shall adopt rules prescribing the manner in which the board of directors or the membership of an electric cooperative may so elect. If the board of directors or the membership of an electric cooperative has elected to have the cooperative's rates regulated by the board, after two years have elapsed from the effective date of such election the board of directors or the membership of the electric cooperative may elect to exempt the cooperative from the rate regulation authority of the board, provided, however, that if the membership elected to have the cooperative's rates regulated by the board, only the membership may elect to exempt the cooperative from the rate regulation authority of the board.

86 Acts, ch 1039, §1; 88 Acts, ch 1174, §1; 88 Acts, ch 1175, §1; 89 Acts, ch 297, §9; 90 Acts, ch 1252, §19; 96 Acts, ch 1196, §2, 3; 2001 Acts, 1st Ex, ch 4, §8, 36; 2008 Acts, ch 1133, §2, 9; 2017 Acts, ch 169, §36, 49; 2018 Acts, ch 1135, §4

Referred to in §476.44, 476.58

476.1B Applicability of authority — municipally owned utilities.

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.

b. Safety standards.

c. Assigned areas of service, as set forth in sections 476.22 through 476.26.

d. Enforcement of civil penalties pursuant to section 476.51.

e. Disconnection of service, as set forth in section 476.20, subsections 1 through 4.

f. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.

g. Enforcement of section 476.56.

h. Enforcement of section 476.66.

i. Enforcement of section 476.62.

j. Assessment of fees for the support of the Iowa energy center created in section 15.120 and the center for global and regional environmental research created by the state board of regents. This paragraph "*j*" is repealed July 1, 2022.

k. An electric power agency as defined in chapter 28F and section 390.9 that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board for those facilities.

l. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.

2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.

3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.95, 476.95A, 476.95B, 476.100, and 476.102.

86 Acts, ch 1162, §1; 88 Acts, ch 1174, §2; 88 Acts, ch 1175, §2; 89 Acts, ch 297, §10; 90 Acts, ch 1252, §20; 96 Acts, ch 1196, §4, 5; 97 Acts, ch 81, §1, 2, 6; 99 Acts, ch 63, §7, 8; 2001 Acts, 1st Ex, ch 4, §9, 36; 2008 Acts, ch 1133, §3, 9; 2010 Acts, ch 1018, §6; 2017 Acts, ch 62, §4; 2017 Acts, ch 169, §37, 49; 2018 Acts, ch 1135, §5; 2018 Acts, ch 1160, §5

Referred to in §476.58

476.1C Applicability of authority — certain gas utilities.

1. Gas public utilities having fewer than two thousand customers:

a. Are not subject to the regulation authority of the utilities board under this chapter unless otherwise specifically provided. Sections 476.10, 476.20, 476.21, and 476.51 apply to such gas utilities.

b. Shall be subject to the assessment of fees for the support of the Iowa energy center created in section 15.120 and the center for global and regional environmental research created by the state board of regents. This paragraph *"b"* is repealed July 1, 2022.

c. Shall file energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may waive all or part of the energy efficiency filing requirements if the gas utility demonstrates superior results with existing energy efficiency efforts.

d. Shall keep books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board. The board may inspect the accounts of the utility at any time.

e. (1) May make effective a new or changed rate, charge, schedule, or regulation after giving written notice of the proposed new or changed rate, charge, schedule, or regulation to all affected customers served by the public utility. The notice shall inform the customers of their right to petition for a review of the proposal to the utilities board within sixty days after notice is served if the petition contains the signatures of at least one hundred of the gas utility's customers. The notice shall state the address of the utilities board. The new or changed rate, charge, schedule, or regulation takes effect sixty days after such valid notice is served unless a petition for review of the new or changed rate, charge, schedule, or regulation signed by at least one hundred of the gas utility's customers is filed with the board prior to the expiration of the sixty-day period.

(2) If such a valid petition is filed with the board within the sixty-day period, any new or changed rate, charge, schedule, or regulation shall take effect, under bond or corporate undertaking, subject to refund of all amounts collected in excess of those amounts which would have been collected under the rates or charges finally approved by the board. The board shall within five months of the date of filing make a determination of just and reasonable rates based on a review of the proposal, applying established regulatory principles. The board may call upon the gas public utility and its customers to furnish factual evidence in support of or opposition to the new or changed rate, charge, schedule, or regulation. If the gas public utility disputes the finding, the utility may within twenty days file for further review, and the board shall docket the case as a formal proceeding under section 476.6, subsection 4, and set the case for hearing. The gas public utility shall submit factual evidence and written argument in support of the filing.

f. Shall not make effective a new or changed rate, charge, schedule, or regulation which relates to services for which a rate change is pending within twelve months following the date the petition to review the prior proposed rate, charge, schedule, or regulation was filed with the board or until the board has made its determination of just and reasonable rates, whichever date is earlier, unless the utility applies to the board for authority and receives authority to make a subsequent rate change at an earlier date.

g. Shall not make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage. Rates charged by a gas public utility having less than two thousand customers for transportation of customer-owned gas shall not exceed the actual cost of such transportation services including a fair rate of return.

2. If, as a result of a review of a proposed new or changed rate, charge, schedule, or regulation of a gas public utility having fewer than two thousand customers, the consumer advocate alleges in a filing with the board that the utility rates are excessive, the disputed amounts shall be specified by the consumer advocate in the filing. The gas public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of the filing which are in excess of rates or charges finally determined by the board to be lawful. If after formal proceeding and hearing pursuant to section 476.6 the board finds

that the utility rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest. If the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

87 Acts, ch 21, §1; 90 Acts, ch 1252, §21; 96 Acts, ch 1196, §6; 2012 Acts, ch 1021, §91; 2017 Acts, ch 169, §38, 39, 49

Referred to in §476.6

476.1D Regulation and deregulation of communications services.

1. Except as provided in this section, the jurisdiction of the board as to the regulation of communications services is not applicable to a service or facility that is provided or is proposed to be provided by a telephone utility that is or becomes subject to effective competition, as determined by the board.

a. In determining whether a service or facility is or becomes subject to effective competition, the board shall consider, among other factors, whether a comparable service or facility is available from a supplier other than the telephone utility in the geographic market being considered by the board and whether market forces in that market are sufficient to assure just and reasonable rates without regulation.

b. When considering market forces in the market proposed to be deregulated, the board shall consider factors including but not limited to the presence or absence of all of the following:

(1) Wireless communications services.

(2) Cable telephony services.

(3) Voice over internet protocol services.

(4) Economic barriers to the entry of competitors or potential competitors in that market.

2. Deregulation of a service or facility for a utility is effective only after a finding of effective competition by the board.

3. If the board finds that a service or facility is subject to effective competition, the board shall deregulate the service or facility within a reasonable time.

4. Upon deregulation, all investment, revenues, and expenses associated with the service or facility shall be removed from the telephone utility's regulated operations and shall not be considered by the board in setting rates for the telephone utility unless they continue to affect the utility's regulated operations. If the board considers investment, revenues, and expenses associated with unregulated services or facilities in setting rates for the telephone utility, the board shall not use any profits or costs from such unregulated services or facilities to determine the rates for regulated services or facilities.

5. Notwithstanding the presence of effective competition, if the board determines a service or facility is an essential communications service or facility and the public interest warrants retention of service regulation, the board shall deregulate rates and may continue service regulation.

6. The board may reimpose rate and service regulation on a deregulated service or facility if it determines the service or facility is no longer subject to effective competition.

7. The board may reimpose service regulation only on a deregulated service or facility if the board determines the service or facility is an essential communications service or facility and the public interest warrants service regulation, notwithstanding the presence of effective competition.

8. If the board reimposes regulation pursuant to subsection 6 or 7, the reimposition of regulation shall apply to all providers of the service or facility.

9. The board may investigate and obtain information from providers of deregulated services or facilities to determine whether the services or facilities are subject to effective competition or whether the service or facility is an essential communications service or facility and the public interest warrants service regulation. However, the board shall not, for

purposes of this subsection, request or obtain information related to the provider's costs or earnings.

91 Acts, ch 150, §2; 95 Acts, ch 199, §1; 96 Acts, ch 1219, §73; 2003 Acts, ch 126, §1; 2003 Acts, ch 145, §286; 2005 Acts, ch 9, §1; 2006 Acts, ch 1010, §123; 2011 Acts, ch 25, §143; 2012 Acts, ch 1023, §68; 2014 Acts, ch 1099, §1, 2; 2018 Acts, ch 1160, §6, 7

Referred to in §476.55, 476.103, 477.9A

476.2 Board powers and rules — utility's Iowa office.

1. The board shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereinafter set forth. The board shall have authority to issue subpoenas and to pay the same fees and mileage as are payable to witnesses in the courts of record of general jurisdiction and shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers provided for in this chapter or in the board's rules. In the establishment, amendment, alteration or repeal of any of such rules, the board shall be subject to the provisions of chapter 17A.

2. The board shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter.

3. The board may intervene in any proceedings before the federal energy regulatory commission or any other federal or state regulatory body when it finds that any decision of that tribunal would adversely affect the costs of any public utility service within the state of Iowa.

4. The board shall have authority to inquire into the management of the business of all public utilities, and shall keep itself informed as to the manner and method in which the same is conducted, and may obtain from any public utility all necessary information to enable the board to perform its duties.

5. Each rate-regulated gas and electric utility operating within the state shall maintain within the state the utility's principal office for Iowa operations. The principal office shall be subject to the jurisdiction of the board and shall house those books, accounts, papers, and records of the utility deemed necessary by the board to be housed within the state. The utility shall maintain within the state administrative, technical, and operating personnel necessary for the delivery of safe and reasonably adequate services and facilities as required pursuant to section 476.8. A public utility which violates this section shall be subject to the penalties provided in section 476.51 and shall be denied authority to recover, for a period determined by the board, the costs of an energy efficiency plan pursuant to section 476.6, subsection 8.

[C66, 71, 73, 75, §490A.2; C77, 79, 81, §476.2]

90 Acts, ch 1168, §51; 90 Acts, ch 1252, §22; 96 Acts, ch 1196, §7; 2018 Acts, ch 1135, §6; 2018 Acts, ch 1160, §8

Referred to in §476.12

476.3 Complaints — investigation — refunds.

1. A public utility shall furnish reasonably adequate service at rates and charges in accordance with tariffs filed with the board. When there is filed with the board by any person or body politic, or filed by the board upon its own motion, a written complaint requesting the board to determine the reasonableness of the rates, charges, schedules, service, regulations, or anything done or omitted to be done by a public utility subject to this chapter in contravention of this chapter, the written complaint shall be forwarded by the board to the public utility, which shall be called upon to satisfy the complaint or to answer it in writing within a reasonable time to be specified by the board. Copies of the written complaint forwarded by the board to the public utility and copies of all correspondence from the public utility in response to the complaint shall be provided by the board in an expeditious manner to the consumer advocate. If the board determines the public utility's response is inadequate and there appears to be any reasonable ground for investigating the complaint, the board

shall promptly initiate a formal proceeding. If the consumer advocate determines the public utility's response to the complaint is inadequate, the consumer advocate may file a petition with the board which shall promptly initiate a formal proceeding if the board determines that there is any reasonable ground for investigating the complaint. The complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint. The formal proceeding may be initiated at any time by the board on its own motion. If a proceeding is initiated upon petition filed by the consumer advocate, complainant, or the public utility, or upon the board's own motion, the board shall set the case for hearing and give notice as it deems appropriate. When the board, after a hearing held after reasonable notice, finds a public utility's rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.

2. If, as a result of a review procedure conducted under section 476.31, a review conducted under section 476.32, a special audit, an investigation by division staff, or an investigation by the consumer advocate, a petition is filed with the board by the consumer advocate, alleging that a utility's rates are excessive, the disputed amount shall be specified in the petition. The public utility shall, within the time prescribed by the board, file a bond or undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected after the date of filing of the petition in excess of rates or charges finally determined by the board to be lawful. If upon hearing the board finds that the utility's rates are unlawful, the board shall order a refund, with interest, of amounts collected after the date of filing of the petition that are determined to be in excess of the amounts which would have been collected under the rates finally approved. However, the board shall not order a refund that is greater than the amount specified in the petition, plus interest, and if the board fails to render a decision within ten months following the date of filing of the petition, the board shall not order a refund of any excess amounts that are collected after the expiration of that ten-month period and prior to the date the decision is rendered.

3. A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

[C66, 71, 73, 75, §490A.3; C77, 79, 81, §476.3; 81 Acts, ch 156, §5, 9]

83 Acts, ch 127, §17, 18; 89 Acts, ch 59, §1; 89 Acts, ch 97, §1; 95 Acts, ch 199, §2; 2011 Acts, ch 25, §143; 2014 Acts, ch 1099, §3

Referred to in §476.4, 476.10, 476.33, 476.52

476.4 Tariffs filed.

1. Every public utility shall file with the board tariffs showing the rates and charges for its public utility services and the rules and regulations under which such services were furnished, on April 1, 1963, which rates and charges shall be subject to investigation by the board as provided in section 476.3, and upon such investigation the burden of establishing the reasonableness of such rates and charges shall be upon the public utility filing the same. These filings shall be made under such rules as the board may prescribe within such time and in such form as the board may designate. In prescribing rules and regulations with respect to the form of tariffs and any other regulations, the board shall, in the case of public utilities subject to regulation by any federal agency, give due regard to any corresponding rules and regulations of such federal agency, to the end that unnecessary duplication of effort and expense may be avoided so far as reasonably possible. Each public utility shall keep copies of its tariffs open to public inspection under such rules as the board may prescribe.

2. No later than January 1, 2015, a telephone utility is required to file tariffs as provided in this section only for such wholesale services as may be specified by the board.

3. Every rate, charge, rule, and regulation contained in any filing made with the commission on or prior to July 4, 1963, shall be effective as of such date, subject, however, to investigation as herein provided. If any such filing is made prior to the time the commission prescribes rules as aforesaid, and if such filing does not comply as to form or substance with

such rules, then the public utility which filed the same shall within a reasonable time after the adoption of such rules make a new filing or filings complying with such rules, which new filing or filings shall be deemed effective as of July 4, 1963.

[C66, 71, 73, 75, §490A.4; C77, 79, 81, §476.4]

2014 Acts, ch 1099, §4; 2018 Acts, ch 1135, §7

Referred to in §476.43

476.4A Exemption from tariff filings for telephone utilities. Repealed by 2014 Acts, ch 1099, §19.

476.5 Adherence to schedules.

No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage.

[C66, 71, 73, 75, §490A.5; C77, 79, 81, §476.5]

2014 Acts, ch 1099, §5

476.6 Changes in rates, charges, schedules, and regulations — supply and cost review — water costs for fire protection — energy efficiency.

1. *Filing with board.* A public utility subject to rate regulation shall not make effective a new or changed rate, charge, schedule, or regulation until the rate, charge, schedule, or regulation has been approved by the board, except as provided in subsections 8 and 9.

2. *Written notice of increase.* All public utilities, except those exempted from rate regulation by section 476.1 and telecommunications service providers registered pursuant to section 476.95A, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility no more than sixty-two days prior to and prior to the time the application for the increase is filed with the board. Public utilities exempted from rate regulation by section 476.1, except telecommunications service providers registered pursuant to section 476.95A, shall give written notice of a proposed increase of any rate or charge to all affected customers served by the public utility at least thirty days prior to the effective date of the increase. If the public utility is subject to rate regulation, the notice to affected customers shall also state that the customer has a right to file a written objection to the rate increase and that the affected customers may request the board to hold a public hearing to determine if the rate increase should be allowed. The board shall prescribe the manner and method that the written notice to each affected customer of the public utility shall be served.

3. *Facts and arguments submitted.* At the time a public utility subject to rate regulation files with the board an application for any new or changed rates, charges, schedules, or regulations, the public utility also shall submit factual evidence and written argument offered in support of the filing. If the filing is an application for a general rate increase, the utility shall also file affidavits containing testimonial evidence to be offered in support of the filing, although this requirement does not apply if the public utility is a rural electric cooperative.

4. *Hearing set.* After the filing of an application for new or changed rates, charges, schedules, or regulations by a public utility subject to rate regulation, the board, prior to the expiration of thirty days after the filing date, shall docket the case as a formal proceeding and set the case for hearing unless the new or changed rates, charges, schedules, or regulations are approved by the board. However, if an application presents no material issue of fact subject to dispute, and the board determines that the application violates a relevant statute, or is not in substantial compliance with a board rule lawfully adopted pursuant to chapter 17A, the application may be rejected by the board without prejudice and without a hearing, provided that the board issues a written order setting forth all of its reasons for rejecting the application. In the case of a gas public utility having less than two thousand customers, the board shall docket a case as a formal proceeding and set the case for hearing as provided in section 476.1C. In the case of a rural electric cooperative, the board may docket the case as a formal proceeding and set the case for hearing prior to the proposed effective date of

the tariff. The board shall give notice of formal proceedings as it deems appropriate. The docketing of a case as a formal proceeding suspends the effective date of the new or changed rates, charges, schedules, or regulations until the rates, charges, schedules, or regulations are approved by the board, except as provided in subsection 9.

5. *Utility hearing expenses reported.* When a case has been docketed as a formal proceeding under subsection 4, the public utility, within a reasonable time thereafter, shall file with the board a report outlining the utility's expected expenses for litigating the case through the time period allowed by the board in rendering a decision. At the conclusion of the utility's presentation of comments, testimony, exhibits, or briefs the utility shall submit to the board a listing of the utility's actual litigation expenses in the proceeding. As part of the findings of the board under subsection 6, the board shall allow recovery of costs of the litigation expenses over a reasonable period of time to the extent the board deems the expenses reasonable and just.

6. *Finding by board.* If, after hearing and decision on all issues presented for determination in the rate proceeding, the board finds the proposed rates, charges, schedules, or regulations of the utility to be unlawful, the board shall by order authorize and direct the utility to file new or changed rates, charges, schedules, or regulations which, when approved by the board and placed in effect, will satisfy the requirements of this chapter. The rates, charges, schedules, or regulations so approved are lawful and effective upon their approval.

7. *Limitation on filings.* A public utility shall not make a subsequent filing of an application for a new or changed rate, charge, schedule, or regulation which relates to services for which a rate filing is pending within twelve months following the date the prior application was filed or until the board has issued a final order on the prior application, whichever date is earlier, unless the public utility applies to the board for authority and receives authority to make a subsequent filing at an earlier date.

8. *Automatic adjustments.*

a. This chapter does not prohibit a public utility from making provision for the automatic adjustment of rates and charges for public utility service provided that a schedule showing the automatic adjustment of rates and charges is first filed with and approved by the board.

b. A public utility may automatically adjust rates and charges to recover costs related to transmission incurred by or charged to the public utility consistent with a tariff or agreement that is subject to the jurisdiction of the federal energy regulatory commission, provided that a schedule showing the automatic adjustment of rates and charges is first filed with and approved by the board. The board shall adopt rules regarding the reporting of transmission expenses and transmission-related activity pursuant to this paragraph.

9. *Temporary authority.*

a. A public utility may choose to place in effect temporary rates, charges, schedules, or regulations without board review on or after ten days following the filing date under this section. If the utility chooses to place such rates, charges, schedules, or regulations in effect, the utility shall file with the board a bond or other corporate undertaking approved by the board conditioned upon the refund in a manner prescribed by the board of amounts collected in excess of the amounts which would have been collected under rates, charges, schedules, or regulations finally approved by the board. At the conclusion of the proceeding if the board determines that the temporary rates, charges, schedules, or regulations placed in effect under this paragraph were not based on previously established regulatory principles, the board shall consider ordering refunds based upon the overpayments made by each individual customer class, rate zone, or customer group. If the board has not rendered a final decision with respect to suspended rates, charges, schedules, or regulations upon the expiration of ten months after the filing date, plus the length of any delay that necessarily results either from the failure of the public utility to exercise due diligence in connection with the proceedings or from intervening judicial proceedings, plus the length of any extension permitted by section 476.33, subsection 3, then such temporary rates, charges, schedules, or regulations placed into effect on a temporary basis shall be deemed finally approved by the board and the utility may place them into effect on a permanent basis.

b. If the board finds that an extension of the ten-month period is necessary to permit the accumulation of necessary data with respect to the operation of a newly constructed electric

generating facility that has a capacity of one hundred megawatts or more of electricity and that is proposed to be included in the rate base for the first time, the board may extend the ten-month period up to a maximum extension of six months, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base. If a utility is proposing to include in its rate base for the first time a newly constructed electric generating facility that has a capacity of one hundred megawatts or more of electricity, the filing date of new or changed rates, charges, schedules, or regulations shall, for purposes of computing the time limitations stated above, be the date as determined by the board that the new plant went into service, but only with respect to that portion of the suspended rates, charges, schedules, or regulations that are necessarily connected with the inclusion of the generating facility in the rate base.

c. The board shall determine the rate of interest to be paid by a public utility to persons receiving refunds. The interest rate to be applied to refunds of moneys collected subject to refund under this subsection is two percent per annum plus the average quarterly interest rate at commercial banks for twenty-four-month loans for personal expenditures, as determined by the board, compounded annually. The board shall consider federal reserve statistical release G.19 or its equivalent when determining interest to be paid under this subsection.

10. *Refunds passed on to customers.* If pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a refund or credit for past gas purchases, the savings shall be passed on to the customers in a manner approved by the board. Similarly, if pursuant to federal law or rule a rate-regulated public utility furnishing gas to customers in the state receives a rate for future gas purchases which is lower than the price included in the public utility's approved rate application, the savings shall be passed on to the customers in a manner approved by the board.

11. *Natural gas supply and cost review.*

a. The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's natural gas procurement and contracting practices. The natural gas supply and cost review shall be conducted as a contested case pursuant to chapter 17A.

b. Under procedures established by the board, each rate-regulated public utility furnishing gas shall periodically file a complete natural gas procurement plan describing the expected sources and volumes of its gas supply and changes in the cost of gas anticipated over a future twelve-month period specified by the board. The utilities shall file information as the board deems appropriate.

c. During the natural gas supply and cost review, the board shall evaluate the reasonableness and prudence of the gas procurement plan. If a utility is not taking all reasonable actions to minimize its purchase gas costs, consistent with assuring an adequate long-term supply of natural gas, the board shall not allow the utility to recover from its customers purchase gas costs in excess of those costs that would be incurred under reasonable and prudent policies and practices.

12. *Electric energy supply and cost review.* The board shall periodically conduct a proceeding for the purpose of evaluating the reasonableness and prudence of a rate-regulated public utility's procurement and contracting practices related to the acquisition of fuel for use in generating electricity. The evaluation may review the reasonableness and prudence of actions taken by a rate-regulated public utility to comply with the federal Clean Air Act Amendments of 1990, Pub. L. No. 101-549. The proceeding shall be conducted as a contested case pursuant to chapter 17A. Under procedures established by the board, the utility shall file information as the board deems appropriate. If a utility is not taking all reasonable actions to minimize its fuel and allowance transaction costs, the board shall not allow the utility to recover from its customers fuel and allowance transaction costs in excess of those costs that would be or would have been incurred under reasonable and prudent policies and practices.

13. *Energy efficiency plans.* Electric and gas public utilities shall offer energy efficiency programs to their customers through energy efficiency plans. An energy efficiency plan as a whole shall be cost-effective. In determining the cost-effectiveness of an energy

efficiency plan, the board shall apply the societal test, total resource cost test, utility cost test, rate-payer impact test, and participant test. Energy efficiency programs for qualified low-income persons and for tree planting programs, educational programs, and assessments of consumers' needs for information to make effective choices regarding energy use and energy efficiency need not be cost-effective and shall not be considered in determining cost-effectiveness of plans as a whole. The energy efficiency programs in the plans may be provided by the utility or by a contractor or agent of the utility. Programs offered pursuant to this subsection by gas and electric utilities that are required to be rate-regulated shall require board approval.

14. *Water costs for fire protection in certain cities.*

a. Application. A city furnished water by a public utility subject to rate regulation may apply to the board for inclusion of all or a part of the costs of fire hydrants or other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection in the rates or charges assessed to consumers covered by the applicant's fire protection service. The application shall be made in a form and manner approved by or as directed by the board. The applicant shall provide such additional information as the board may require to consider the application.

b. Review. The board shall review the application, and may in its discretion consider additional evidence, beyond that supplied in the application or provided by the applicant in response to a request for additional information pursuant to paragraph "*a*", including but not limited to soliciting oral or written testimony from other interested parties.

c. Notice. Written notice of a proposed rate increase shall be provided by the public utility pursuant to subsection 2, except that notice shall be provided within ninety days of the date of application. Costs of the notice shall be paid for by the applicant.

d. Conditions for approval. As a condition to approving an application to include water-related fire protection costs in the utility's rates or charges, the board shall make an affirmative determination that the following conditions will be met:

(1) That the service area currently charged for fire protection, either directly or indirectly, is substantially the same service area containing those persons who will pay for water-related fire protection through inclusion of such costs within the utility's rates or charges.

(2) That the inclusion of such costs within the utility's rates or charges will not cause substantial inequities among the utility's customers.

(3) That all or a portion of the costs sought to be included in the utility's rates or charges by the applicant are reasonable in the circumstances, and limited to the purposes specified in paragraph "*a*".

(4) That written notice has been provided pursuant to paragraph "*c*" and that the costs of the notice have been paid by the applicant.

e. Inclusion within rates or charges. If the board affirmatively determines that the conditions of paragraph "*d*" are or will be satisfied, the board shall include the reasonable costs in the rates or charges assessed to consumers covered by the applicant's fire protection service.

f. Written order. The board shall issue a written order within six months of the date of application. The written order shall include a recitation of the facts found pursuant to consideration of the application.

15. *Energy efficiency implementation, cost review, and cost recovery.*

a. (1) (a) Electric utilities required to be rate-regulated under this chapter shall file five-year energy efficiency plans and demand response plans with the board. Gas utilities required to be rate-regulated under this chapter shall file five-year energy efficiency plans with the board. An energy efficiency plan and budget or a demand response plan and budget shall include a range of energy efficiency or demand response programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and

electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans or demand response plans filed with the board.

(b) The board shall allow a customer of an electric utility that is required to be rate-regulated to request an exemption from participation in any five-year energy efficiency plan offered by an electric utility if the energy efficiency plan and demand response plan, at the time of approval by the board, have a cumulative rate-payer impact test result of less than one. Upon receipt of a request for exemption submitted by a customer, the electric utility shall grant the exemption and, beginning January 1 of the following year, the customer shall no longer be assessed the costs of the plan and shall be prohibited from participating in any program included in such plan until the exemption no longer applies, as determined by the board.

(2) Gas and electric utilities required to be rate-regulated under this chapter may request an energy efficiency plan or demand response plan modification during the course of a five-year plan. A modification may be requested due to changes in funding as a result of public utility customers requesting exemptions from the plan or for any other reason identified by the gas or electric utility. The board shall take action on a modification request made by a gas or electric utility within ninety days after the modification request is filed. If the board fails to take action within ninety days after a modification request is filed, the modification request shall be deemed approved.

(3) The board shall adopt rules pursuant to chapter 17A establishing reasonable processes and procedures for utility customers from any customer class to request exemptions from energy efficiency plans that meet the requirements of subparagraph (1), subparagraph division (b). The rules adopted by the board shall only apply to electric utilities that are required to be rate-regulated.

b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the economic development authority to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards. The board shall periodically report the energy efficiency results including energy savings of each utility to the general assembly.

c. (1) The board shall conduct contested case proceedings for review of energy efficiency plans, demand response plans, and budgets filed by gas and electric utilities required to be rate-regulated under this chapter.

(2) Notwithstanding the goals developed pursuant to paragraph *"b"*, the board shall not require or allow a gas utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed one and one-half percent of the gas utility's expected annual Iowa retail rate revenue from retail customers in the state, shall not require or allow an electric utility to adopt an energy efficiency plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail customers in the state, and shall not require or allow an electric utility to adopt a demand response plan that results in projected cumulative average annual costs that exceed two percent of the electric utility's expected annual Iowa retail rate revenue from retail customers in the state. For purposes of determining the two percent threshold amount, the board shall exclude from an electric utility's expected annual Iowa retail rate revenue the revenues expected from customers that have received exemptions from energy efficiency plans pursuant to paragraph *"a"*. This subparagraph shall apply to energy efficiency plans and demand response plans that are effective on or after January 1, 2019.

(3) The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's plan or budget, the reviewing court shall not order a stay.

(4) The board shall approve, reject, or modify a plan filed pursuant to this subsection no

later than March 31, 2019. If the board fails to approve, reject, or modify a plan filed by a gas or electric utility on or before such date, any plan filed by the gas or electric utility that was approved by the board prior to May 4, 2018, shall be terminated. The board shall not require or allow a gas or electric utility to implement an energy efficiency plan or demand response plan that does not meet the requirements of this subsection.

(5) Whenever a request to modify an approved plan or budget is filed subsequently by a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

d. Notice to customers of a contested case proceeding for review of energy efficiency plans, demand response plans, and budgets shall be in a manner prescribed by the board.

e. (1) A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan or demand response plan approved by the board in a contested case proceeding conducted pursuant to paragraph "*c*". Customers that have been granted exemptions from energy efficiency plans pursuant to paragraph "*a*", shall not be charged for recovery of energy efficiency costs beginning January 1 of the year following the year in which the customer was granted the exemption.

(2) The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency or demand response plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found to be imprudently conducted. Beginning January 1, 2019, a gas or electric utility shall represent energy efficiency and demand response in customer billings as a separate cost or expense.

f. A rate-regulated utility required to submit an energy efficiency plan under this subsection shall, upon the request of a state agency or political subdivision to which it provides service, provide advice and assistance regarding measures which the state agency or political subdivision might take in achieving improved energy efficiency results. The cooperation shall include assistance in accessing financial assistance for energy efficiency measures.

16. *Filing of forecasts.* The board shall periodically require each rate-regulated gas or electric public utility to file a forecast of future gas requirements or electric generating needs and the board shall evaluate the forecast. The forecast shall include but is not limited to a forecast of the requirements of its customers, its anticipated sources of supply, and its anticipated means of addressing the forecasted gas requirements or electric generating needs.

17. *Allocation of replacement tax costs.*

a. The costs of the replacement tax imposed pursuant to chapter 437A or 437B shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on January 1, 1999. The implementation and initial imposition of the replacement taxes pursuant to chapter 437B is not intended to result in an increase in the rates and charges for the sale of water that is subject to regulation by the board and in effect on January 1, 2013.

b. The cost of the replacement taxes imposed by chapter 437A or 437B shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current property tax on individual customers to the maximum extent practicable.

c. Upon the restructuring of the electric industry in this state so that individual consumers

are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

d. Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

18. *Recovery of management costs.* A public utility which is assessed management costs by a local government pursuant to chapter 480A is entitled to recover those costs. If the public utility serves customers within the boundaries of the local government imposing the management costs, such costs shall be recovered exclusively from those customers.

19. *Electric power generating facility emissions.*

a. It is the intent of the general assembly that the state, through a collaborative effort involving state agencies and affected generation owners, provide for compatible statewide environmental and electric energy policies with respect to regulated emissions from rate-regulated electric power generating facilities in the state that are fueled by coal. Each rate-regulated public utility that is an owner of one or more electric power generating facilities fueled by coal and located in this state on July 1, 2001, shall develop a multiyear plan and budget for managing regulated emissions from its facilities in a cost-effective manner.

(1) The initial multiyear plan and budget shall be filed with the board by April 1, 2002. Updates to the plan and budget shall be filed at least every twenty-four months.

(2) Copies of the initial plan and budget, as well as any subsequent updates, shall be served on the department of natural resources.

(3) The initial multiyear plan and budget and any subsequent updates shall be considered in a contested case proceeding pursuant to chapter 17A. The department of natural resources and the consumer advocate shall participate as parties to the proceeding.

(4) The department of natural resources shall state whether the plan or update meets applicable state environmental requirements for regulated emissions. If the plan does not meet these requirements, the department shall recommend amendments that outline actions necessary to bring the plan or update into compliance with the environmental requirements.

b. The board shall not approve a plan or update that does not meet applicable state environmental requirements and federal ambient air quality standards for regulated emissions from electric power generating facilities located in the state.

c. The board shall review the plan or update and the associated budget, and shall approve the plan or update and the associated budget if the plan or update and the associated budget are reasonably expected to achieve cost-effective compliance with applicable state environmental requirements and federal ambient air quality standards. In reaching its decision, the board shall consider whether the plan or update and the associated budget reasonably balance costs, environmental requirements, economic development potential, and the reliability of the electric generation and transmission system.

d. The board shall issue an order approving or rejecting a plan, update, or budget within one hundred eighty days after the public utility's filing is deemed complete; however, upon good cause shown, the board may extend the time for issuing the order as follows:

(1) The board may grant an extension of thirty days.

(2) The board may grant more than one extension, but each extension must rely upon a separate showing of good cause.

(3) A subsequent extension must not be granted any earlier than five days prior to the expiration of the original one-hundred-eighty-day period, or the current extension.

e. The reasonable costs incurred by a rate-regulated public utility in preparing and filing the plan, update, or budget and in participating in the proceedings before the board and the

reasonable costs associated with implementing the plan, update, or budget shall be included in its regulated retail rates.

f. It is the intent of the general assembly that the board, in an environmental plan, update, or associated budget filed under this section by a rate-regulated public utility, may limit investments or expenditures that are proposed to be undertaken prior to the time that the environmental benefit to be produced by the investment or expenditure would be required by state or federal law.

20. *Preapproval of cost recovery for natural gas extensions — rules.* The board may adopt rules which provide for a preapproval process for cost recovery for natural gas extensions.

21. *Federal tax reduction — customer benefits.* Customers of gas and electric utilities subject to rate regulation by the board shall receive the full benefits of the utilities' reduced federal corporate income taxes as provided in the federal Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2054. Notwithstanding any other provision of law or rule to the contrary, the board shall, no later than June 1, 2018, approve any proposal filed by a rate-regulated gas or electric utility to pass such benefits on to customers. The board may approve rates with provision for adjustments to ensure that the rates are accurate and that customers receive the full benefits.

[C66, 71, 73, 75, §490A.6; C77, 79, 81, §476.6; 81 Acts, ch 156, §6, 9, ch 157, §1 – 3; 82 Acts, ch 1100, §23]

83 Acts, ch 127, §19 – 26, 51; 84 Acts, ch 1023, §1; 87 Acts, ch 21, §2; 89 Acts, ch 58, §1; 89 Acts, ch 148, §1; 89 Acts, ch 321, §29; 90 Acts, ch 1103, §1; 90 Acts, ch 1252, §23 – 27; 91 Acts, ch 253, §22; 93 Acts, ch 68, §1; 96 Acts, ch 1196, §8, 9; 98 Acts, ch 1013, §1; 98 Acts, ch 1148, §2, 9; 98 Acts, ch 1194, §37, 40; 2001 Acts, 1st Ex, ch 4, §10, 36; 2002 Acts, ch 1162, §70, 71; 2003 Acts, ch 126, §2, 3; 2003 Acts, ch 145, §286; 2004 Acts, ch 1006, §1; 2006 Acts, ch 1030, §51; 2007 Acts, ch 168, §16, 18; 2008 Acts, ch 1133, §4, 5, 9; 2009 Acts, ch 108, §38, 41; 2009 Acts, ch 133, §158; 2010 Acts, ch 1176, §1, 3; 2011 Acts, ch 118, §50, 89; 2013 Acts, ch 30, §112; 2013 Acts, ch 94, §33, 35, 36; 2014 Acts, ch 1099, §6; 2017 Acts, ch 9, §1, 2; 2017 Acts, ch 21, §3, 4; 2018 Acts, ch 1135, §8 – 14, 20; 2018 Acts, ch 1160, §9, 10; 2019 Acts, ch 89, §39

Referred to in §34A.7, 476.1C, 476.2, 476.10, 476.10A, 476.23, 476.33, 476.52, 476.53

Subsection 15, paragraph c, subparagraphs (2) and (4) amended

476.6A Alternate energy production facilities — notification requirements.

1. On and after January 1, 2013, the owner of an alternate energy production facility, as defined in section 476.42, which when constructed or installed will be attached to an electric transmission or distribution line or attached to equipment which is attached to an electric transmission or distribution line, who has not entered into a power purchase agreement with a public utility, shall be subject to the notification requirements of subsection 2.

2. No later than thirty days prior to commencement of the construction or installation of an alternate energy production facility as described in subsection 1, the owner of the facility shall provide written notice to the public utility within whose service territory the facility is to be located of the owner's intent to construct or install the facility, the type of facility to be constructed or installed, and the date that the facility is anticipated to commence operation.

2012 Acts, ch 1027, §1

476.7 Application by utility for review.

If there shall be filed with the board by any public utility an application requesting the board to determine the reasonableness of the utility's rates, charges, schedules, service or regulations, the board shall promptly initiate a formal proceeding. Such a formal proceeding may be initiated at any time by the board on its own motion. Whenever such a proceeding has been initiated upon application or motion, the board shall set the case for hearing and give such notice thereof as it deems appropriate. Whenever the board, after a hearing held after reasonable notice, finds any public utility's rates, charges, schedules, service or regulations are unjust, unreasonable, insufficient, discriminatory or otherwise in violation of any provision of law, the board shall determine just, reasonable, sufficient and

nondiscriminatory rates, charges, schedules, service or regulations to be thereafter observed and enforced.

[C66, 71, 73, 75, §490A.7; C77, 79, 81, §476.7]

476.8 Utility charges and service.

1. Every public utility is required to furnish reasonably adequate service and facilities. *"Reasonably adequate service and facilities"* for public utilities furnishing gas or electricity includes programs for customers to encourage the use of energy efficiency and renewable energy sources. The charge made by any public utility for any heat, light, gas, energy efficiency and renewable energy programs, water or power produced, transmitted, delivered or furnished, sanitary sewage or storm water collected and treated, or communications services, or for any service rendered or to be rendered in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful. In determining reasonable and just rates, the board shall consider all factors relating to value and shall not be bound by rate base decisions or rulings made prior to the adoption of this chapter.

2. The board, in determining the value of materials or services to be included in valuations or costs of operations for rate-making purposes, may disallow any unreasonable profit made in the sale of materials to or services supplied for any public utility by any firm or corporation owned or controlled directly or indirectly by such utility or any affiliate, subsidiary, parent company, associate or any corporation whose controlling stockholders are also controlling stockholders of such utility. The burden of proof shall be on the public utility to prove that no unreasonable profit is made.

[C66, 71, 73, 75, §490A.8; C77, 79, 81, §476.8]

83 Acts, ch 127, §27; 90 Acts, ch 1252, §28; 2016 Acts, ch 1013, §3

Referred to in §476.2

476.9 Accounts rendered to board.

1. Every public utility, except telecommunications service providers registered pursuant to section 476.95A, shall keep and render to the board in the manner and form prescribed by the board uniform accounts of all business transacted.

2. Every public utility engaged directly or indirectly in any other business than that of the production, transmission, or furnishing of heat, light, water, power, or the collection and treatment of sanitary sewage or storm water for the public shall, if required by the board, keep and render separately to the board in like manner and form the accounts of all such other business, in which case all the provisions of this chapter shall apply to the books, accounts, papers and records of such other business and all profits and losses may be taken into consideration by the board if deemed relevant to the general fiscal condition of the public utility.

3. Every public utility, except telecommunications service providers registered pursuant to section 476.95A, is required to keep and render its books, accounts, papers and records accurately and faithfully in the manner and form prescribed by the board, and to comply with all directions of the board relating to such books, accounts, papers and records.

4. The board shall consult with other state and federal regulatory bodies for the purpose of eliminating accounting discrepancies with regard to the keeping of public utility accounts before prescribing any system of accounts to be kept by the public utility.

[C66, 71, 73, 75, §490A.9; C77, 79, 81, §476.9]

2016 Acts, ch 1013, §4; 2018 Acts, ch 1160, §11

476.10 Investigations — expense — appropriation.

1. *a.* In order to carry out the duties imposed upon it by law, the board may, at its discretion, allocate and charge directly the expenses attributable to its duties to the person bringing a proceeding before the board, to persons participating in matters before the board, or to persons subject to inspection by the board. The board shall ascertain the certified expenses incurred and directly chargeable by the consumer advocate division of the department of justice in the performance of its duties. The board and the consumer

advocate separately may decide not to charge expenses to persons who, without expanding the scope of the proceeding or matter, intervene in good faith in a board proceeding initiated by a person subject to the board's jurisdiction, the consumer advocate, or the board on its own motion. For assessments in any proceedings or matters before the board, the board and the consumer advocate separately may consider the financial resources of the person, the impact of assessment on participation by intervenors, the nature of the proceeding or matter, and the contribution of a person's participation to the public interest. The board may present a bill for expenses under this subsection to the person, either at the conclusion of a proceeding or matter, or from time to time during its progress. Presentation of a bill for expenses under this subsection constitutes notice of direct assessment and request for payment in accordance with this section.

b. The board shall ascertain the total of the division's expenses incurred during each fiscal year in the performance of its duties under law. The board shall add to the total of the division's expenses the certified expenses of the consumer advocate as provided under section 475A.6. The board shall deduct all amounts charged directly to any person from the total expenses of the board and the consumer advocate. The board may assess the amount remaining after the deduction to all persons providing service over which the board has jurisdiction in proportion to the respective gross operating revenues of such persons from intrastate operations during the last calendar year over which the board has jurisdiction. For purposes of determining gross operating revenues under this section, the board shall not include gross receipts received by a cooperative corporation or association for wholesale transactions with members of the cooperative corporation or association, provided that the members are subject to assessment by the board based upon the members' gross operating revenues, or provided that such a member is an association whose members are subject to assessment by the board based upon the members' gross operating revenues. If any portion of the remainder can be identified with a specific type of utility service, the board shall assess those expenses only to the entities providing that type of service over which the board has jurisdiction. The board may make the remainder assessments under this paragraph on a quarterly basis, based upon estimates of the expenditures for the fiscal year for the utilities division and the consumer advocate. Not more than ninety days following the close of the fiscal year, the utilities division shall conform the amount of the prior fiscal year's assessments to the requirements of this paragraph. For gas and electric public utilities exempted from rate regulation pursuant to this chapter, the remainder assessments under this paragraph shall be computed at one-half the rate used in computing the assessment for other persons.

2. *a.* A person subject to a charge or assessment shall pay the division the amount charged or assessed against the person within thirty days from the time the division provides notice to the person of the amount due, unless the person files an objection in writing with the board setting out the grounds upon which the person claims that such charge or assessment is excessive, unreasonable, erroneous, unlawful, or invalid. Upon receipt of an objection, the board shall set the matter for hearing and issue its order in accordance with its findings in the proceeding.

b. The order shall be subject to review in the manner provided in this chapter. All amounts collected by the division pursuant to the provisions of this section shall be deposited with the treasurer of state and credited to the department of commerce revolving fund created in section 546.12. Such amounts shall be spent in accordance with the provisions of chapter 8.

3. Whenever the board shall deem it necessary in order to carry out the duties imposed upon it in connection with rate regulation under section 476.6, investigations under section 476.3, or review proceedings under section 476.31, the board may employ additional temporary or permanent staff, or may contract with persons who are not state employees for engineering, accounting, or other professional services, or both. The costs of these additional employees and contract services shall be paid by the public utility whose rates are being reviewed in the same manner as other expenses are paid under this section. Beginning on July 1, 1991, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board to hire additional staff and contract for services under this section. The board shall increase quarterly assessments

specified in subsection 1, paragraph "*b*", by amounts necessary to enable the board to hire additional staff and contract for services under this section. The authority to hire additional temporary or permanent staff that is granted to the board by this section shall not be subject to limitation by any administrative or executive order or decision that restricts the number of state employees or the filling of employee vacancies, and shall not be subject to limitation by any law of this state that restricts the number of state employees or the filling of employee vacancies unless that law is made applicable to this section by express reference to this section. Before the board expends or encumbers an amount in excess of the funds budgeted for rate regulation and before the board increases quarterly assessments pursuant to this subsection, the director of the department of management shall approve the expenditure or encumbrance. Before approval is given, the director of the department of management shall determine that the expenses exceed the funds budgeted by the general assembly to the board for rate regulation and that the board does not have other funds from which the expenses can be paid. Upon approval of the director of the department of management the board may expend and encumber funds for the excess expenses, and increase quarterly assessments to raise the additional funds. The board and the office of consumer advocate may add additional personnel or contract for additional assistance to review and evaluate energy efficiency plans and the implementation of energy efficiency programs including, but not limited to, professionally trained engineers, accountants, attorneys, skilled examiners and inspectors, and secretaries and clerks. The board and the office of consumer advocate may also contract for additional assistance in the evaluation and implementation of issues relating to telecommunication competition. The board and the office of the consumer advocate may expend additional sums beyond those sums appropriated. However, the authority to add additional personnel or contract for additional assistance must first be approved by the department of management. The additional sums for energy efficiency shall be provided to the board and the office of the consumer advocate by the utilities subject to the energy efficiency requirements in this chapter. Telephone companies shall pay any additional sums needed for assistance with telecommunication competition issues. The assessments shall be in addition to and separate from the quarterly assessment.

4. *a.* Fees paid to the utilities division shall be deposited in the department of commerce revolving fund created in section 546.12. These funds shall be used for the payment, upon appropriation by the general assembly, of the expenses of the utilities division and the consumer advocate division of the department of justice.

b. The administrator and consumer advocate shall account for receipts and disbursements according to the separate duties imposed upon the utilities and consumer advocate divisions by the laws of this state and each separate duty shall be fiscally self-sustaining.

c. All fees and other moneys collected under this section and sections 478.4, 479.16, and 479A.9 shall be deposited into the department of commerce revolving fund created in section 546.12 and expenses required to be paid under this section shall be paid from funds appropriated for those purposes.

[C66, 71, 73, 75, §490A.10; C77, 79, 81, §476.10; 81 Acts, ch 156, §7, ch 158, §1]

83 Acts, ch 127, §28; 86 Acts, ch 1246, §613, 614; 89 Acts, ch 103, §1; 89 Acts, ch 296, §72; 89 Acts, ch 321, §30; 90 Acts, ch 1247, §11; 90 Acts, ch 1252, §29; 91 Acts, ch 260, §1236, 1237; 93 Acts, ch 131, §20, 21; 94 Acts, ch 1107, §80; 95 Acts, ch 199, §3; 2001 Acts, ch 9, §1, 3; 2009 Acts, ch 181, §45 – 47; 2018 Acts, ch 1160, §12

Referred to in §12.91, 475A.6, 476.1A, 476.1B, 476.1C, 476.10A, 476.10B, 476.53, 476.87, 476.95, 476.95B, 477A.3, 477C.3, 478.4, 479.14, 479.16, 479A.9

476.10A Funding for Iowa energy center and center for global and regional environmental research.

1. *a.* The board shall direct all gas and electric utilities to remit to the treasurer of state one-tenth of one percent of the total gross operating revenues during the last calendar year derived from their intrastate public utility operations. The board shall by rule provide a schedule for remittances.

b. The amounts collected pursuant to this section shall be in addition to the amounts permitted to be assessed pursuant to section 476.10. The board shall allow inclusion of these

amounts in the budgets approved by the board pursuant to section 476.6, subsection 15, paragraph "*c*".

c. (1) Of eighty-five percent of the remittances collected pursuant to this section, the following shall occur:

(a) For the fiscal year beginning July 1, 2018, such remittances are appropriated to the Iowa energy center created in section 15.120.

(b) For the fiscal year beginning July 1, 2019, the first one million two hundred eighty-thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(c) For the fiscal year beginning July 1, 2020, the first two million nine hundred ten thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(d) For the fiscal year beginning July 1, 2021, the first three million five hundred thirty thousand dollars of such remittances shall be transferred to the general fund of the state, and the remaining amount is appropriated to the Iowa energy center created in section 15.120.

(2) Fifteen percent of the remittances collected pursuant to this section is appropriated to the center for global and regional environmental research established by the state board of regents.

2. Notwithstanding section 8.33, any unexpended moneys remitted to the treasurer of state under this section shall be retained for the purposes designated. Notwithstanding section 12C.7, subsection 2, interest or earnings on investments or time deposits of the moneys remitted under this section shall be retained and used for the purposes designated, pursuant to section 476.46.

3. The Iowa energy center and the center for global and regional environmental research shall each provide a written annual report to the utilities board that describes each center's activities and the results that each center has accomplished. Each report shall include an explanation of initiatives and projects of importance to the state of Iowa.

4. This section is repealed July 1, 2022.

90 Acts, ch 1252, §30; 91 Acts, ch 253, §23; 96 Acts, ch 1196, §10; 2002 Acts, ch 1109, §3; 2017 Acts, ch 169, §40, 41, 49; 2018 Acts, ch 1172, §91

Referred to in §15.120

476.10B Energy-efficient building.

1. For the purposes of this section, *"building project expenses"* means expenses that have been approved by the utilities board for the building and related improvements and furnishings developed under this section and that are considered part of the regulatory expenses charged by the utilities board and the consumer advocate division of the department of justice for carrying out duties under section 476.10.

2. The department of administrative services, in consultation with the board and the consumer advocate division of the department of justice, shall provide for the construction of a building to house the board and the division. A building developed under this subsection shall be a model energy-efficient building that may be used as a public example for similar efforts. The building shall comply with the life cycle cost provisions developed pursuant to section 72.5. The building shall be located on the capitol complex grounds or at another convenient location in the vicinity of the capitol complex grounds.

3. Building project expenses shall include but are not limited to the costs associated with construction, maintenance, and operation of the building that are approved by the board and shall also include principal of, premium, if any, and interest on indebtedness to finance the building.

4. The department of administrative services' costs associated with construction, maintenance, and operation of the building as provided under chapter 8A are building project expenses.

5. A cost-effective approach for financing construction of the building shall be utilized, which may include but is not limited to lease, lease-purchase, bonding, or installment acquisition arrangement, or a financing arrangement under section 12.28. If financing for

the building is implemented under section 12.28, the limitation on principal under that section does not apply. This subsection is not a qualification of any other powers which the board and the division may possess and the authorizations and powers granted under this subsection are not subject to the terms, requirements, or limitations of any other provisions of law. The department of administrative services must comply with the provisions of section 12.28 when entering into financing agreements for the purchase of real or personal property.

6. *a.* If financing for the building is implemented through bonding, the provisions of section 12.91 shall apply. In order to assure maintenance of the bond reserve funds established in connection with the financing, the treasurer of state shall, on or before January 1 of each calendar year, make and deliver to the governor the treasurer's certificate stating the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund.

b. Within thirty days after the beginning of the session of the general assembly next following the delivery of the certificate, the governor shall submit to both houses of the general assembly printed copies of a budget including the sum, if any, required to restore each bond reserve fund to the bond reserve fund requirement for that fund. Any sums appropriated by the general assembly and paid to the treasurer of state shall be deposited by the treasurer of state in the applicable bond reserve fund.

7. The department of administrative services, in consultation with the board and the division, shall secure architectural services, contract for construction, engineering, and construction oversight and management, and control the funding associated with the building construction and the building's operation and maintenance. The department of administrative services may utilize consultants or other expert assistance to address feasibility, planning, or other considerations connected with construction of the building or decision making regarding the building. The department of administrative services, on behalf of the board and division, shall consult with the office of the governor, appropriate legislative bodies, and the capitol planning commission.

2006 Acts, ch 1179, §73

Referred to in §12.91

476.11 Telephone toll connections. Repealed by 2018 Acts, ch 1160, §32.

476.12 Rehearings before board.

Notwithstanding the Iowa administrative procedure Act, chapter 17A, any party, as defined in the rules and regulations promulgated by the board as provided in section 476.2, to a contested case before the board may within twenty days after the issuance of the final decision apply for a rehearing. The board shall either grant or refuse an application for rehearing within thirty days after the filing of the application, or may after giving the interested parties notice and opportunity to be heard and after consideration of all the facts, including those arising since the making of the order, abrogate or modify its order. A failure by the board to act upon the application for rehearing within the above period shall be deemed a refusal of the application. Neither the filing of an application for rehearing nor the granting of the application shall stay the effectiveness of an order unless the board so directs.

[C66, 71, 73, 75, §490A.12; C77, 79, 81, §476.12]

88 Acts, ch 1100, §2; 2003 Acts, ch 44, §114

Referred to in §478.32, 479.32, 479B.22

476.13 Judicial review.

1. Notwithstanding the Iowa administrative procedure Act, chapter 17A, the district court for Polk county or for the county in which a public utility maintains its principal place of business has exclusive venue for the judicial review under chapter 17A of actions of the board pursuant to rate-regulatory powers over that public utility.

2. Upon the filing of a petition for judicial review in an action referred to in subsection 1, the clerk of the district court shall notify the chief justice of the supreme court for purposes of assignment of a district judge under section 602.1212. The judicial review proceeding shall be heard by the district judge appointed by the supreme court under section 602.1212, but in the county of venue under subsection 1.

3. Notwithstanding the Iowa administrative procedure Act, chapter 17A, if a public utility seeks judicial review of an order approving rates for the public utility, the level of rates that may be collected, under bond and subject to refund, while the appeal is pending shall be limited to the level of the temporary rates set by the board, or the level of the final rates set by the board, whichever is greater. During the period the judicial review proceeding is pending, the board shall retain jurisdiction to determine the rate of interest to be paid on any refunds eventually required on rates collected during judicial review.

[C66, 71, 73, 75, §490A.13; C77, 79, 81, §476.13]

83 Acts, ch 127, §29; 2003 Acts, ch 44, §114

Referred to in §602.1212

476.14 Violations stopped.

Whenever the board shall be of the opinion that any public utility or any other person is violating this chapter or any order of the board, the board may commence an action in the district court for the county in which such violation is alleged to have occurred, to have such violation stopped and prevented by injunction, mandamus or other appropriate remedy.

[C66, 71, 73, 75, §490A.20; C77, 79, 81, §476.14]

476.15 Extent of jurisdiction.

The jurisdiction and powers of the board shall extend as provided in this chapter to the utility business of public utilities operating within this state to the full extent permitted by the Constitution and laws of the United States.

[C66, 71, 73, 75, §490A.21; C77, 79, 81, §476.15]

2019 Acts, ch 59, §171

Section amended

476.16 Annual report.

The board shall include in its annual report required under sections 7A.1 and 7A.10 among other matters, to the extent such regulation is conferred upon the board by this chapter, the following:

1. A complete financial report of receipts and expenditures, including list of public utilities and separately the amount of total fees and assessments paid by each.

2. A list of the applications, subject and disposition of each docket number under this chapter, including board fees for such docket assessed by the board.

[C66, 71, 73, 75, §490A.22; C77, 79, 81, §476.16]

476.17 Peak-load energy conservation.

1. The board may promulgate rules pursuant to chapter 17A which require or authorize a public utility to establish peak-load management procedures.

2. Rules of the board shall relate to reducing or limiting the peak-load period consumption.

3. In promulgating rules under this section, the board is not bound by decisions, rulings or orders which relate to the definitions of types or classes of customers and which were issued by the Iowa state commerce commission prior to July 1, 1980.

[C81, §476.17]

476.18 Impermissible charges.

1. Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of lobbying.

2. Legal costs and attorney fees incurred by a public utility subject to rate regulation in an appeal in state or federal court involving the validity of any action of the board shall not be included either directly or indirectly in the public utility's charges or rates to customers except to the extent that recovery of legal costs and attorney fees is allowed by the board. The board shall allow a public utility to recover reasonable legal costs and attorney fees incurred in the appeal. The board may consider the degree of success of the legal arguments of the public utility in determining the reasonable legal costs and attorney fees to be allowed.

3. *a.* Public utilities subject to rate regulation are prohibited from including either directly or indirectly in their charges or rates to customers the costs of advertising other than

advertising which is required by the board or by other state or federal regulation. However, this subsection does not apply to a utility's advertising which is deemed by the board to be necessary for the utility's customers and which is approved by the board.

b. Every ad which is published, broadcast, or otherwise displayed or disseminated to the public by a public utility which is to be charged to the customers of the public utility and which is not required by the board or by other state or federal regulation shall include a statement in the ad that the costs of the ad are being charged to the customers of the public utility. This paragraph does not apply to a utility's product or service that is or becomes subject to competition as determined by the board.

4. This section does not apply to a rural electric cooperative.

83 Acts, ch 127, §30; 84 Acts, ch 1225, §1; 2011 Acts, ch 25, §143

476.19 Construction of statutes.

Nothing contained in this chapter shall be construed to invalidate any proceedings under statutes existing prior to the enactment of this chapter; nor shall any action, litigation or appeal pending prior to the effective date of rate regulation of this chapter be affected.

[C66, 71, 73, 75, §490A.25; C77, 79, 81, §476.19]

2019 Acts, ch 59, §172

Section amended

476.20 Disconnection limited — notice — moratorium — deposits.

1. *a.* A utility shall not, except in cases of emergency, discontinue, reduce, or impair service to a community, or a part of a community, except for nonpayment of account or violation of rules and regulations, unless and until permission to do so is obtained from the board.

b. (1) A public utility described in section 476.1, subsection 3, paragraph "*c*", may enter into an agreement with the governing body of a city utility, combined city utility, city enterprise, or combined city enterprise to discontinue water service to a property or premises if an account owed the city utility, city enterprise, or combined city utility or city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment provided to that customer's property or premises becomes delinquent pursuant to section 384.84, subsection 3. An agreement entered into under this paragraph shall not negate any obligations of a city utility, combined city utility, city enterprise, or combined city enterprise under section 384.84.

(2) A public utility that has entered into an agreement under this paragraph shall not be liable for damages related to the discontinuance of water service under this paragraph. The customer shall be responsible for all costs associated with discontinuing and reestablishing water service disconnected pursuant to this paragraph.

(3) The board shall adopt rules for the discontinuance of water service under this paragraph. A public utility shall only discontinue water service under this paragraph in accordance with the rules adopted pursuant to this subparagraph.

2. The board shall establish rules requiring a regulated public utility furnishing gas or electricity to include in the utility's notice of pending disconnection of service a written statement advising the customer that the customer may be eligible to participate in the low income home energy assistance program or weatherization assistance program administered by the division of community action agencies of the department of human rights. The written statement shall list the address and telephone number of the local agency which is administering the customer's low income home energy assistance program and the weatherization assistance program. The written statement shall also state that the customer is advised to contact the public utility to settle any of the customer's complaints with the public utility, but if a complaint is not settled to the customer's satisfaction, the customer may file the complaint with the board. The written statement shall include the address and phone number of the board. If the notice of pending disconnection of service applies to a residence, the written statement shall advise that the disconnection does not apply from November 1 through April 1 for a resident who is a "head of household", as defined in section 422.4, and who has been certified to the public utility by the local agency which

is administering the low income home energy assistance program and weatherization assistance program as being eligible for either the low income home energy assistance program or weatherization assistance program, and that if such a resident resides within the serviced residence, the customer should promptly have the qualifying resident notify the local agency which is administering the low income home energy assistance program and weatherization assistance program. The board shall establish rules requiring that the written notice contain additional information as it deems necessary and appropriate.

3. *a.* The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service. This subsection applies both to regulated utilities and to municipally owned utilities and unincorporated villages which own their own distribution systems, and violations of this subsection subject the utilities to civil penalties under section 476.51.

b. A qualified applicant for the low income home energy assistance program or the weatherization assistance program who is also a "head of household", as defined in section 422.4, subsection 7, shall be promptly certified by the local agency administering the applicant's program to the applicant's public utility that the resident is a "head of household" as defined in section 422.4, subsection 7, and is qualified for the low income home energy assistance program or weatherization assistance program. Notwithstanding subsection 1, a public utility furnishing gas or electricity shall not disconnect service from November 1 through April 1 to a residence which has a resident that has been certified under this paragraph.

c. The rules established by the board shall provide that a public utility furnishing gas or electricity shall not disconnect service to a residence in which one of the heads of household is a service member deployed for military service, as defined in section 29A.1, subsection 3, prior to a date ninety days after the end of the service member's deployment, if the public utility is informed of the deployment.

4. A public utility which violates a provision of this section relating to the disconnection of service or which violates a rule of the board relating to disconnection of service is subject to civil penalties imposed by the board under section 476.51.

5. *a.* The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service. This subsection shall not apply to municipally owned utilities, which shall be governed by the provisions of section 384.84 with respect to deposits and payment plans for delinquent amounts owed. Municipally owned utilities and electric utilities that are not required to be rate-regulated shall not be subject to the board's rules in regards to deposits and payment plans for delinquent amounts owed and repayment of past due debt. Municipally owned utilities and electric utilities that are not required to be rate-regulated shall be subject to the board's rules in regards to payment plans made prior to the disconnection of services.

(1) The deposit for a residential or commercial customer for a place which has previously received service shall not be greater than the highest billing of service for one month for the place in the previous twelve-month period.

(2) The deposit for a residential or a commercial customer for a place which has not previously received service or for an industrial customer shall be the customer's projected one month's usage for the place to be serviced as determined by the public utility according to rules established by the board.

b. This subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service.

c. The rules shall allow a person other than the customer to pay the customer's deposit. Upon termination of service to such a customer, the deposit plus accumulated interest less any unpaid utility bill of the customer, shall be reimbursed to the person who made the deposit.

6. This section shall not apply to telecommunications service providers registered pursuant to section 476.95A.

[C66, 71, 73, 75, §490A.26; C77, 79, 81, §476.20]

83 Acts, ch 127, §31; 84 Acts, ch 1131, §1; 84 Acts, ch 1273, §1; 2010 Acts, ch 1170, §4; 2011 Acts, ch 25, §143; 2011 Acts, ch 47, §9; 2014 Acts, ch 1085, §2; 2015 Acts, ch 30, §152; 2017 Acts, ch 62, §5; 2018 Acts, ch 1135, §15; 2018 Acts, ch 1160, §13

Referred to in §384.84, 476.1A, 476.1B, 476.1C

476.21 Discrimination prohibited.

A corporation or cooperative association providing electrical or gas service shall not consider the use of renewable energy sources by a customer as a basis for establishing discriminatory rates or charges for any service or commodity sold to the customer or discontinue services or subject the customer to any other prejudice or disadvantage based on the customer's use or intended use of renewable energy sources. As used in this section, "*renewable energy sources*" includes but is not limited to solar heating, wind power and the conversion of urban and agricultural organic wastes into methane gas and liquid fuels.

[C79, 81, §476.21]

2018 Acts, ch 1135, §16

Referred to in §476.1A, 476.1C

SUBCHAPTER II

ASSIGNED AREA OF SERVICE

476.22 Definition.

As used in sections 476.23 to 476.26, unless the context otherwise requires, "*electric utility*" includes a public utility furnishing electricity as defined in section 476.1 and a city utility as defined in section 390.1.

[C77, 79, 81, §476.22]

Referred to in §422.7(57)(b), 476.1B

476.23 Electric service conflicts — certificates of authority.

1. An electric utility shall not construct or extend facilities or furnish or offer to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility without having first filed with the board the express written agreement of the electric utility presently serving this customer, except as otherwise provided in this section. Any municipal corporation, after being authorized by a vote of the people, or any electric utility may file a petition with the board requesting a certificate of authority to furnish electric service to the existing point of delivery of any customer already receiving electric service from another electric utility. If, after notice by the board to the electric utility currently serving the customer, objection to the petition is not filed and investigation is not deemed necessary, the board shall issue a certificate within thirty days of the filing of the petition. When an objection is filed, if the board, after notice and opportunity for hearing, determines that service to the customer by the petitioner is in the public interest, including consideration of any unnecessary duplication of facilities, it shall grant this certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. Whether or not an objection is filed, any certificate issued shall require that the petitioner pay to the electric utility presently serving the customer, the reasonable price for facilities serving the customer. This price determination by the board shall include due consideration of the cost of the facilities being acquired; any necessary generating capacity and transmission capacity dedicated to the customer, including, but not limited to, electric power generating facilities and alternate energy production facilities not yet in service but for which the board has issued an order pursuant to section 476.53, and electric power generating facility emissions plan budgets approved by the board pursuant to section 476.6, subsection 19; depreciation; loss of revenue; and the cost of facilities necessary to reintegrate the system of the utility after detaching the portion sold.

2. An electric utility shall not construct or extend facilities or furnish electric service to a prospective customer not presently being served, unless its existing service facilities are nearer the proposed point of delivery than the service facilities of any other utility. However, an electric utility may extend electric service and transmission lines if the electric utility closest to the delivery point consents to this extension in writing and a copy of the agreement is filed with the board or, if the board, after notice and opportunity for hearing and after giving due consideration to the prevention of unnecessary duplication of facilities, finds that service from an electric utility, other than the closest utility, is in the public interest. This subsection shall not apply if the prospective customers are within an exclusive service area assigned to an electric utility as provided in this subchapter.

3. Notwithstanding subsections 1 and 2 of this section, any electric utility may extend electric service and transmission lines to its own utility property and facilities.

4. If not inconsistent with the provisions of this subchapter:

a. All rights of municipal corporations under chapter 364 to grant a person a franchise to erect, maintain, and operate plants and systems for electric light and power within the corporate boundaries, and rights acquired by franchise or agreement shall be preserved in these municipal corporations;

b. All rights of city utilities under the city code shall be preserved in these city utilities;

c. All rights of city utilities and joint electric utilities under chapter 390 shall be preserved in these city utilities and joint electric utilities; and

d. All rights of cities under chapter 6B are preserved. However, prior to the institution of condemnation proceedings, the city shall obtain a certificate of authority from the board in accordance with this subchapter and the board's determination of price under this subchapter shall be conclusive evidence of damages in these condemnation proceedings.

[C66, 71, 73, 75, §490A.23, 490A.24; C77, 79, 81, §476.23]

2003 Acts, ch 29, §1, 6; 2014 Acts, ch 1026, §143

Referred to in §437A.3, 476.1B, 476.22

476.24 Electric utility service area maps.

1. On or before July 1, 1977, and subsequently whenever requested by the board, electric utilities furnishing electricity to the public for compensation in this state shall file, jointly or severally, with the board detailed maps of their service area drawn to a scale of not less than one inch per mile or drawn to a larger scale if required for clarity showing all of the following:

a. The locations of an electric utility's generation, franchised transmission lines, distribution lines, and related facilities as of January 1, 1976.

b. All state and federal highways and other public roads within the electric utility's service area.

c. All section lines and numbers and township and range numbers within the electric utility's service area.

d. The corporate boundaries of all cities within the electric utility's service area.

e. All lakes and rivers within the electric utility's service area.

f. All railroads within the electric utility's service area.

g. Any additional information requested by the board.

2. On or before July 1, 1978, and subsequently when deemed by the board to be necessary, the board shall prepare or cause to have prepared a composite map of this state showing the service areas of electric utilities as submitted by the electric utilities. The form and detail of all maps shall be determined by the board.

[C77, 79, 81, §476.24]

Referred to in §476.1B, 476.22

476.25 Assigned service areas — electric utilities — legislative policy.

It is declared to be in the public interest to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public. In order to effect that public interest, the board may establish service areas within which specified electric utilities shall provide electric service to customers on an exclusive

basis. Except for good cause expressed through formal public statement, the board shall establish these exclusive service areas on or before July 1, 1979. These exclusive service area boundaries shall be established by the board upon the following basis:

1. The service area boundaries shall be in a line approximately equidistant between the electric distribution lines of adjacent electric utilities as they existed on January 1, 1976, and as shown by the maps filed in accordance with this subchapter. However, those boundaries may be modified by the board to promote the public interest, to preserve existing service areas and electric utilities' rights to serve existing customers, and to prevent unnecessary duplication of facilities, to take account of natural and physical barriers which would make electric service beyond these barriers uneconomic and impractical and those boundaries shall be modified by the board to take account of the contracts between electric utilities which have been approved by the board pursuant to subsection 2 of this section. When an electric utility's exclusive service area is established by the board to include existing customers presently served by the facilities of another electric utility, unless a voluntary exchange of facilities is agreed upon by the electric utilities involved and approved by the board, the board after notice and opportunity for hearing, shall require the purchase of those facilities presently serving these customers at a reasonable price to be determined by the board. The board, on its own motion or at the request of an electric utility or municipal corporation, after notice and opportunity for hearing, may modify the boundaries of an electric utility exclusive service area which it has previously established if this modification, including consideration of the factors noted in this subsection, is found to be in the public interest.

2. Contracts between electric utilities to designate service areas and customers to be served by the electric utilities or for the exchange of customers between electric utilities, when approved by the board, shall be valid and enforceable and shall be incorporated into the appropriate exclusive service areas established pursuant to subsection 1 of this section. The board shall approve a contract if it finds that the contract will eliminate or avoid unnecessary duplication of facilities, will provide adequate electric service to all areas and customers affected, will promote the efficient and economical use and development of the electric systems of the contracting electric utilities, and is in the public interest.

3. An electric utility shall not serve or offer to serve electric customers in an exclusive service area assigned to another electric utility, nor shall an electric utility construct facilities to serve electric customers in an exclusive service area assigned to another electric utility. The state, an electric utility, or any other person who is injured or threatened with injury by conduct prohibited by this section may initiate a contested case proceeding with the board under chapter 17A. Upon finding a violation of this section the board shall order appropriate corrective action including discontinuance of the unlawful service to electric customers, removal of the unlawful facility, or other disposition the board deems just and reasonable.

[C77, 79, 81, §476.25]

84 Acts, ch 1101, §1; 2014 Acts, ch 1026, §143

Referred to in §476.1B, 476.22

476.26 Effect of incorporation, annexation, or consolidation.

The inclusion by incorporation, consolidation, or annexation of any facilities or service area of an electric utility within the boundaries of any city shall not by such inclusion impair or affect in any respect the rights of the electric utility to continue to provide electric utility service and to extend service to prospective customers in accordance with the provisions of this subchapter.

[C66, 71, 73, 75, §490A.23; C77, 79, 81, §476.26]

2014 Acts, ch 1026, §143

Referred to in §476.1B, 476.22

SUBCHAPTER III

CROSSINGS — RAILROAD RIGHTS-OF-WAY

476.27 Public utility crossing — railroad rights-of-way.

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

a. *"Board"* means the Iowa utilities board.

b. *"Crossing"* means the construction, operation, repair, or maintenance of a facility over, under, or across a railroad right-of-way by a public utility.

c. *"Direct expenses"* includes, but is not limited to, any or all of the following:

(1) The cost of inspecting and monitoring the crossing site.

(2) Administrative and engineering costs for review of specifications; for entering a crossing on the railroad's books, maps, and property records; and other reasonable administrative and engineering costs incurred as a result of the crossing.

(3) Document and preparation fees associated with a crossing, and any engineering specifications related to the crossing.

(4) Damages assessed in connection with the rights granted to a public utility with respect to a crossing.

d. *"Electric transmission owner"* means an individual or entity who owns and maintains electric transmission facilities including transmission lines, wires, or cables that are capable of operating at an electric voltage of thirty-four and one-half kilovolts or greater that are required for rate-regulated electric utilities, municipal electric utilities, and rural electric cooperatives in this state to provide electric service to the public for compensation.

e. *"Facility"* means any cable, conduit, wire, pipe, casing pipe, supporting poles and guys, manhole, or other material and equipment, that is used by a public utility to furnish any of the following:

(1) Communications services.

(2) Electricity.

(3) Gas by piped system.

(4) Sanitary and storm sewer service.

(5) Water by piped system.

f. *"Public utility"* means a public utility as defined in section 476.1, except that, for purposes of this section, *"public utility"* also includes all mutual telephone companies, municipally owned facilities, unincorporated villages, waterworks, municipally owned waterworks, joint water utilities, rural water districts incorporated under chapter 357A or 504, cooperative water associations, franchise cable television operators, persons furnishing electricity to five or fewer persons, and electric transmission owners primarily providing service to public utilities as defined in section 476.1.

g. *"Railroad"* or *"railroad corporation"* means a railroad corporation as defined in section 321.1, which is the owner, operator, occupant, manager, or agent of a railroad right-of-way or the railroad corporation's successor in interest. *"Railroad"* and *"railroad corporation"* include an interurban railway.

h. *"Railroad right-of-way"* means one or more of the following:

(1) A right-of-way or other interest in real estate that is owned or operated by a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation.

(2) A right-of-way or other interest in real estate that is occupied or managed by or on behalf of a railroad corporation, the trustees of a railroad corporation, or the successor in interest of a railroad corporation, including an abandoned railroad right-of-way that has not otherwise reverted pursuant to chapter 327G.

(3) Another interest in a former railroad right-of-way that has been acquired or is operated by a land management company or similar entity.

i. *"Special circumstances"* means either or both of the following:

(1) The existence of characteristics of a segment of railroad right-of-way or of a proposed utility facility that increase the direct expenses associated with a proposed crossing.

(2) A proposed crossing that involves a significant and imminent likelihood of danger to

the public health or safety, or that is a serious threat to the safe operations of the railroad, or to the current use of the railroad right-of-way, necessitating additional terms and conditions associated with the crossing.

2. *Rulemaking and standard crossing fee.* The board, in consultation with the state department of transportation, shall adopt rules pursuant to chapter 17A prescribing the terms and conditions for a crossing. The rules shall provide that any crossing be consistent with the public convenience and necessity and reasonable service to the public. The rules, at a minimum, shall address the following:

a. The terms and conditions applicable to a crossing including, but not limited to, the following:

(1) Notification required prior to the commencement of any crossing activity.

(2) A requirement that the railroad and the public utility each maintain and repair the person's own property within the railroad right-of-way, and bear responsibility for each person's own acts and omissions; except that the public utility shall be responsible for any bodily injury or property damage that typically would be covered under a standard railroad protective liability insurance policy.

(3) The amount and scope of insurance or self-insurance required to cover risks associated with a crossing.

(4) A procedure to address the payment of costs associated with the relocation of public utility facilities within the railroad right-of-way necessary to accommodate railroad operations.

(5) Terms and conditions for securing the payment of any damages by the public utility before it proceeds with a crossing.

(6) Immediate access to a crossing for repair and maintenance of existing facilities in case of emergency.

(7) Engineering standards for utility facilities crossing railroad rights-of-way.

(8) Provision for expedited crossing, absent a claim of special circumstances, after payment by the public utility of the standard crossing fee, if applicable, and submission of completed engineering specifications to the railroad.

(9) Other terms and conditions necessary to provide for the safe and reasonable use of a railroad right-of-way by a public utility, and consistent with rules adopted by the board, including any complaint procedures adopted by the board to enforce the rules.

b. Unless otherwise agreed by the parties and subject to subsection 4, a public utility that locates its facilities within the railroad right-of-way for a crossing, other than a crossing along the public roads of the state pursuant to chapter 477, shall pay the railroad a one-time standard crossing fee of seven hundred fifty dollars for each crossing. The standard crossing fee shall be in lieu of any license or any other fees or charges to reimburse the railroad for the direct expenses incurred by the railroad as a result of the crossing. The public utility shall also reimburse the railroad for any actual flagging expenses associated with a crossing in addition to the standard crossing fee.

3. *Powers not limited.*

a. Notwithstanding subsection 2, rules adopted by the board shall not prevent a railroad and a public utility from otherwise negotiating the terms and conditions applicable to a crossing or the resolution of any disputes relating to such crossing.

b. Notwithstanding paragraph *"a"*, neither this subsection nor this section shall impair the authority of a public utility to secure crossing rights by easement pursuant to the exercise of the power of eminent domain.

4. *Special circumstances.*

a. A railroad or public utility that believes special circumstances exist for a particular crossing may petition the board for relief.

(1) If a petition for relief is filed, the board shall determine whether special circumstances exist that necessitate either a modification of the direct expenses to be paid, or the need for additional terms and conditions.

(2) The board may make any necessary findings of fact and determinations related to the existence of special circumstances, as well as any relief to be granted.

(3) A determination of the board, except for a determination on the issue of damages for

the rights granted to a public utility with respect to a crossing, shall be considered final agency action subject to judicial review under chapter 17A.

(4) The board shall assess the costs associated with a petition for relief equitably against the parties.

b. A railroad or public utility that claims to be aggrieved by a determination of the board on the issue of damages for the rights granted to a public utility with respect to a crossing may seek judicial review as provided in subsection 5.

5. *Appeals.*

a. A railroad or public utility that claims to be aggrieved by the board's determination of damages for rights granted to a public utility may appeal the board's determination to the district court in the same manner as provided in section 6B.18 and sections 6B.21 through 6B.23. In any appeal of the determination of damages, the public utility shall be considered the applicant, and the railroad shall be considered the condemnee. References in sections 6B.18 and 6B.21 to "*compensation commission*" mean the board as defined in this section, or appointees of the board.

b. An appeal of any determination of the board other than the issues of damages for rights granted to a public utility shall be pursuant to chapter 17A.

6. *Authority to cross — emergency relief.*

a. Pending board resolution of a claim of special circumstances raised in a petition, a public utility may, upon securing the payment of any damages, and upon submission of completed engineering specifications to the railroad, proceed with a crossing in accordance with the rules adopted by the board, unless the board, upon application for emergency relief, determines that there is a reasonable likelihood that either of the following conditions exist:

(1) That the proposed crossing involves a significant and imminent likelihood of danger to the public health or safety.

(2) That the proposed crossing is a serious threat to the safe operations of the railroad or to the current use of the railroad right-of-way.

b. If the board determines that there is a reasonable likelihood that the proposed crossing meets either condition, then the board shall immediately intervene to prevent the crossing until a factual determination is made.

7. *Conflicting provisions.* Notwithstanding any provision of the Code to the contrary, this section shall apply in all crossings of railroad rights-of-way involving a public utility as defined in this section, and shall govern in the event of any conflict with any other provision of law.

2001 Acts, ch 138, §1, 2; 2002 Acts, ch 1119, §62; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393; 2011 Acts, ch 25, §143; 2015 Acts, ch 115, §1 – 3

Referred to in §306.46, 476.95A

476.28 Reserved.

SUBCHAPTER IV

LOCAL TELEPHONE SERVICE

476.29 Certificates for providing local telecommunications services. Repealed by 1992 Acts, ch 1058, §3; 2007 Acts, ch 4, §1.

476.30 Reserved.

SUBCHAPTER V

RULES

476.31 Continuing audit of operation.

The board shall adopt not later than July 1, 1983, rules and policies to implement a program for the continuous review of operations of rate-regulated public utilities with respect to all matters that affect rates or charges for utility service.

[81 Acts, ch 156, §1]

Referred to in §476.3, 476.10

476.32 Review of annual reports.

The board shall review annual reports submitted by rate-regulated public utilities. The board shall commence rate-review proceedings under this chapter if an annual report indicates that the earnings of the public utility are excessive.

[81 Acts, ch 156, §2]

Referred to in §476.3

476.33 Rules governing hearings.

1. The board shall adopt rules pursuant to chapter 17A to provide for the completion of proceedings under section 476.3 within ten months after the date of the filing of a petition under section 476.3, subsection 2, and to provide for the completion of proceedings under section 476.6 within ten months after the date of filing of the new or changed rates, charges, schedules, or regulations under that section. These rules shall include reasonable time limitations for the submission or completion of comments and testimony, and exhibits, briefs, and hearings, and may provide for the granting of additional time upon the request of a party to the proceeding for good cause shown.

2. Additional time granted to a party under subsection 1 shall not extend the amount of time for which a utility is required to file a bond or other undertaking conditioned upon refund under section 476.3, subsection 2.

3. If in a proceeding under section 476.6 additional time is granted to a party under subsection 1, the board may extend the ten-month period during which a utility is prohibited from placing its entire rate increase request into effect under section 476.6, but an extension shall not exceed the aggregate amount of all additional time granted under subsection 1.

4. The board shall adopt rules that require the board, in rate regulatory proceedings under sections 476.3 and 476.6, to utilize either a historic test year or a future test year at the rate-regulated public utility's discretion.

a. For a rate regulatory proceeding utilizing a historic test year, the rules shall require the board to consider the use of the most current test period possible in determining reasonable and just rates, subject only to the availability of existing and verifiable data respecting costs and revenues, and in addition, to consider verifiable data that exists within nine months after the conclusion of the test year, respecting known and measurable changes in costs not associated with a different level of revenue, and known and measurable revenues not associated with a different level of costs, that are to occur at any time within twelve months after the date of commencement of the proceedings. Parties proposing adjustments that are not verifiable at the commencement of the proceedings shall include projected data related to the adjustments in their initial substantive filing with the board. For purposes of this paragraph, a proceeding commences under section 476.6 upon the filing date of new or changed rates, charges, schedules, or regulations.

b. For a rate regulatory proceeding utilizing a future test year, the rules shall require the board to consider the use of any twelve-month period beginning no later than the date on which a proposed rate change is expected to take effect in determining just and reasonable rates. The rules shall also require the board to conduct a proceeding subsequent to the effective date of a rate resulting from a rate regulatory proceeding utilizing a future test year to determine whether the actual costs and revenues are reasonably consistent with those approved by the board. If the actual costs and revenues are not reasonably consistent with those approved by the board, the board shall adjust the rates accordingly. For a rate regulatory

proceeding utilizing a future test year, the board may adopt rules regarding evidence required, information to support forecasts, and any reporting obligations. The board may also adopt rules regarding the conditions under which a public utility that utilizes a future test year may subsequently utilize a historic test year. A public utility shall not be precluded from filing a rate regulatory proceeding utilizing a future test year prior to the adoption of any rules pursuant to this subsection.

c. This subsection does not limit the authority of the board to consider other evidence in proceedings under sections 476.3 and 476.6.

[81 Acts, ch 156, §3]

83 Acts, ch 127, §32, 33; 89 Acts, ch 97, §2; 90 Acts, ch 1168, §52; 2003 Acts, ch 179, §134; 2004 Acts, ch 1006, §2; 2018 Acts, ch 1135, §17

Referred to in §476.6

476.34 through 476.40 Reserved.

SUBCHAPTER VI

ALTERNATE ENERGY PRODUCTION FACILITIES

476.41 Purpose.

It is the policy of this state to encourage the development of alternate energy production facilities and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient use.

83 Acts, ch 182, §2

Referred to in §476.1B, 476.43

476.42 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *a.* *"Alternate energy production facility"* means any or all of the following:

(1) A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility. For purposes of this definition only, *"waste management"* includes a facility using plasma gasification to produce synthetic gas, either as a stand-alone fuel or for blending with natural gas, the output of which is used to generate electricity or steam. For purposes of this definition only, *"plasma gasification"* means the thermal dissociation of carbonaceous material into fragments of compounds in an oxygen-starved environment.

(2) Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

(3) Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

b. A facility which is a qualifying facility under 18 C.F.R. pt. 292, subpt. B is not precluded from being an alternate energy production facility under this subchapter.

2. *"Electric utility"* means a public utility that furnishes electricity to the public for compensation.

3. *"Next generating plant"* means an electric utility's assumed next coal-fired base load electric generating plant, whether planned or not, based on current technology and undiscounted current cost.

4. *a.* *"Small hydro facility"* means any or all of the following:

(1) A hydroelectric facility at a dam.

(2) Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

(3) Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

b. A facility which is a qualifying facility under 18 C.F.R. pt. 292, subpt. B is not precluded from being a small hydro facility under this subchapter.

83 Acts, ch 182, §3; 90 Acts, ch 1252, §31 – 33; 92 Acts, ch 1017, §1; 2010 Acts, ch 1061, §180; 2011 Acts, ch 25, §125; 2011 Acts, ch 77, §1; 2014 Acts, ch 1026, §143

Referred to in §15E.61, 15E.351, 260C.18A, 476.1B, 476.6A, 476.46, 476.53, 476.58

476.43 Rates for alternate energy production facilities.

1. Subject to section 476.44, the board shall require electric utilities to do both of the following under terms and conditions that the board finds are just and economically reasonable for the electric utilities' customers, are nondiscriminatory to alternate energy producers and small hydro producers, and will further the policy stated in section 476.41:

a. At least one of the following:

(1) Own alternate energy production facilities or small hydro facilities located in this state.

(2) Enter into long-term contracts to purchase or wheel electricity from alternate energy production facilities or small hydro facilities located in the utility's service area.

b. Provide for the availability of supplemental or backup power to alternate energy production facilities or small hydro facilities on a nondiscriminatory basis and at just and reasonable rates.

2. Upon application by the owner or operator of an alternate energy production facility or small hydro facility or any interested party, the board shall establish for the affected public utility just and economically reasonable rates for electricity purchased under subsection 1, paragraph "*a*". The rates shall be established at levels sufficient to stimulate the development of alternate energy production and small hydro facilities in Iowa and to encourage the continuation of existing capacity from those facilities.

3. The board may adopt individual utility or uniform statewide facility rates. The board shall consider the following factors in setting individual or uniform rates:

a. The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the electric utility serving the area.

b. The term of the contract between the electric utility and the seller.

c. A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the electric utility's new construction program.

d. The electric utility's annual energy costs, including current fuel costs, related operation and maintenance costs, and other energy-related costs considered appropriate by the board.

e. External factors, including but not limited to, environmental and economic factors.

f. Other relevant factors.

g. If the board adopts uniform statewide rates, the board shall use representative data in lieu of utility specific information in applying the factors listed in paragraphs "*a*" through "*f*".

4. In the case of a utility that purchases all or substantially all of its electricity requirements, the rates established under this section must be based on the electric utility's current purchased power costs.

5. In lieu of the other procedures provided by this section, an electric utility and an owner or operator of an alternate energy production facility or small hydro facility may enter into a long-term contract in accordance with subsection 1 and may agree to rates for purchase and sale transactions. A contract entered into under this subsection must be filed with the board in the manner provided for tariffs under section 476.4.

6. This section does not require an electric utility to construct additional facilities unless those facilities are paid for by the owner or operator of the affected alternate energy production facility or small hydro facility.

83 Acts, ch 182, §4, 7; 90 Acts, ch 1252, §34 – 37; 2003 Acts, ch 29, §2, 6

Referred to in §28F.14, 476.1B, 476.44

476.44 Exceptions.

1. The board shall not require an electric utility to purchase or wheel electricity from an alternate energy production facility or small hydro facility unless the facility is owned or

operated by an individual, firm, partnership, corporation, company, association, joint stock association, city, town, or county that meets both of the following:

a. Is not primarily engaged in the business of producing or selling electricity, gas, or useful thermal energy other than electricity, gas, or useful thermal energy sold solely from alternate energy production facilities or small hydro facilities.

b. Does not sell electricity, gas, or useful thermal energy to residential users other than the tenants or the owner or operator of the facility.

2. *a.* An electric utility subject to this subchapter, except a utility that elects rate regulation pursuant to section 476.1A, shall not be required to own or purchase, at any one time, more than its share of one hundred five megawatts of power from alternate energy production facilities or small hydro facilities at the rates established pursuant to section 476.43. The board shall allocate the one hundred five megawatts based upon each utility's percentage of the total Iowa retail peak demand, for the year beginning January 1, 1990, of all utilities subject to this section. If a utility undergoes reorganization as defined in section 476.76, the board shall combine the allocated purchases of power for each utility involved in the reorganization.

b. Notwithstanding the one hundred five megawatt maximum, the board may increase the amount of power that a utility is required to own or purchase at the rates established pursuant to section 476.43 if the board finds that a utility, including a reorganized utility, exceeds its 1990 Iowa retail peak demand by twenty percent and the additional power the utility is required to purchase will encourage the development of alternate energy production facilities and small hydro facilities. The increase shall not exceed the utility's increase in peak demand multiplied by the ratio of the utility's share of the one hundred five megawatt maximum to its 1990 Iowa retail peak demand.

83 Acts, ch 182, §5; 90 Acts, ch 1252, §38; 92 Acts, ch 1163, §97; 92 Acts, ch 1166, §1; 2003 Acts, ch 29, §3, 6; 2008 Acts, ch 1032, §106; 2014 Acts, ch 1026, §143; 2018 Acts, ch 1026, §145

Referred to in §476.1B, 476.43

476.44A Trading of credits.

The board may establish or participate in a program to track, record, and verify the trading of credits or attributes relating to electricity generated from alternate energy production facilities or renewable energy sources among electric generators, utilities, and other interested entities, within this state and with similar entities in other states.

2008 Acts, ch 1128, §14, 15; 2008 Acts, ch 1133, §6, 9; 2008 Acts, ch 1191, §129

Referred to in §476.1B

476.45 Exemption from excess capacity.

Capacity of an alternate energy production facility or small hydro facility, that is owned or purchased by an electric utility, shall not be included in a calculation of an electric utility's excess generating capacity for ratemaking purposes.

83 Acts, ch 182, §6; 2003 Acts, ch 29, §4, 6

Referred to in §476.1B

476.46 Alternate energy revolving loan program.

1. The Iowa energy center created under section 15.120 shall establish and administer an alternate energy revolving loan program to encourage the development of alternate energy production facilities and small hydro facilities within the state.

2. *a.* An alternate energy revolving loan fund is created in the office of the treasurer of state to be administered by the Iowa energy center.

b. The fund shall include moneys appropriated or otherwise directed to the fund.

c. Moneys in the fund shall be used to provide loans for the construction of alternate energy production facilities or small hydro facilities as defined in section 476.42.

d. (1) A gas or electric utility that is not required to be rate-regulated shall not be eligible for a loan under this section. However, gas and electric utilities not required to be rate-regulated shall be eligible for loans from moneys remitted to the fund. Such loans shall be limited to a maximum of five hundred thousand dollars per applicant and shall be limited to one loan every two years.

(2) A facility shall be eligible for no more than one million dollars in loans outstanding at any time under this program.

e. (1) Each loan shall be for a period not to exceed twenty years, shall bear no interest, and shall be repayable to the fund created under this section in installments as determined by the Iowa energy center. The interest rate upon delinquent payments shall accelerate immediately to the current legal usury limit.

(2) Any loan made pursuant to this program shall become due for payment upon sale of the facility for which the loan was made.

(3) Interest on the fund shall be deposited in the fund. A portion of the interest on the fund, not to exceed fifty percent of the total interest accrued, shall be used for promotion and administration of the fund.

f. Section 8.33 shall not apply to the moneys in the fund.

96 Acts, ch 1196, §11; 2002 Acts, ch 1109, §4; 2008 Acts, ch 1126, §31, 33; 2009 Acts, ch 173, §35, 36; 2017 Acts, ch 169, §42, 43, 49; 2018 Acts, ch 1026, §146; 2019 Acts, ch 59, §173

Referred to in §476.10A

Subsection 2, paragraph b amended

476.47 Alternate energy purchase programs.

1. Beginning January 1, 2004, an electric utility, whether or not rate-regulated under this chapter, shall offer an alternate energy purchase program to customers, based on energy produced by alternate energy production facilities in Iowa.

2. The board shall require electric utilities to file plans for alternate energy purchase programs offered pursuant to this section.

a. Rate-regulated electric utilities shall file plans for alternate energy purchase programs that allow customers to contribute voluntarily to the development of alternate energy in Iowa, and shall file tariffs as required by the board by rule.

b. Electric utilities that are not rate-regulated shall offer alternate energy purchase programs at rates determined by their governing authority, and shall file tariffs with the board for informational purposes only.

3. The electric utility shall notify consumers of its alternate energy purchase program and any proposed modifications to such program at least sixty days prior to implementation of the program or any modification.

4. For purposes of this section, an electric utility may base its program on energy produced by alternate energy production facilities located outside of Iowa under any of the following circumstances:

a. The energy is purchased by the electric utility pursuant to a contract in effect prior to July 1, 2001, and continues until the expiration of the contract, including any options to renew that are exercised by the electric utility.

b. The electric utility has a financial interest, as of July 1, 2001, in the alternate energy production facility that is located outside of Iowa, or in an entity that has a financial interest in an alternate energy production facility located outside of Iowa.

c. The energy is purchased by an electric utility that is not rate-regulated and that is required to purchase all of its electric power requirements from a single supplier that is physically located outside of Iowa.

5. This section shall not apply to non-rate-regulated electric utilities physically located outside of Iowa that serve Iowa customers.

6. Any consumer-owned utility may apply to the board for a waiver under this section, and the board, for good cause, may grant the waiver.

2001 Acts, 1st Ex, ch 4, §11, 36

Referred to in §476.1A, 476.1B

476.48 Small wind innovation zone program.

1. *Definitions.* For purposes of this section, unless the context otherwise requires:

a. *"Electric utility"* means a public utility that furnishes electricity to the public for compensation and which enters into a model interconnection agreement with the owner of a small wind energy system as provided in subsection 4.

b. *"Small wind energy system"* means a wind energy conversion system that collects and

converts wind into energy to generate electricity which has a nameplate generating capacity of one hundred kilowatts or less.

c. *"Small wind innovation zone"* means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance as provided in subsection 3.

2. *Program established.*

a. The utilities division shall establish and administer a small wind innovation zone program to optimize local, regional, and state benefits from wind energy and to facilitate and expedite interconnection of small wind energy systems with electric utilities throughout this state. Pursuant to the program, the owner of a small wind energy system located within a small wind innovation zone desiring to interconnect with an electric utility shall benefit from a streamlined application process, may utilize a model interconnection agreement, and can qualify under a model ordinance.

b. A political subdivision seeking to be designated a small wind innovation zone shall apply to the division upon a form developed by the division. The division shall approve an application which documents that the applicable local government has adopted the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance and that an electric utility operating within the political subdivision has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms.

3. *Model ordinance.* The Iowa league of cities, the Iowa association of counties, the Iowa environmental council, the Iowa wind energy association, and representatives from the utility industry shall consult and develop a model ordinance to be offered on both the Iowa league of cities' and the Iowa association of counties' internet sites and made available for use by a local government which constitutes or encompasses a political subdivision that is applying for designation as a small wind innovation zone. A local government adopting the model ordinance shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance in order to qualify as a small wind innovation zone.

4. *Model interconnection agreement.* The utilities board shall develop a model interconnection agreement by June 1, 2010, for utilization within a small wind innovation zone by the owner of a small wind energy system seeking to interconnect with an electric utility. The interconnection agreement shall ensure that the energy produced can be safely interconnected with the utility without causing any adverse or unsafe consequences and is consistent with the electric utility's resource needs. The board shall establish by rule procedures for modification of the model interconnection agreement upon mutually agreeable terms and conditions in unique or unusual circumstances, subject to board approval. Electric utilities shall consider adopting the model interconnection agreement.

5. *Tax credit incentives.* The owner of a small wind energy system operating within a small wind innovation zone shall qualify for the renewable energy tax credit pursuant to chapter 476C.

6. *Reporting requirements.* The division shall prepare a report summarizing the number of applications received from political subdivisions seeking to be designated a small wind innovation zone, the number of applications granted, the number of small wind energy systems generating electricity within each small wind innovation zone, and the amount of wind energy produced, and shall submit the report to the members of the general assembly by January 1 annually.

2009 Acts, ch 148, §1, 2

476.49 and 476.50 Reserved.

SUBCHAPTER VII

PENALTY

476.51 Civil penalty.

1. A public utility which, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one hundred dollars nor more than two thousand five hundred dollars per violation.

2. A public utility which willfully, after written notice by the board of a specific violation, violates the same provision of this chapter, the same rule adopted by the board, or the same provision of an order lawfully issued by the board, is subject to a civil penalty, which may be levied by the board, of not less than one thousand dollars nor more than ten thousand dollars per violation. For the purposes of this section, *"willful"* means knowing and deliberate, with a specific intent to violate.

3. Each violation is a separate offense. In the case of a continuing violation, each day a violation continues, after the time specified for compliance in the written notice by the board, is a separate and distinct offense. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the appropriateness of the penalty in relation to the size of the public utility, the gravity of the violation, and the good faith of the public utility in attempting to achieve compliance following notification of a violation, and any other relevant factors.

4. The written notice given by the board to a public utility under this section shall specify an appropriate time for compliance.

5. Civil penalties collected pursuant to this section from utilities providing water, electric, or gas service shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and to be used only for the low income home energy assistance program and the weatherization assistance program administered by the division of community action agencies of the department of human rights. Civil penalties collected pursuant to this section from utilities providing telecommunications service shall be forwarded to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 to be used only for consumer education programs administered by the board. Penalties paid by a rate-regulated public utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to customers.

83 Acts, ch 127, §34; 88 Acts, ch 1134, §92; 91 Acts, ch 260, §1238; 92 Acts, ch 1084, §1; 94 Acts, ch 1107, §81; 2003 Acts, ch 126, §4; 2009 Acts, ch 181, §48; 2018 Acts, ch 1160, §14

Referred to in §476.1A, 476.1B, 476.1C, 476.2, 476.20, 476.95A, 476.103

SUBCHAPTER VIII

POLICIES

476.52 Management efficiency.

1. It is the policy of this state that a public utility shall operate in an efficient manner.

2. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in an inefficient manner, or is not exercising ordinary, prudent management, or in comparison with other utilities in the state the board determines that the utility is performing in a less beneficial manner than other utilities, the board may reduce the level of profit or adjust the revenue requirement for the utility to the extent the board believes appropriate to provide incentives to the utility to correct its inefficient operation.

3. If the board determines in the course of a proceeding conducted under section 476.3 or 476.6 that a utility is operating in such an extraordinarily efficient manner that tangible financial benefits result to the ratepayer, the board may increase the level of profit or adjust the revenue requirement for the utility.

4. In making its determination under this section, the board may also consider a public utility's pursuit of energy efficiency programs. The board shall adopt rules for determining the level of profit or the revenue requirement adjustment that would be appropriate. The board shall also adopt rules establishing a methodology for an analysis of a utility's management efficiency.

83 Acts, ch 127, §35; 89 Acts, ch 297, §11; 2018 Acts, ch 1041, §99

476.53 Electric generating and transmission facilities.

1. It is the intent of the general assembly to attract the development of electric power generating and transmission facilities within the state in sufficient quantity to ensure reliable electric service to Iowa consumers and provide economic benefits to the state. It is also the intent of the general assembly to encourage rate-regulated public utilities to consider altering existing electric generating facilities, where reasonable, to manage carbon emission intensity in order to facilitate the transition to a carbon-constrained environment.

2. *a.* The general assembly's intent with regard to the development of electric power generating and transmission facilities, or the significant alteration of an existing generating facility, as provided in subsection 1, shall be implemented in a manner that is cost-effective and compatible with the environmental policies of the state, as expressed in this Title XI.

b. The general assembly's intent with regard to the reliability of electric service to Iowa consumers, as provided in subsection 1, shall be implemented by considering the diversity of the types of fuel used to generate electricity, the availability and reliability of fuel supplies, and the impact of the volatility of fuel costs.

3. *a.* The board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the electric power generating facility or alternate energy production facility are included in regulated electric rates whenever a rate-regulated public utility does any of the following:

(1) (a) Files an application pursuant to section 476A.3 to construct in Iowa a baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred megawatts or a combined-cycle electric power generating facility, or an alternate energy production facility as defined in section 476.42, or to significantly alter an existing generating facility. For purposes of this subparagraph, a significant alteration of an existing generating facility must, in order to qualify for establishment of ratemaking principles, fall into one of the following categories:

(i) Conversion of a coal fueled facility into a gas fueled facility.

(ii) Addition of carbon capture and storage facilities at a coal fueled facility.

(iii) Addition of gas fueled capability to a coal fueled facility, in order to convert the facility to one that will rely primarily on gas for future generation.

(iv) Addition of a biomass fueled capability to a coal fueled facility.

(v) Repowering of an alternate energy production facility. For purposes of this subparagraph subdivision, *"repowering"* shall mean either the complete dismantling and replacement of generation equipment at an existing project site, or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

(b) With respect to a significant alteration of an existing generating facility, an original facility shall not be required to be either a baseload or a combined-cycle facility. Only the incremental investment undertaken by a utility under subparagraph division (a), subparagraph subdivision (i), (ii), (iii), or (iv) shall be eligible to apply the ratemaking principles established by the order issued pursuant to paragraph *"e"*. Facilities for which advanced ratemaking principles are obtained pursuant to this section shall not be subject to a subsequent board review pursuant to section 476.6, subsection 19, to the extent that the investment has been considered by the board under this section. To the extent an eligible utility has been authorized to make capital investments subject to section 476.6, subsection 19, such investments shall not be eligible for ratemaking principles pursuant to this section.

(2) Leases or owns in Iowa, in whole or in part, a new baseload electric power generating facility with a nameplate generating capacity equal to or greater than three hundred

megawatts or a combined-cycle electric power generating facility, or a new alternate energy production facility as defined in section 476.42.

b. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles proposed by a rate-regulated public utility that provide for reasonable restrictions upon the ability of the public utility to seek a general increase in electric rates under section 476.6 for at least three years after the generating facility begins providing service to Iowa customers.

c. In determining the applicable ratemaking principles, the board shall make the following findings:

(1) The rate-regulated public utility has in effect a board-approved energy efficiency plan as required under section 476.6, subsection 15.

(2) The rate-regulated public utility has demonstrated to the board that the public utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply.

d. The applicable ratemaking principles shall be determined in a contested case proceeding, which proceeding may be combined with the proceeding for issuance of a certificate conducted pursuant to chapter 476A.

e. The order setting forth the applicable ratemaking principles shall be issued prior to the commencement of construction or lease of the facility.

f. Following issuance of the order, the rate-regulated public utility shall have the option of proceeding according to either of the following:

(1) Withdrawing its application for a certificate pursuant to chapter 476A.

(2) Proceeding with the construction or lease of the facility.

g. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the order issued pursuant to paragraph "*e*" shall be binding with regard to the specific electric power generating facility in any subsequent rate proceeding.

4. The utilities board and the consumer advocate may employ additional temporary staff, or may contract for professional services with persons who are not state employees, as the board and the consumer advocate deem necessary to perform required functions as provided in this section, including but not limited to review of power purchase contracts, review of emission plans and budgets, and review of ratemaking principles proposed for construction or lease of a new generating facility. Beginning July 1, 2002, there is appropriated out of any funds in the state treasury not otherwise appropriated, such sums as may be necessary to enable the board and the consumer advocate to hire additional staff and contract for services under this section. The costs of the additional staff and services shall be assessed to the utilities pursuant to the procedure in section 476.10 and section 475A.6.

83 Acts, ch 127, §36, 50; 2001 Acts, 1st Ex, ch 4, §12, 36; 2002 Acts, 2nd Ex, ch 1003, §31, 35; 2003 Acts, ch 29, §5, 6; 2003 Acts, ch 159, §2 – 4; 2004 Acts, ch 1101, §67; 2010 Acts, ch 1176, §2, 3; 2010 Acts, ch 1193, §55, 69, 80; 2013 Acts, ch 30, §113; 2015 Acts, ch 29, §61; 2015 Acts, ch 138, §46, 161, 162; 2018 Acts, ch 1135, §18; 2018 Acts, ch 1160, §15

Referred to in §476.23, 476A.4, 476A.6, 476A.7

476.53A Renewable electric power generation.

It is the intent of the general assembly to encourage the development of renewable electric power generation. It is also the intent of the general assembly to encourage the use of renewable power to meet local electric needs and the development of transmission capacity to export wind power generated in Iowa.

2011 Acts, ch 115, §1

476.54 Delayed payment charges.

A public utility shall not apply delayed payment charges on a customer's account if the scheduled payment was made by the customer within twenty days from the date the billing was sent to the customer. Delayed payment charges on a customer's account shall not exceed

one and one-half percent per month of the past-due amount. This section shall not apply to telecommunications service providers registered pursuant to section 476.95A.

83 Acts, ch 127, §37; 2018 Acts, ch 1160, §16

476.55 Complaint of antitrust activities.

1. An application for new or changed rates, charges, schedules, or regulations filed under this chapter, or an application for a certificate or an amendment to a certificate submitted under chapter 476A, by an electric transmission line utility or a gas pipeline utility or a subsidiary of either shall not be approved by the board if, upon complaint by an Iowa electric or gas utility, the board finds activities which create or maintain a situation inconsistent with antitrust laws and the policies which underlie them. The board may grant the rate or facility certification request once it determines that those activities which led to the antitrust complaint have been eliminated. However, this subsection does not apply to an application for new or changed rates, charges, schedules, or regulations after the expiration of the ten-month limitation and applicable extensions.

2. *a.* Notwithstanding section 476.1D, the board may receive a complaint from a local exchange carrier that another local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them. For purposes of this subsection, *"local exchange carrier"* means the same as defined in section 476.96* and includes a city utility authorized pursuant to section 388.2 to provide local exchange services. If, after notice and opportunity for hearing, the board finds that a local exchange carrier has engaged in an activity that is inconsistent with antitrust laws and the policies which underlie them, the board may order any of the following:

(1) The local exchange carrier to adjust retail rates in an amount sufficient to correct the antitrust activity.

(2) The local exchange carrier to pay any costs incurred by the complainant for the pursuit of the complaint.

(3) The local exchange carrier to pay a civil penalty.

(4) Either the local exchange carrier or the complainant to pay the costs of the complaint proceeding before the board, and the other party's reasonable attorney fees.

b. This subsection shall not be construed to modify, restrict, or limit the right of a person to bring a complaint under any other provision of this chapter.

83 Acts, ch 127, §38; 2005 Acts, ch 9, §2; 2011 Acts, ch 25, §143

*Section 476.96 repealed by 2018 Acts, ch 1160, §32; corrective legislation is pending

476.56 Energy costs provided.

A gas or electric public utility shall provide, upon the request of a person who states in writing that the person is an owner of real property, or an interested prospective purchaser or renter of the property, which is or has been receiving gas or electric service from the public utility, the annual gas or electric energy costs for the property.

88 Acts, ch 1174, §3

Referred to in §476.1A, 476.1B

476.57 Limitations on use of ADAD equipment — penalty. Repealed by 2018 Acts, ch 1160, §32.

476.58 Safety of distributed generation facilities — disconnection device required — rules.

1. For purposes of this section:

a. *"Disconnection device"* means a lockable visual disconnect or other disconnection device capable of disconnecting and de-energizing the residual voltage in a distributed generation facility.

b. *"Distributed generation facility"* means any of the following:

(1) A cogeneration facility or a small power production facility that is a qualifying facility under 18 C.F.R. pt. 292, subpt. B, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system, and that typically includes

an electric generator and the equipment required to interconnect safely with the electric distribution system or local electric power system.

(2) An alternate energy production facility as defined in section 476.42.

(3) A small hydro facility as defined in section 476.42.

c. *"Electric distribution system"* means the facilities and equipment owned and operated by an electric utility that are used to transmit electricity to ultimate usage points from interchanges with higher voltage transmission networks which transport bulk power over long distances and that generally operate at less than one hundred kilovolts of electricity.

d. *"Electric meter"* means a device used by an electric utility that measures and registers the integral of an electrical quantity with respect to time.

e. *"Electric utility"* means a public utility that furnishes electricity to the public for compensation.

f. *"Interconnection customer"* means a person that interconnects a distributed generation facility to an electric distribution system.

2. Consistent with the board's safety jurisdiction pursuant to section 476.1, the board shall adopt rules pursuant to chapter 17A relating to the safe installation and operation of interconnections between distributed generation facilities and electric distribution systems. The rules shall include but not be limited to the following:

a. For installations placed in service on or after July 1, 2015, a requirement that a disconnection device be installed at a location that is easily visible and adjacent to an interconnection customer's electric meter. For installations placed in service prior to July 1, 2015, a requirement that an interconnection customer provide and attach a permanent placard at the electric meter that clearly identifies the presence and location of disconnection devices for distributed generation facilities on the property.

b. A requirement that interconnection customers notify local paid or volunteer fire departments of the location of distributed generation facilities and associated disconnection devices upon completion of installation and procedures for such notifications.

c. Procedures for electric utilities to deny or disconnect service for safety reasons to a person who does not comply with rules adopted pursuant to this subsection.

3. Procedures and requirements provided in rules adopted pursuant to subsection 2 shall apply to all electric utilities and all interconnection customers in this state. However, only those rule provisions concerning interconnections between distributed generation facilities and electric distribution systems and safety issues shall apply to utilities over which the board's jurisdiction is limited by section 476.1A or 476.1B.

4. This section shall not be construed to expand the board's jurisdiction over a utility over which the board's jurisdiction is limited by section 476.1A or 476.1B. This section shall not be construed to authorize the board to require that an installation or connection of a distributed generation facility, disconnection device, or interconnection between a distributed generation facility and an electric distribution system be performed by a licensed electrician, installer, or professional engineer. This section shall not be construed to require inspection of a distributed generation facility, disconnection device, or interconnection between a distributed generation facility and an electric distribution system pursuant to chapter 103.

2015 Acts, ch 91, §1

476.59 and 476.60 Reserved.

SUBCHAPTER IX

ENERGY EFFICIENCY PROGRAMS

476.61 Reserved.

476.62 Energy-efficient lighting required.

All public utility-owned exterior flood lighting, including but not limited to street and security lighting, shall be replaced when worn-out exclusively with high pressure sodium lighting or lighting with equivalent or better energy efficiency as approved in rules adopted by the board.

89 Acts, ch 297, §12
Referred to in §474.5, 476.1A, 476.1B

476.63 Energy efficiency programs.

The division shall consult with the economic development authority in the development and implementation of public utility energy efficiency programs.

89 Acts, ch 297, §13; 90 Acts, ch 1252, §39; 2009 Acts, ch 108, §39, 41; 2011 Acts, ch 118, §50, 89

476.64 Reserved.

476.65 Energy audits. Repealed by 96 Acts, ch 1196, §14.

SUBCHAPTER X

CUSTOMER CONTRIBUTION FUND

476.66 Customer contribution fund.

1. The utilities board shall adopt rules which shall require each electric and gas public utility to establish a fund whose purposes shall include the receiving of contributions to assist the utility's low-income customers with weatherization measures to improve energy efficiency related to winter heating and summer cooling, and to supplement the energy assistance received under the federal low-income home energy assistance program for the payment of winter heating electric or gas utility bills.

2. The rules shall require each utility to periodically notify its customers of the availability and purpose of the fund and to provide them with forms on which they can authorize the utility to bill their contribution to the fund on a monthly basis.

3. The rules shall permit the fund to accept matching funds from persons or organizations who wish to provide assistance for customers of the utility.

4. The utility may be reimbursed by the fund for the administrative costs of the billings, disbursements, notices to customers, and financial recordkeeping. However, such reimbursement shall not exceed five percent of the total revenues collected.

5. The utility shall establish a board or committee to determine the appropriate distribution of the funds. The board or committee shall include representatives from community or regional organizations which are active in assisting citizens with payment of their winter heating bills.

6. The rules established by the utilities board shall require an annual report to be filed for each fund. The utilities board shall compile an annual statewide report of the fund results. The division of community action agencies of the department of human rights shall prepare an annual report of the unmet need for energy assistance and weatherization. Both reports shall be submitted to the appropriations committees of the general assembly on the first day of the following session.

7. Existing programs to receive customer contributions established by public utilities shall be construed to meet the requirements of this section. Such plans shall be subject to review by the utilities board.

88 Acts, ch 1175, §3; 92 Acts, ch 1155, §1; 2002 Acts, ch 1119, §177
Referred to in §216A.102, 476.1A, 476.1B

476.67 through 476.70 Reserved.

SUBCHAPTER XI

PUBLIC UTILITY AFFILIATES

476.71 Purpose.

It is the intent of the general assembly that a public utility should not directly or indirectly include in regulated rates or charges any costs or expenses of an affiliate engaged in any business other than that of utility business unless the affiliate provides goods or services to the public utility. The costs that are included should be reasonably necessary and appropriate for utility business. It is also the intent of the general assembly that a public utility should only provide nonutility services in a manner that minimizes the possibility of cross-subsidization or unfair competitive advantage.

89 Acts, ch 103, §2

476.72 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Affiliate"* means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

2. *"Control"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

3. *"Nonutility service"* includes the sale, lease, or other conveyance of commercial and residential gas or electric appliances, interior lighting systems and fixtures, or heating, ventilating, or air conditioning systems and component parts or the servicing, repair, or maintenance of such equipment.

4. *"Public utility"* means a rate-regulated public utility providing electric, gas, water, sanitary sewage, or storm water drainage service, or any combination thereof.

5. *"Utility business"* means the generation or transmission of electricity or furnishing of gas or furnishing electricity to the public for compensation.

89 Acts, ch 103, §3; 2014 Acts, ch 1026, §143; 2014 Acts, ch 1099, §9; 2018 Acts, ch 1024, §2

476.73 Affiliate records.

1. *Access to records.* Every public utility and affiliate through the public utility shall provide the board with access to books, records, accounts, documents, and other data and information which the board finds necessary to effectively implement and effectuate the provisions of this chapter.

2. *Separate records.* The board may require affiliates of a public utility to keep separate records and the board may provide for the examination and inspection of the books, accounts, papers, and records, as may be necessary to enforce this chapter.

3. *Allocation permitted.* The board may inquire as to and prescribe, for ratemaking purposes, the allocation of capitalization, earnings, debts, and expenses related to ownership, operation, or management of affiliates.

89 Acts, ch 103, §4

476.74 Affiliate information required to be filed.

1. *Goods and services.* All contracts or arrangements providing for the furnishing or receiving of goods and services including but not limited to the furnishing or receiving of management, supervisory, construction, engineering, accounting, legal, financial, marketing, data processing, or similar services made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

2. *Sales, purchases, and leases.* All contracts or arrangements for the purchase, sale, lease, or exchange of any property, right, or thing made or entered into on or after July 1, 1989, between a public utility and any affiliate shall be filed annually with the board.

3. *Loans.* All contracts or arrangements providing for any loan of money or an extension or renewal of any loan of money or any similar transaction made or entered into on or after

July 1, 1989, between a public utility and any affiliate, whether as guarantor, endorser, surety, or otherwise, shall be filed annually with the board.

4. *Verified copies required.* Every public utility shall file with the board a verified copy of the contract or arrangement referred to in this section, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements or a verified summary of the unwritten contracts or arrangements, whether written or unwritten, entered into prior to July 1, 1989, and in force and effect at that time. Any contract or agreement determined by the board to be a confidential record pursuant to section 22.7 shall be returned to the public utility filing the confidential record within sixty days after the contract or agreement is filed.

5. *Exemption.* The provisions of this section requiring filing of contracts or agreements with the board shall not apply to transactions with an affiliate where the amount of consideration involved is not in excess of fifty thousand dollars or five percent of the capital equity of the utility, whichever is smaller. However, regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within this exemption. In any proceeding involving the rates, charges or practices of the public utility, the board may exclude from the accounts of the public utility any unreasonable payment or compensation made pursuant to any contract or arrangement which is not required to be filed under this subsection.

6. *Continuing jurisdiction.* The board shall have the same jurisdiction over modifications or amendments of contracts or arrangements in this section as it has over the original contracts or arrangements. Any modification or amendment of contracts or arrangements shall also be filed annually with the board.

7. *Sanction.* For ratemaking purposes, the board may exclude the payment or compensation to an affiliate or adjust the revenue received from an affiliate associated with any contract or arrangement required to be filed with the board if the contract or arrangement is not so filed.

8. *Alternative information.* The board shall consult with other state and federal regulatory agencies for the purpose of eliminating duplicate or conflicting filing requirements and may adopt rules which provide that comparable information required to be filed with other state or federal regulatory agencies may be accepted by the board in lieu of information required by this section.

9. *Reasonableness required.* In any proceeding, whether upon the board's own motion or upon application or complaint involving the rates, charges, or practices of any public utility, the board, for ratemaking purposes may exclude from the accounts of the public utility or adjust any payment or compensation related to any transaction with an affiliate for any services rendered or for any property or service furnished or received, as described in this section, under contracts or arrangements with an affiliate unless and upon inquiry the public utility shall establish the reasonableness of the payment or compensation.

10. *Exemption by rule or waiver.* The board may adopt rules which exempt any public utility or class of public utility or class of contracts or arrangements from this section or waive the requirements of this section if the board finds that the exemption or waiver is in the public interest.

89 Acts, ch 103, §5

476.75 Audits required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the transactions between a public utility and its affiliates. An affiliate transaction audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §6

476.76 Reorganization defined.

For purposes of this subchapter unless the context otherwise requires, "*reorganization*" means either of the following:

1. The acquisition, sale, lease, or any other disposition, directly or indirectly, including by merger or consolidation, of the whole or any substantial part of a public utility's assets.

2. The purchase or other acquisition or sale or other disposition of the controlling capital stock of any public utility, either directly or indirectly.

89 Acts, ch 103, §7; 2014 Acts, ch 1026, §143

Referred to in §476.44

476.77 Time and standards for review.

1. A reorganization shall not take place if the board disapproves. Prior to reorganization, the applicant shall file with the board a proposal for reorganization with supporting testimony and evidence to establish that the reorganization is not contrary to the interests of the public utility's ratepayers and the public interest.

2. A proposal for reorganization shall be deemed to have been approved unless the board disapproves the proposal within ninety days after its filing. The board, for good cause shown, may extend the deadline for acting on an application for an additional period not to exceed ninety days. However, the board shall not disapprove a proposal for reorganization without providing for notice and opportunity for hearing. The notice of hearing shall be provided no later than fifty days after the proposal for reorganization has been filed.

3. In its review of a proposal for reorganization, the board may consider all of the following:

a. Whether the board will have reasonable access to books, records, documents, and other information relating to the public utility or any of its affiliates.

b. Whether the public utility's ability to attract capital on reasonable terms, including the maintenance of a reasonable capital structure, is impaired.

c. Whether the ability of the public utility to provide safe, reasonable, and adequate service is impaired.

d. Whether ratepayers are detrimentally affected.

e. Whether the public interest is detrimentally affected.

4. The board may adopt rules which exempt a public utility or class of public utility or class of reorganization from this section if the board finds that with respect to the public utility or class of public utility or class of reorganization review is not necessary in the public interest. The board may adopt rules necessary to protect the interest of the customers of the exempt public utility. These rules may include, but are not limited to, notification of a proposed sale or transfer of assets or stock. The board may waive the requirements of this section, if the board finds that board review is not necessary in the public interest.

89 Acts, ch 103, §8; 91 Acts, ch 68, §1; 98 Acts, ch 1097, §1, 2

476.78 Cross-subsidization prohibited.

A public utility shall not directly or indirectly include any costs or expenses attributable to providing nonutility service in regulated rates or charges. Except for contracts existing as of July 1, 1996, a public utility or its affiliates shall not use vehicles, service tools and instruments, or employees, the costs, salaries, or benefits of which are recoverable in the regulated rates for electric service or gas service to install, service, or repair residential or commercial gas or electric heating, ventilating, or air conditioning systems, or interior lighting systems and fixtures; or to sell at retail heating, ventilating, air conditioning, or interior lighting equipment. For the purpose of this section, "*commercial*" means a place of business primarily used for the storage or sale, at wholesale or retail, of goods, wares, services, or merchandise. Nothing in this section shall be construed to prohibit a public utility from using its utility vehicles, service tools and instruments, and employees to market systems, services, and equipment, to light pilots, or to eliminate a customer emergency or threat to public safety.

89 Acts, ch 103, §9; 96 Acts, ch 1196, §12; 2014 Acts, ch 1099, §10

Referred to in §476.83

476.79 Provision of nonutility service.

1. A public utility providing any nonutility service to its customers shall keep and render to the board separate records of the nonutility service. The board may provide for the examination and inspection of the books, accounts, papers, and records of the nonutility service, as may be necessary, to enforce any provisions of this chapter.

2. The board shall adopt rules which specify the manner and form of the accounts relating to providing nonutility services which the public utility shall maintain.

89 Acts, ch 103, §10; 2014 Acts, ch 1099, §11
Referred to in §476.83

476.80 Additional requirements.

A public utility which engages in a systematic marketing effort as defined by the board, other than on an incidental or casual basis, to promote the availability of nonutility service from the public utility shall make available at reasonable compensation on a nondiscriminatory basis to all persons engaged primarily in providing the same competitive nonutility services in that area all of the following services to the same extent utilized by the public utility in connection with its nonutility services:

1. Access to and use of the public utility's customer lists.
2. Access to and use of the public utility's billing and collection system.
3. Access to and use of the public utility's mailing system.

89 Acts, ch 103, §11; 2014 Acts, ch 1099, §12
Referred to in §105.11, 476.81, 476.82, 476.83

476.81 Audit required.

The board may periodically retain a nationally or regionally recognized independent auditing firm to conduct an audit of the nonutility services provided by a public utility subject to the provisions of section 476.80. A nonutility service audit shall not be conducted more frequently than every three years, unless ordered by the board for good cause. The cost of the audit shall be paid by the public utility to the independent auditing firm and shall be included in its regulated rates and charges, unless otherwise ordered by the board for good cause after providing the public utility the opportunity for a hearing on the board's decision.

89 Acts, ch 103, §12; 2014 Acts, ch 1099, §13
Referred to in §476.82

476.82 Exemption — energy efficiency.

Notwithstanding any language to the contrary, nothing in this subchapter shall prohibit a public utility from participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute. A public utility participating in or conducting energy efficiency projects or programs established or approved by the board or required by statute shall not be subject to the provisions of sections 476.80 and 476.81 for those energy efficiency projects or programs.

89 Acts, ch 103, §13; 2014 Acts, ch 1026, §143

476.83 Complaints.

Any person may file a written complaint with the board requesting that the board determine compliance by a public utility with the provisions of section 476.78, 476.79, or 476.80, or any validly adopted rules to implement these sections. Upon the filing of a complaint, the board may promptly initiate a formal complaint proceeding and give notice of the proceeding and the opportunity for hearing. The formal complaint proceeding may be initiated at any time by the board on its own motion. The board shall render a decision in the proceeding within ninety days after the date the written complaint was filed, unless additional time is requested by the complainant.

89 Acts, ch 103, §14; 96 Acts, ch 1196, §13; 2014 Acts, ch 1099, §14

476.84 Water, sanitary sewer, and storm water utilities — acquisitions — advance ratemaking.

1. This section applies to the acquisition of water, sanitary sewer, and storm water utilities

by rate-regulated public utilities. This section does not apply to the acquisition of such utilities by non-rate-regulated entities described in section 476.1, subsection 4.

2. *a.* A public utility shall not acquire, in whole or in part, a water, sanitary sewer, or storm water utility with a fair market value of five hundred thousand dollars or more from a non-rate-regulated entity described in section 476.1, subsection 4, unless the board first approves the acquisition. In addition, if the utility to be acquired is a city utility, then the public utility shall not acquire the city utility until the city has first met the requirements of section 388.2A.

b. If a water, sanitary sewer, or storm water utility that is the subject of an acquisition meets the requirements of paragraph *"a"*, then the acquiring public utility may apply to the board, prior to the completion of the acquisition, for advance approval of a proposed initial tariff for providing service to customers of the acquired utility.

c. As part of its review of the proposed acquisition, the board shall specify in advance, by order issued after a contested case proceeding, the ratemaking principles that will apply when the costs of the acquired utility are included in regulated rates. The lesser of the sale price or the fair market value of the acquired utility as established pursuant to section 388.2A, subsection 2, shall be used in determining the applicable ratemaking principles. In determining the applicable ratemaking principles, the board shall not be limited to traditional ratemaking principles or traditional cost recovery mechanisms. Among the principles and mechanisms the board may consider, the board has the authority to approve ratemaking principles that provide for reasonable restrictions upon the ability of the public utility to seek an increase in specified regulated rates for a period of time after the acquisition takes place.

d. In determining the applicable ratemaking principles, the board shall find that the proposed acquisition will result in just and reasonable rates to all customers of the public utility, including but not limited to existing customers of the public utility. In making this finding, the board may consider any factor it reasonably concludes may affect future rates, including but not limited to the price paid for the acquired utility and the projected cost of reasonable and prudent changes to the acquired utility in order to provide adequate services and facilities to customers. The board shall consider whether there are ratemaking principles that will result in just and reasonable rates to all customers in determining whether to approve or disapprove a proposed acquisition.

e. Upon the approval of a proposal for acquisition by board order, the parties subject to the acquisition shall have the option of either proceeding with such acquisition or not, subject to any termination provisions contained in the acquisition agreement.

f. Notwithstanding any provision of this chapter to the contrary, the ratemaking principles established by the board pursuant to this section shall be binding with regard to the acquired utility in any subsequent rate proceeding.

2018 Acts, ch 1024, §3

476.85 Reserved.

SUBCHAPTER XII

COMPETITIVE NATURAL GAS PROVIDERS

476.86 Definitions.

As used in this section and section 476.87, unless the context otherwise requires:

1. *"Aggregator"* means a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.

2. *a.* *"Competitive natural gas provider"* means a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa. *"Competitive natural gas provider"* includes an affiliate of an Iowa gas utility.

b. *"Competitive natural gas provider"* does not include the following:

(1) A public utility which is subject to rate regulation under this chapter.

(2) A municipally owned utility which provides natural gas service within its incorporated

area or within the municipal natural gas competitive service area, as defined in section 437A.3, subsection 22, paragraph "*a*", subparagraph (1), in which the municipally owned utility is located.

99 Acts, ch 20, §2, 6; 99 Acts, ch 208, §57, 74; 2018 Acts, ch 1041, §100

476.87 Certification of competitive natural gas providers.

1. The board shall certify all competitive natural gas providers and aggregators providing natural gas services in this state. In an application for certification, a competitive natural gas provider or aggregator must reasonably demonstrate managerial, technical, and financial capability sufficient to obtain and deliver the services such provider or aggregator proposes to offer. The board may establish reasonable conditions or restrictions on the certificate at the time of issuance. The board shall adopt rules to establish specific criteria for certification. The board shall make a determination on an application for certification within ninety days of its submission, unless the board determines that additional time is necessary to consider the application, in which case the board may extend the time for making a determination for an additional sixty days.

2. The board may resolve disputes involving the provision of natural gas services by a competitive natural gas provider or aggregator.

3. The board shall allocate the costs and expenses reasonably attributable to certification and dispute resolution in this section to persons identified as parties to such proceeding who are engaged in or who seek to engage in providing natural gas services or other persons identified as participants in such proceeding. The funds received for the costs and the expenses of certification and dispute resolution shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

99 Acts, ch 20, §3, 6; 2009 Acts, ch 181, §49

Referred to in §476.86

476.88 through 476.90 Reserved.

SUBCHAPTER XIII

ALTERNATIVE OPERATOR SERVICES

476.91 Alternative operator services.

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

a. *"Alternative operator services company"* means a nongovernmental company which receives more than half of its Iowa intrastate telecommunications services revenues from calls placed by end-user customers from telephones other than ordinary residence or business telephones. The definition is further limited to include only companies which provide operator assistance, either through live or automated intervention, on calls placed from other than ordinary residence or business telephones, and does not include services provided under contract to rate-regulated local exchange utilities.

b. *"Contracting entity"* means an entity providing telephones other than ordinary residence or business telephones for use by end-user customers which has contracted with an alternative operator services company to provide telecommunications services to those telephones.

c. *"End-user customer"* means a person who places a local or toll call.

d. *"Other than ordinary residence or business telephones"* means telephones other than the residence or business telephones of the customary users of the telephones, including but not limited to pay telephones and telephones in motel, hotel, hospital, and college dormitory rooms.

2. *Jurisdiction.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, all intrastate telecommunications services provided by alternative operator services companies to

end-user customers, using other than ordinary residence or business telephones, are subject to the jurisdiction of the board and shall be rendered pursuant to tariffs approved by the board. Alternative operator services companies shall be subject to all requirements and sanctions provided in this chapter. Contracting entities shall be subject to the requirements of any board regulations concerning telecommunications services provided by alternative operator services companies.

3. *Requirements.* The board shall adopt and enforce requirements for the provision of services by alternative operator services companies and contracting entities.

4. *Billing by local exchange utilities.* Notwithstanding any finding by the board that a service or facility is subject to competition and should be deregulated pursuant to section 476.1, a regulated local exchange utility shall not perform billing and collection functions relating to regulated telecommunications services provided by an alternative operator services company, unless the alternative operator services company has filed a statement with the local exchange utility signed by a corporate officer, or other authorized person having personal knowledge, that all regulated telecommunications services to be billed shall be rendered pursuant to tariffs approved by the board.

89 Acts, ch 95, §1
Referred to in §476.95

476.92 through 476.94 Reserved.

SUBCHAPTER XIV

TELECOMMUNICATIONS SERVICE PROVIDERS

476.95 Internet protocol-enabled service and voice over internet protocol service — regulation.

1. For purposes of this section:

a. *"Internet protocol-enabled service"* means any service, capability, functionality, or application that uses internet protocol or any successor protocol and enables an end user to send or receive voice, data, or video communications in internet protocol format or a successor format.

b. *"Political subdivision"* means the same as defined in section 145A.2.

c. *"Voice over internet protocol service"* means an internet protocol-enabled service that facilitates real-time, two-way voice communication that originates from, or terminates at, a user's location and permits the user to receive a call that originates from the public switched telephone network and to terminate a call on the public switched telephone network.

2. Notwithstanding any other provision of law to the contrary, a department, agency, board, or political subdivision of the state shall not regulate, by rule, order, or other means directly or indirectly, the entry, rates, terms, or conditions for internet protocol-enabled service or voice over internet protocol service.

3. This section shall not be construed to affect, modify, limit, or expand any of the following:

a. The authority of the attorney general to take any action pursuant to chapter 537 or section 714.16.

b. The application or enforcement of any law that is intended to have general application to the conduct of business in this state.

c. Any entity's obligation under section 251 or 252 of the federal Telecommunications Act of 1996.

d. Any authority of the board over wholesale telecommunications services, rates, agreements, interconnection, providers, or tariffs.

e. Any authority of the board to address or affect the resolution of a dispute regarding intercarrier compensation.

f. Any authority of the board, in accordance with state and federal law, to assess voice over internet protocol service for any of the following:

(1) Surcharges for 911 emergency services under section 34A.7.

(2) Assessments for dual party relay service under section 477C.7.

(3) Direct costs under section 476.10 and a share of remainder assessments that reflect the service's lesser degree of regulation.

g. Any authority of the board to regulate internet protocol-enabled service or voice over internet protocol service pursuant to section 476.91.

95 Acts, ch 199, §6; 2018 Acts, ch 1160, §17

Referred to in §476.1B

476.95A Annual registration for telecommunications service providers.

1. A provider of telecommunications service, as defined in section 476.103, offering telephone numbers to retail customers in this state shall register annually with the board.

2. An applicant shall complete an application for registration on a form provided by the board. The form shall include contact information, the approximate number of service lines provided in the state, and any other information deemed necessary by the board.

3. Within five business days of the receipt of a completed application for registration, the board shall issue a nonexclusive acknowledgment of compliance with this section. The acknowledgment shall authorize the registrant to obtain telephone numbers, interconnect with other telecommunications service providers, cross railroad rights-of-way pursuant to section 476.27, and provide telecommunications service in this state. An acknowledgment may be transferred by filing a new or updated registration form.

4. A registrant shall submit to the board corrections to the information supplied in the registration form within a reasonable time after a change in circumstances, which circumstances would be required to be reported in an application for registration form.

5. Refusal to file and maintain an annual registration pursuant to this section is a violation of this chapter and may subject a telecommunications service provider to a civil penalty pursuant to section 476.51.

6. Notwithstanding this subsection, the board shall continue to recognize the validity of, and the rights conferred upon, a certificate of public convenience and necessity issued to a telecommunications service provider by the board prior to July 1, 2018.

2018 Acts, ch 1160, §18

Referred to in §476.1B, 476.6, 476.9, 476.20, 476.54

476.95B Applicability of authority.

1. The board may exercise any powers reserved or delegated to the state by the federal Telecommunications Act of 1996 or any other federal law, rule, or order thereunder, and may hear and resolve any dispute arising thereunder, including but not limited to intercarrier compensation, interconnection, and number portability.

2. In proceedings under 47 U.S.C. §251–254, the board shall allocate the costs and expenses of the proceedings to persons identified as parties in the proceeding who are engaged in or who seek to engage in providing telecommunications service or other persons identified as participants in the proceeding. The funds received for the costs and the expenses shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

2018 Acts, ch 1160, §19

Referred to in §476.1B

SUBCHAPTER XV

LOCAL EXCHANGE CARRIERS

476.96 Definitions. Repealed by 2018 Acts, ch 1160, §32.

476.97 Price regulation. Repealed by 2014 Acts, ch 1099, §19.

476.98 Earnings calculation and report. Repealed by 2005 Acts, ch 9, §4.

476.99 Additional price regulation plan provisions. Repealed by 2014 Acts, ch 1099, §19.

476.100 Prohibited acts.

A local exchange carrier shall not do any of the following:

1. Discriminate against another provider of communications services by refusing or delaying access to the local exchange carrier's services.

2. Discriminate against another provider of communications services by refusing or delaying access to essential facilities on terms and conditions no less favorable than those the local exchange carrier provides to itself and its affiliates. A local telecommunications facility, feature, function, or capability of the local exchange carrier's network is an essential facility if all of the following apply:

a. Competitors cannot practically or economically duplicate the facility, feature, function, or capability, or obtain the facility, feature, function, or capability from another source.

b. The use of the facility, feature, function, or capability by potential competitors is technically and economically feasible.

c. Denial of the use of the facility, feature, function, or capability by competitors is unreasonable.

d. The facility, feature, function, or capability will enable competition.

3. Degrade the quality of access or service provided to another provider of communications services.

4. Fail to disclose in a timely manner, upon reasonable request and pursuant to a protective agreement concerning proprietary information, all information reasonably necessary for the design of network interface equipment, network interface services, or software that will meet the specifications of the local exchange carrier's local exchange network.

5. Unreasonably refuse or delay interconnections or provide inferior interconnections to another provider.

6. Use basic exchange service rates, directly or indirectly, to subsidize or offset the costs of other products or services offered by the local exchange carrier.

7. Discriminate in favor of itself or an affiliate in the provision and pricing of, or extension of credit for, any telephone service.

95 Acts, ch 199, §11

Referred to in §476.1B

476.101 Local exchange competition. Repealed by 2018 Acts, ch 1160, §32.

SUBCHAPTER XVI

UNIVERSAL SERVICE

476.102 Universal service.

1. The board shall initiate a proceeding to preserve universal service such that it shall be maintained in a competitively neutral fashion. As a part of this proceeding, the board shall determine the difference between the cost of providing universal service and the prices determined to be appropriate for such service.

2. The board shall base policies for the preservation of universal service on the following principles:

a. A plan adopted by the board should ensure the continued viability of universal service by maintaining quality services at just and reasonable rates.

b. The plan should define the nature and extent of the service encompassed within any entities' universal service obligations.

c. The plan should establish specific and predictable mechanisms to provide competitively neutral support for universal service. Those mechanisms shall include a nondiscriminatory mechanism by which funds to support universal service shall be collected, and a mechanism for disbursement of support funds to eligible subscribers, either directly to those subscribers, or to the subscriber's provider of local exchange services chosen by the subscriber.

d. The plan should be based on other principles as the board determines are necessary

and appropriate for the protection of the public interest, convenience, and necessity and consistent with the purposes of this section.

95 Acts, ch 199, §13; 2018 Acts, ch 1160, §20

Referred to in §476.1B

SUBCHAPTER XVII

CHANGE IN SERVICE

476.103 Unauthorized change in service — civil penalty.

1. Notwithstanding the deregulation of a communications service or facility under section 476.1D, the board may adopt rules to protect consumers from unauthorized changes in telecommunications service. Such rules shall not impose undue restrictions upon competition in telecommunications markets.

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

a. *"Change in service"* means the designation of a new provider of a telecommunications service to a consumer, including the initial selection of a service provider, and includes the addition or deletion of a telecommunications service for which a separate charge is made to a consumer account.

b. *"Consumer"* means a person other than a service provider who uses a telecommunications service.

c. *"Executing service provider"* means, with respect to any change in telecommunications service, a service provider who executes an order for a change in service received from another service provider.

d. *"Service provider"* means a person providing a telecommunications service.

e. *"Submitting service provider"* means a service provider who requests another service provider to execute a change in service.

f. *"Telecommunications service"* means a local exchange or long distance telephone service other than commercial mobile radio service.

3. The board shall adopt rules prohibiting an unauthorized change in telecommunications service. The rules shall be consistent with federal communications commission regulations regarding procedures for verification of customer authorization of a change in service. The rules, at a minimum, shall provide for all of the following:

a. (1) A submitting service provider shall obtain verification of customer authorization of a change in service before submitting such change in service.

(2) Verification appropriate under the circumstances for all other changes in service.

(3) The verification may be in written, oral, or electronic form and may be performed by a qualified third party.

(4) The reasonable time period during which the verification is to be retained, as determined by the board.

b. A customer shall be notified of any change in service.

c. Appropriate compensation for a customer affected by an unauthorized change in service.

d. Board determination of potential liability, including assessment of damages, for unauthorized changes in service among the customer, previous service provider, executing service provider, and submitting service provider.

e. A provision encouraging service providers to resolve customer complaints without involvement of the board.

f. The prompt reversal of unauthorized changes in service.

g. Procedures for a customer, service provider, or the consumer advocate to submit to the board complaints of unauthorized changes in service.

4. *a.* In addition to any applicable civil penalty set out in section 476.51, a service provider who violates a provision of this section, a rule adopted pursuant to this section, or an order lawfully issued by the board pursuant to this section, is subject to a civil penalty, which, after

notice and opportunity for hearing, may be levied by the board, of not more than ten thousand dollars per violation. Each violation is a separate offense.

b. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in a compromise, the board may consider the size of the service provider, the gravity of the violation, any history of prior violations by the service provider, remedial actions taken by the service provider, the nature of the conduct of the service provider, and any other relevant factors.

c. A civil penalty collected pursuant to this subsection shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the department of commerce revolving fund created in section 546.12 and to be used only for consumer education programs administered by the board.

d. A penalty paid by a rate-of-return regulated utility pursuant to this section shall be excluded from the utility's costs when determining the utility's revenue requirement, and shall not be included either directly or indirectly in the utility's rates or charges to its customers.

e. The board shall not commence an administrative proceeding to impose a civil penalty under this section for acts subject to a civil enforcement action pending in court under section 714D.7.

5. If the board determines, after notice and opportunity for hearing, that a service provider has shown a pattern of violations of the rules adopted pursuant to this section, the board may by order do any of the following:

a. Prohibit any other service provider from billing charges to residents of Iowa on behalf of the service provider determined to have engaged in such a pattern of violations.

b. Prohibit certificated local exchange service providers from providing exchange access services to the service provider.

c. Limit the billing or access services prohibition under paragraph "*a*" or "*b*" to a period of time. Such prohibition may be withdrawn upon a showing of good cause.

d. Revoke the certificate of public convenience and necessity of a local exchange service provider.

6. The board has primary jurisdiction over a complaint pursuant to this section initiated by a service provider.

7. Subsection 6 does not preclude proceedings before the federal communications commission to enforce applicable federal law. However, a service provider or a consumer, for the same alleged acts, shall not pursue a complaint both before the federal communications commission and pursuant to this section.

8. The board shall adopt competitively neutral rules establishing procedures for the solicitation, imposition, and lifting of preferred carrier freezes. A valid preferred carrier freeze prevents a change in service unless the subscriber gives the service provider from whom the freeze was requested the subscriber's express consent.

99 Acts, ch 16, §1; 2009 Acts, ch 181, §51; 2018 Acts, ch 1160, §21

Referred to in §476.95A, 714D.6

SUBCHAPTER XVIII

SEVERABILITY

476.104 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid or otherwise rendered ineffective by any entity, the invalidity or ineffectiveness shall not affect other provisions or applications of this chapter that can be given effect without the invalid or ineffective provision or application, and to this end the provisions of this chapter are severable.

2003 Acts, ch 126, §7

CHAPTER 476A

ELECTRIC POWER GENERATION AND TRANSMISSION

Referred to in §6B.61, 28F.13, 427.1(2), 437A.3, 437A.6, 437A.7, 437A.15, 474.1, 474.9, 476.1A, 476.53, 476.55, 546.7

SUBCHAPTER I

ELECTRIC POWER GENERATING FACILITIES

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SUBCHAPTER II

ELECTRIC POWER AGENCIES

476A.20 Definitions. Repealed by 2010 Acts, ch 1018, §7.
476A.21 through 476A.36 Transferred to §390.10 through 390.25; 2010 Acts, ch 1018, §8 – 23.

SUBCHAPTER I

ELECTRIC POWER GENERATING FACILITIES

476A.1 Definitions.

As used in this subchapter, unless the context otherwise requires:

1. *"Agency"* means an agency as defined in section 17A.2, subsection 1.

2. *"Board"* means the utilities board within the utilities division of the department of commerce.

3. *"Certificate"* means a certificate of public convenience, use and necessity issued pursuant to section 476A.6.

4. *"Commence to construct"* means significant alteration of a site to install permanent equipment or structures but does not include activities incident to preliminary engineering, environmental studies or acquisition of a site for a facility.

5. *"Facility"* means any electric power generating plant or a combination of plants at a single site, owned by any person, with a total capacity of twenty-five megawatts of electricity or more and those associated transmission lines connecting the generating plant to either a power transmission system or an interconnected primary transmission system or both. Transmission lines subject to the provisions of this subchapter shall not require a franchise under chapter 478.

6. *"Regulatory agency"* means an agency which issues licenses or permits required for the construction, operation or maintenance of a facility pursuant to statutes or rules in effect on the date on which an application for a certificate is accepted by the utilities board.

[C77, 79, 81, §476A.1]

90 Acts, ch 1252, §41; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.2 Certificate required.

1. Commencing January 1, 1977, a person shall not commence to construct a facility except as provided in section 476A.9 unless a certificate for the facility has been issued by the board. This subchapter shall not apply to persons who prior to July 1, 1976:

a. Have acquired a site for a facility; and,

b. Have publicly announced the intention to construct a facility; and,

c. Have let contracts for major components of a facility.

2. Any significant alteration, as determined by the board, in the location, construction, maintenance, or operation of a facility whether constructed before or after July 1, 1976,

shall require an application for an amendment to a certificate or a certificate, whichever is appropriate. "*Significant alteration*" shall include but shall not be limited to a change in the type of fuel used by the major electric generating facility.

3. Any person required to obtain a certificate or an amendment to a certificate shall construct, operate and maintain the facility according to the terms of the certificate and any amendments to the certificate. A certificate shall only be issued pursuant to this subchapter.

4. This subchapter shall not apply to an electric power generating plant, or combination of plants at a single site, with a total capacity of more than twenty-five but less than one hundred megawatts of electricity if the owner or operator prior to January 1, 1990, has met all of the following conditions:

a. Acquired a site for the facility.

b. Publicly announced the intention to construct a facility at that site.

c. Let contracts for major components of the facility.

[C77, 79, 81, §476A.2]

90 Acts, ch 1252, §42; 2001 Acts, 1st Ex, ch 4, §35, 36

476A.3 Application submitted — review.

An application for a certificate or an amendment to a certificate shall be submitted to the board on such forms as the board may prescribe. Copies of the application shall be forwarded to regulatory agencies. Regulatory agencies receiving a copy of the application shall conduct a preliminary review of the contents and shall evaluate the application for completeness and compliance with the regulatory agency's permit and licensing requirements within a reasonable amount of time.

[C77, 79, 81, §476A.3]

Referred to in §476.53

476A.4 Hearing scheduled — notice.

1. The proceeding for the issuance of a certificate or an amendment to a certificate shall be treated in the same manner as a contested case pursuant to the provisions of chapter 17A. Upon acceptance of an application by the board, a public hearing shall be scheduled.

2. The board shall serve notice of the proceeding on the following:

a. Interested agencies, as determined by the board, and regulatory agencies.

b. County and city zoning authorities from the area in which the proposed site is located.

c. Owners of record of real property located within one thousand linear feet of the proposed site.

3. Notice of the proceeding in the form provided in section 17A.12, subsection 2, shall be published in a newspaper of general circulation in each county in which the proposed site is located once a week for two consecutive weeks with the second publication being at least twenty days prior to the date of the hearing. The board shall be responsible for publication and delivery of notices required by this section.

4. The board shall conduct the hearing, as described in subsection 1, in the county in which the construction of the greater portion of the facility is being proposed.

5. A proceeding for the issuance of a certificate under section 476A.5 may be consolidated with a contested case proceeding for determination of applicable ratemaking principles under section 476.53.

[C77, 79, 81, §476A.4]

2001 Acts, 1st Ex, ch 4, §13, 36

Referred to in §476A.5

476A.5 Proceeding — role of regulatory agencies and local authorities.

1. The board shall conduct the contested case proceeding. Regulatory agencies which appear on record at the proceeding shall state whether the application meets their permit and licensing requirements. If the application does not meet such requirements, the regulatory agency shall recommend amendments to the application which outline actions necessary to bring the applicant in compliance with the regulatory agency's permit and licensing requirements. The board shall not issue a certificate for a facility which does not meet the permit and licensing requirements of a regulatory agency.

2. If a regulatory agency which received notice pursuant to section 476A.4 fails to appear of record in the contested case proceeding, the board shall conclusively presume that the facility meets the regulatory agency's permit and licensing requirements and the regulatory agency shall immediately issue any license or permit required for the construction, operation or maintenance of the facility.

3. City and county zoning authorities designated as parties to the proceeding may appear on record and may state whether the facility meets city, county and airport zoning requirements. The failure of a facility to meet zoning requirements established pursuant to chapters 329, 335 and 414 shall not preclude the board from issuing the certificate and to that extent the provisions of this subsection shall supersede the provisions of chapters 329, 335 and 414.

[C77, 79, 81, §476A.5]

Referred to in §476A.4, 476A.9

476A.6 Decision — criteria.

The board shall render a decision on the application in an expeditious manner. A certificate shall be issued to the applicant if the board finds all of the following:

1. The services and operations resulting from the construction of the facility are consistent with legislative intent as expressed in section 476.53 and the economic development policy of the state as expressed in Title I, subtitle 5, and will not be detrimental to the provision of adequate and reliable electric service.

2. The applicant is willing to construct, maintain, and operate the facility pursuant to the provisions of the certificate and this subchapter.

3. The construction, maintenance, and operation of the facility will be consistent with reasonable land use and environmental policies and consonant with reasonable utilization of air, land, and water resources, considering available technology and the economics of available alternatives.

[C77, 79, 81, §476A.6]

83 Acts, ch 127, §39; 90 Acts, ch 1252, §43 – 46; 2001 Acts, 1st Ex, ch 4, §14, 35, 36

Referred to in §476A.1

476A.7 Issuance of certificate — effect.

1. Issuance of a certificate by the board:

a. Authorizes construction of the facility on the site designated in the certificate according to the terms and conditions stated in the certificate and licenses and permits issued by regulatory agencies during the proceeding; and,

b. Gives the applicant the power of eminent domain to the extent and under such conditions as the board may approve, prescribe and find necessary for the public convenience, use and necessity, proceeding in the manner of works of internal improvement under chapter 6B. The burden of proving the necessity for the exercise of the power of eminent domain shall be on the person issued the certificate.

2. A certificate may be transferred, subject to the approval of the board, to a person who agrees to comply with the terms of the certificate including any amendments to the certificate. Certificates shall be transferable by operation of law to any receiver, trustee or similar assignee under a mortgage, deed of trust or similar instrument.

3. Pursuant to the provisions of section 476.53, a rate-regulated public utility shall have the option of withdrawing its application for issuance of a certificate at any time prior to the issuance of the certificate, or after the certificate has been issued.

[C77, 79, 81, §476A.7]

2001 Acts, 1st Ex, ch 4, §15, 36

476A.8 Further approvals prohibited — exception.

Upon issuance of a certificate, notwithstanding any provision of law except statutory requirements relating to the protection of employees engaged in the construction of the facility, a regulatory agency, city or county shall not require any further approval, permit or license for the construction of the facility.

[C77, 79, 81, §476A.8]

476A.9 Advance site preparation.

Subsequent to the hearing held pursuant to section 476A.5 and in the event of extensive delay in the issuance of a certificate, the board may permit an applicant having an application docketed for hearing to begin work to prepare the site for construction of the facility. Any activities conducted pursuant to this section shall have no probative value in the board's decision concerning the actual issuance of a certificate.

[C77, 79, 81, §476A.9]

Referred to in §476A.2

476A.10 Costs of proceeding.

The applicant for a certificate, or an amendment to certificate, shall pay all the costs and expenses incurred by the division in reaching a decision on the application including the costs of examinations of the site, the hearing, publishing of notice, division staff salaries, the cost of consultants employed by the division, and other expenses reasonably attributable to the proceeding.

[C77, 79, 81, §476A.10]

476A.11 Single hearing — judicial review.

Notwithstanding the provisions of chapter 17A:

1. Any proceeding or oral presentation held on an application for a certificate or an amendment to a certificate shall be held in lieu of any other proceeding or oral presentation required for a license or permit necessary for the construction, maintenance or operation of a facility.

2. The decision of the board shall be considered a single agency action. The agency action shall be subject to judicial review in the manner provided in chapter 17A.

3. Only parties to the proceeding before the board may seek judicial review of the final order of the board.

[C77, 79, 81, §476A.11]

476A.12 Rules.

The board shall adopt rules pursuant to chapter 17A necessary to implement the provisions of this subchapter including but not limited to the promulgation of facility siting criteria, the form for an application for a certificate and an amendment to a certificate, the description of information to be furnished by the applicant, the determination of what constitutes a significant alteration to a facility, and the establishment of minimum guidelines for public participation in the proceeding.

[C77, 79, 81, §476A.12]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.13 Staff assistance — federal preemption.

1. The board may request staff assistance from other federal, state and local agencies, pursuant to chapter 28D, to assist in discharging the responsibilities assigned to the board pursuant to this subchapter. The board may exercise the powers and responsibilities assigned to the board under this subchapter jointly with other governmental agencies pursuant to chapter 28E.

2. This subchapter shall not apply to any facility over which an agency of the federal government has exclusive jurisdiction. When concurrent jurisdiction exists with certain powers reserved to the state, the state shall exercise those powers with respect to facilities operating within this state to the full extent permitted by the Constitution and the laws of the United States.

[C77, 79, 81, §476A.13]

2001 Acts, 1st Ex, ch 4, §35, 36

476A.14 Penalties.

1. Any person who commences to construct a facility as provided in this subchapter without having first obtained a certificate, or who constructs, operates, or maintains any

facility other than in compliance with a certificate issued by the board or a certificate amended pursuant to this subchapter, or who causes any of these acts to occur, shall be liable for a civil penalty of not more than ten thousand dollars for each violation or for each day of continuing violation. Civil penalties collected pursuant to this subsection shall be forwarded by the clerk of court to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12.

2. The district court shall have exclusive jurisdiction to grant restraining orders and temporary or permanent injunctive relief as may be necessary to obtain compliance with this subchapter.

3. Persons convicted of violating any provision of this subchapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §476A.14]

2001 Acts, 1st Ex, ch 4, §35, 36; 2009 Acts, ch 181, §52

Referred to in §602.8102(67)

476A.15 Waiver.

The board, if it determines that the public interest would not be adversely affected, may waive any of the requirements of this subchapter.

83 Acts, ch 127, §40; 90 Acts, ch 1252, §47; 2001 Acts, 1st Ex, ch 4, §16, 35, 36

476A.16 through 476A.19 Reserved.

SUBCHAPTER II

ELECTRIC POWER AGENCIES

476A.20 Definitions. Repealed by 2010 Acts, ch 1018, §7. See §390.9.

476A.21 through 476A.36 Transferred to §390.10 through 390.25; 2010 Acts, ch 1018, §8 – 23.

CHAPTER 476B

WIND ENERGY PRODUCTION TAX CREDIT

Referred to in §2.48, 422.11J, 422.33, 422.60, 423.4, 432.12E, 437A.6, 437A.17B, 476C.4, 524.802

476B.1 Definitions.
476B.2 General rule.
476B.3 Credit amount.
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476B.5 Determination of eligibility.
476B.6 Tax credit certificate procedure.
476B.6A Alternative tax credit qualification — pilot project.
476B.7 Transfer of tax credit certificates.
476B.8 Use of tax credit certificates.
476B.9 Registration of tax credit certificates.
476B.10 Rules.

476B.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Department"* means the department of revenue.

3. *"Qualified electricity"* means electricity produced from wind at a qualified facility.

4. *"Qualified facility"* means an electrical production facility that meets all of the following:

a. Produces electricity from wind.

b. Is located in Iowa.

c. Was originally placed in service on or after July 1, 2005, but before July 1, 2012.

d. (1) For applications filed on or after March 1, 2008, consists of one or more wind turbines connected to a common gathering line which have a combined nameplate capacity of no less than two megawatts and no more than thirty megawatts.

(2) For applications filed on or after July 1, 2009, by a private college or university, community college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital, for the applicant's own use of qualified electricity, consists of wind turbines with a combined nameplate capacity of three-fourths of a megawatt or greater. For the purposes of this subparagraph, *"public hospital"* means a hospital licensed pursuant to chapter 135B and governed pursuant to chapter 145A, 226, 347, 347A, or 392.

2004 Acts, ch 1175, §409, 418; 2005 Acts, ch 179, §163; 2006 Acts, ch 1135, §1, 12; 2008 Acts, ch 1128, §4, 5, 15; 2009 Acts, ch 80, §1, 9; 2013 Acts, ch 138, §126, 127

Referred to in §476B.6A

476B.2 General rule.

The owner of a qualified facility shall, for each kilowatt-hour of qualified electricity that the owner sells or uses for on-site consumption during the ten-year period beginning on the date the qualified facility was originally placed in service, be allowed a wind energy production tax credit to the extent provided in this chapter against the tax imposed in chapter 422, divisions II, III, and V, and chapter 432, and may claim a refund of tax imposed by chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14.

2004 Acts, ch 1175, §410, 418; 2008 Acts, ch 1128, §6, 15

476B.3 Credit amount.

The wind energy production tax credit allowed under this chapter equals the product of one cent multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by the owner during the taxable year.

2004 Acts, ch 1175, §411, 418; 2005 Acts, ch 179, §164; 2008 Acts, ch 1128, §7, 15

476B.4 Limitation.

The wind energy production tax credit shall not be allowed for any kilowatt-hour of electricity that is sold to a related person. For purposes of this section, persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b) of the Internal Revenue Code. In the case of a corporation that is a member of an affiliated group of corporations filing a consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to such a person by another member of such group.

2004 Acts, ch 1175, §412, 418; 2005 Acts, ch 179, §165; 2009 Acts, ch 80, §2, 7, 9

476B.5 Determination of eligibility.

1. An owner may apply to the board for a written determination regarding whether a facility is a qualified facility by submitting to the board a written application containing all of the following:

a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.

b. The nameplate generating capacity of the facility.

c. Information regarding the facility's initial placement in service.

d. Information regarding the type of facility.

e. Except when electricity is used for on-site consumption, a copy of an executed power purchase agreement or other agreement to purchase electricity upon completion of the project. An executed interconnection agreement or transmission service agreement shall be accepted by the board under this paragraph if the owner of the facility has agreed to sell electricity from the facility directly or indirectly to a wholesale power pool market.

f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is a qualified facility. The board

shall notify the applicant of the approval or denial of the application within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. A facility that is not operational within eighteen months after issuance of an approval for the facility by the board shall cease to be a qualified facility. However, a facility that is approved as qualified under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twelve months to become operational. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

4. The maximum amount of nameplate generating capacity of all qualified facilities the board may find eligible under this chapter shall not exceed fifty megawatts of nameplate generating capacity.

5. An owner shall not be an owner of more than two qualified facilities.

2004 Acts, ch 1175, §413, 418; 2005 Acts, ch 179, §166; 2006 Acts, ch 1135, §2, 3, 12; 2008 Acts, ch 1128, §8, 15; 2009 Acts, ch 80, §3; 2011 Acts, ch 115, §2, 13

476B.6 Tax credit certificate procedure.

1. *a.* If a city or a county in which a qualified facility is located has enacted an ordinance under section 427B.26 and an owner has filed for and received special valuation pursuant to that ordinance, the owner is not required to obtain approval from the city council or county board of supervisors to apply for the wind energy production tax credit pursuant to subsection 2.

b. (1) If neither a city nor a county in which a qualified facility is located has enacted an ordinance under section 427B.26, or a qualified facility is not eligible for special valuation pursuant to an ordinance adopted by a city or a county under section 427B.26, the owner must receive approval of the applicable city council or county board of supervisors of the city or county in which the qualified facility is located in order to be eligible to receive the wind energy production tax credit. The application for approval may be submitted prior to commencement of the construction of the qualified facility but shall be submitted no later than the close of the owner's first taxable year for which the credit is to be applied for. The application must contain the owner's name and address, the address of the qualified facility, and the dates of the owner's first and last taxable years for which the credit will be applied for. Within forty-five days of the receipt of the application for approval, the city council or county board of supervisors, as applicable, shall either approve or disapprove the application. After the forty-five-day time period has expired, the application is deemed to be approved.

(2) Upon approval of an application submitted pursuant to subparagraph (1), the owner may apply for the tax credit as provided in subsection 2. In addition, approval of the application submitted pursuant to subparagraph (1) is acceptance by the applicant for the assessment of the qualified facility for property tax purposes for a period of twelve years and approval by the city council or county board of supervisors, as applicable, for the payment of the property taxes levied on the qualified property to the state. For purposes of property taxation, the qualified facility receiving approval of an application submitted pursuant to subparagraph (1) shall be centrally assessed and shall be exempt from any replacement tax under section 437A.6 for the period during which the facility is subject to property taxation. The property taxes to be paid to the state are those property taxes which make up the consolidated tax levied on the qualified facility and which are due and payable in the twelve-year period beginning with the first fiscal year beginning on or after the end of the owner's first taxable year for which the credit is applied for. Upon approval of the application, the city council or county board of supervisors, as applicable, shall notify the county treasurer to designate on the tax statement which lists the taxes on the qualified facility the amount of the property taxes to be paid to the department. Payment of the

designated property taxes to the department shall be in the same manner as required for the payment of regular property taxes and failure to pay designated property taxes to the department shall be treated the same as failure to pay property taxes to the county treasurer.

c. Once the owner of the qualified facility receives approval under paragraph *"b"*, subsequent approval under paragraph *"b"* is not required for the same qualified facility for subsequent taxable years.

2. An owner of a qualified facility may apply to the board for the wind energy production tax credit by submitting to the board all of the following:

a. A completed application in a form prescribed by the board.

b. A copy of the determination granting approval of the facility as a qualified facility by the board.

c. A copy of a signed power purchase agreement or other agreement to purchase electricity.

d. Sufficient documentation that the electricity has been generated by the qualified facility and sold to a purchaser.

e. For a facility in which electricity is used for on-site consumption, the requirements of paragraphs *"c"* and *"d"* shall not be applicable. For such facilities, the owner must submit a certification under penalty of perjury that the claimed amount of electricity was generated by the qualified facility and consumed by the owner.

f. Any other information the board deems necessary.

3. The board shall notify the department of the amount of kilowatt-hours generated and purchased from a qualified facility or generated and used on-site by a qualified facility. The department shall calculate the amount of the tax credit for which the applicant is eligible and shall issue the tax credit certificate for that amount or notify the applicant in writing of its refusal to do so. An applicant whose application is denied may file an appeal with the department within sixty days from the date of the denial pursuant to the provisions of chapter 17A.

4. Each tax credit certificate shall contain the owner's name, address, and tax identification number, the amount of tax credits, the first taxable year the certificate may be used, the type of tax to which the tax credits shall be applied, and any other information required by the department. The tax credit certificate shall only list one type of tax to which the amount of the tax credit may be applied. Once issued by the department, the tax credit certificate shall not be terminated or rescinded.

5. A tax credit certificate may be filed pursuant to any of the following, to the extent applicable:

a. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate shall be issued directly to equity holders or beneficiaries of the applicant in proportion to their pro rata share of the income of such entity. The applicant shall, in the application made under this section, identify its equity holders or beneficiaries, and the percentage of such entity's income that is allocable to each equity holder or beneficiary.

b. If the tax credit applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. In absence of such designation, the credits under this section shall flow through to the partners, shareholders, or members in accordance with their pro rata share of the income of the entity. The applicant shall, in the application made under this section, identify the holders or beneficiaries that are to receive the tax credit certificates and the percentage of the tax credit that is allocable to each holder or beneficiary.

c. If an applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificates and all future rights to the tax credit in this section may be distributed to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. The applicant shall, in the application made under this section, designate the percentage of the tax credit allocable to the liquidating equity holder or beneficiary that is to receive the current and future tax credit certificates under this section.

d. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity, all of the income of which is taxed directly to its equity holders or beneficiaries for the taxes imposed under chapter 422, division V, or under chapter 423, 432, or 437A, the tax credit certificate shall be issued directly to the partnership, limited liability company, S corporation, estate, trust, or other reporting entity.

6. The department shall not issue a tax credit certificate if the facility approved by the board as a qualified facility is not operational within eighteen months after the approval is issued.

7. Once a tax credit certificate is issued pursuant to this section, the tax credit may only be claimed against the type of tax reflected on the certificate.

8. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to July 1, 2006.

2004 Acts, ch 1175, §414, 418; 2005 Acts, ch 179, §167; 2006 Acts, ch 1135, §4, 12; 2008 Acts, ch 1128, §9 – 11, 15; 2009 Acts, ch 80, §4, 9; 2014 Acts, ch 1093, §16; 2016 Acts, ch 1011, §85

Referred to in §476B.7

476B.6A Alternative tax credit qualification — pilot project.

Notwithstanding any other provision of this chapter to the contrary, the board shall establish a pilot project which will allow for a wind energy production tax credit of one and one-half cents multiplied by the number of kilowatt-hours of qualified electricity sold or used for on-site consumption by up to two qualified facilities selected for participation in the project. To be eligible for the project, a qualified facility shall meet all eligibility requirements otherwise applicable pursuant to this chapter, and in addition shall be located in a county in this state with a population of between forty-four thousand one hundred fifty and forty-four thousand five hundred based on the 2006 census, and with a combined nameplate generating capacity of at least one megawatt per applicant. For purposes of the pilot project, the two megawatt minimum requirement for qualification pursuant to section 476B.1, subsection 4, paragraph *"d"*, shall not be applicable. The board shall reduce the remaining credits available under this chapter by a dollar amount equal to the amount of credits awarded pursuant to the project.

2009 Acts, ch 179, §143

476B.7 Transfer of tax credit certificates.

1. Wind energy production tax credit certificates issued under this chapter may be transferred to any person or entity. Within thirty days of transfer, the transferee must submit the transferred tax credit certificate to the department along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department shall issue one or more replacement tax credit certificates to the transferee. Each replacement certificate must contain the information required under section 476B.6 and must have the same effective taxable year and the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule of the board shall not be

transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. A replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

2. The tax credit shall be freely transferable. The transferee may use the amount of the tax credit transferred against the taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. The transferee may claim a refund under chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14 for which the original transferor could have claimed a refund. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2004 Acts, ch 1175, §415, 418; 2005 Acts, ch 179, §168; 2008 Acts, ch 1128, §12, 15

476B.8 Use of tax credit certificates.

To claim a wind energy production tax credit under this chapter, a taxpayer must include one or more tax credit certificates with the taxpayer's tax return, or if used against taxes imposed under chapter 423, the taxpayer shall comply with section 423.4, subsection 4, or if used against taxes imposed under chapter 437A, the taxpayer shall comply with section 437A.17B. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to July 1, 2006. The tax credit certificate or certificates included with the taxpayer's tax return shall be issued in the taxpayer's name, expire on or after the last day of the taxable year for which the taxpayer is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the taxpayer's tax return. Any tax credit in excess of the taxpayer's tax liability for the taxable year may be credited to the taxpayer's tax liability for the following seven taxable years or until depleted, whichever is the earlier. If the tax credit is applied against the taxes imposed under chapter 423 or 437A, any credit in excess of the taxpayer's tax liability is carried over and can be filed with the refund claim for the following seven tax years or until depleted, whichever is earlier. However, the certificate shall not be used to reduce tax liability for a tax period ending after the expiration date of the certificate.

2004 Acts, ch 1175, §416, 418; 2005 Acts, ch 179, §169; 2008 Acts, ch 1128, §13, 15; 2014 Acts, ch 1093, §17

476B.9 Registration of tax credit certificates.

The department shall develop a system for the registration of the wind energy production tax credit certificates issued or transferred under this chapter and a system that permits verification that any tax credit claimed on a tax return is valid and that transfers of the tax credit certificates are made in accordance with the requirements of this chapter. The tax credit certificates issued under this chapter shall not be classified as a security pursuant to chapter 502.

2004 Acts, ch 1175, §417, 418; 2005 Acts, ch 179, §170

476B.10 Rules.

The department and the board may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

2005 Acts, ch 179, §171

CHAPTER 476C

RENEWABLE ENERGY TAX CREDIT

Referred to in §2.48, 422.11J, 422.11L, 422.33, 422.60, 423.4, 432.12E, 437A.17B, 476.48

476C.1 Definitions.
476C.2 Tax credit amount — limitations.
476C.3 Determination of eligibility.
476C.4 Tax credit certificate procedure.
476C.5 Certificate issuance period.
476C.6 Transferability and use of tax credit certificates — registration.
476C.7 Rules.

476C.1 Definitions.

For purposes of this chapter, unless the context otherwise requires:

1. *"Anaerobic digester system"* means a system of components that processes plant or animal materials based on the absence of oxygen and produces methane or other biogas used to generate electricity, hydrogen fuel, or heat for a commercial purpose.

2. *"Biogas recovery facility"* means an anaerobic digester system that is located in this state.

3. *"Biomass conversion facility"* means a facility in this state that converts plant-derived organic matter including, but not limited to, agricultural food and feed crops, crop wastes and residues, wood wastes and residues, or aquatic plants to generate electricity, hydrogen fuel, or heat for a commercial purpose.

4. *"Board"* means the utilities board within the utilities division of the department of commerce.

5. *"Department"* means the department of revenue.

6. *"Eligible renewable energy facility"* means a wind energy conversion facility, a biogas recovery facility, a biomass conversion facility, a methane gas recovery facility, a solar energy conversion facility, or a refuse conversion facility that meets all of the following requirements:

a. Is located in this state.

b. Is at least fifty-one percent owned by one or more of any combination of the following:

(1) A resident of this state.

(2) Any of the following as defined in section 9H.1:

(a) An authorized farm corporation.

(b) An authorized limited liability company.

(c) An authorized trust.

(d) A family farm corporation.

(e) A family farm limited liability company.

(f) A family trust.

(g) A revocable trust.

(h) A testamentary trust.

(3) A small business as defined in section 15.102.

(4) An electric cooperative association organized pursuant to chapter 499 that sells electricity to end users located in this state, a municipally owned city utility as defined in section 362.2, or a public utility subject to rate regulation pursuant to chapter 476.

(5) An electric cooperative association that has one or more members organized pursuant to chapter 499.

(6) A cooperative corporation organized pursuant to chapter 497 or a limited liability company organized pursuant to chapter 489 whose shares and membership are held by an entity that is not prohibited from owning agricultural land under chapter 9H.

(7) A school district located in this state.

c. Has at least one owner that meets the requirements of paragraph *"b"* for each two and one-half megawatts of nameplate generating capacity or the energy production capacity equivalent for hydrogen fuel or heat for a commercial purpose of the otherwise eligible renewable energy facility.

d. Was initially placed into service on or after July 1, 2005, and before January 1, 2018.

e. For applications filed on or after July 1, 2011, is a facility of not less than three-fourths

megawatts of nameplate generating capacity or the energy production capacity equivalent if all or a portion of the renewable energy produced is for on-site consumption by the producer.

f. For applications filed on or after July 1, 2011, except for wind energy conversion facilities, is a facility of no greater than sixty megawatts of nameplate generating capacity or the energy production capacity equivalent.

7. *"Energy production capacity equivalent"* means the amount of energy in a standard cubic foot of hydrogen gas or the number of British thermal units that are equal to the energy in a kilowatt-hour of electricity. For the purposes of this chapter, one kilowatt-hour shall be deemed equivalent to three thousand three hundred thirty-three British thermal units of heat or ten and forty-five one hundredths of standard cubic feet of hydrogen gas.

8. *"Heat for a commercial purpose"* means the heat in British thermal unit equivalents from refuse-derived fuel, methane, or other biogas produced in this state either for commercial use by a producer for on-site consumption or sold to a purchaser of renewable energy for use for a commercial purpose in this state or for use by an institution in this state.

9. *"Hydrogen fuel"* means hydrogen produced in this state from a renewable source that is used in a fuel cell or hydrogen-powered internal combustion engine.

10. *"Methane gas recovery facility"* means a facility in this state which is used in connection with a sanitary landfill or which uses wastes that would otherwise be deposited in a sanitary landfill, that collects methane gas or other gases and converts the gas into energy to generate electricity, hydrogen fuel, or heat for a commercial purpose.

11. *"Producer of renewable energy"* means a person who owns an eligible renewable energy facility.

12. *"Purchaser of renewable energy"* means a person who buys electric energy, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for a commercial purpose from an eligible renewable energy facility.

13. *"Refuse conversion facility"* means a facility in this state that converts solid waste into fuel that can be burned to generate heat for a commercial purpose in this state.

14. *"Solar energy conversion facility"* means a solar energy facility in this state that collects and converts incident solar radiation into energy to generate electricity.

15. *"Wind energy conversion facility"* means a wind energy conversion system in this state that collects and converts wind into energy to generate electricity.

2005 Acts, ch 160, §7, 14; 2006 Acts, ch 1135, §5 – 8, 12; 2008 Acts, ch 1162, §136, 154, 155; 2011 Acts, ch 115, §3 – 5; 2011 Acts, ch 118, §33, 89; 2014 Acts, ch 1122, §1; 2015 Acts, ch 124, §5, 9, 10; 2016 Acts, ch 1128, §10, 16, 21

Referred to in §476C.3

2015 amendment to subsection 6, paragraph b, subparagraph (4), takes effect June 26, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

2016 amendment to subsection 6, paragraph d, takes effect May 27, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1128, §16, 21

476C.2 Tax credit amount — limitations.

1. A producer or purchaser of renewable energy may receive renewable energy tax credits under this chapter in an amount equal to one and one-half cents per kilowatt-hour of electricity, or four dollars and fifty cents per million British thermal units of heat for a commercial purpose, or four dollars and fifty cents per million British thermal units of methane gas or other biogas used to generate electricity, or one dollar and forty-four cents per one thousand standard cubic feet of hydrogen fuel generated by and purchased from an eligible renewable energy facility or used for on-site consumption by the producer.

2. The renewable energy tax credit shall not be allowed for any kilowatt-hour of electricity, British thermal unit of heat for a commercial purpose, British thermal unit of methane gas or other biogas used to generate electricity, or standard cubic foot of hydrogen fuel that is purchased from an eligible renewable energy facility by a related person. For purposes of this subsection, persons shall be treated as related to each other if either person owns an eighty percent or more equity interest in the other person.

3. A taxpayer who is eligible to claim a renewable energy tax credit under this chapter shall not be eligible to claim a solar energy system tax credit under section 422.11L or 422.33.

2005 Acts, ch 160, §8, 14; 2011 Acts, ch 115, §6; 2012 Acts, ch 1121, §9 – 11

476C.3 Determination of eligibility.

1. A producer or purchaser of renewable energy may apply to the board for a written determination regarding whether a facility is an eligible renewable energy facility by submitting to the board a written application containing all of the following:

a. Information regarding the ownership of the facility including the percentage of equity interest held by each owner.

b. The nameplate generating capacity of the facility or energy production capacity equivalent.

c. Information regarding the facility's initial placement in service.

d. Information regarding the type of facility and what type of renewable energy the facility will produce.

e. Except when the renewable energy is produced for on-site consumption by the producer, a copy of the power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose which shall designate either the producer or purchaser of renewable energy as eligible to apply for the renewable energy tax credit.

f. Any other information the board may require.

2. The board shall review the application and supporting information and shall make a preliminary determination regarding whether the facility is an eligible renewable energy facility. The board shall notify the applicant of the approval or denial of the application within thirty days of receipt of the application and information required. If the board fails to notify the applicant of the approval or denial within thirty days, the application shall be deemed denied unless the application is placed on a waiting list as described in subsection 6. An applicant who receives a determination denying an application may file an appeal with the board within thirty days from the date of the denial pursuant to the provisions of chapter 17A. In the absence of a timely appeal, the preliminary determination shall be final. If the application is incomplete, the board may grant an extension of time for the provision of additional information.

3. *a.* A facility that is not operational within thirty months after issuance of an approval for the facility by the board shall cease to be an eligible renewable energy facility. However, a wind energy conversion facility that is approved as eligible under this section but is not operational within eighteen months due to the unavailability of necessary equipment shall be granted an additional twenty-four months to become operational.

b. A facility which notifies the board prior to the expiration of the time periods specified in paragraph "*a*" that the facility intends to become operational and wishes to preserve its eligibility shall be granted a twelve-month extension. An extension may be renewed for succeeding twelve-month periods if the board is notified prior to the expiration of the extension of the continued intention to become operational during the succeeding period of extension.

c. If the owner of a facility discontinues efforts to achieve operational status, the owner shall notify the board. Upon receipt of such notification, the board shall no longer consider the facility as an eligible renewable energy facility under this chapter.

d. A facility that is granted and thereafter loses approval may reapply to the board for a new determination.

4. *a.* The maximum amount of nameplate generating capacity of all wind energy conversion facilities the board may find eligible under this chapter shall not exceed three hundred sixty-three megawatts of nameplate generating capacity.

b. The maximum amount of energy production capacity equivalent of all other facilities the board may find eligible under this chapter shall not exceed a combined output of sixty-three megawatts of nameplate generating capacity and, annually, one hundred sixty-seven billion British thermal units of heat for a commercial purpose.

(1) Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, no more than ten megawatts of nameplate generating capacity or energy production capacity equivalent shall be allocated to any one facility.

(2) Of the maximum amount of energy production capacity equivalent of all other

facilities found eligible under this chapter, fifty-five billion British thermal units of heat for a commercial purpose shall be reserved annually for an eligible facility that is a refuse conversion facility for processed, engineered fuel from a multicounty solid waste management planning area. The maximum amount of energy production capacity the board may find eligible for a single refuse conversion facility is, annually, fifty-five billion British thermal units of heat for a commercial purpose.

(3) (a) Of the maximum amount of energy production capacity equivalent of all other facilities found eligible under this chapter, ten megawatts of nameplate generating capacity or energy production equivalent shall be reserved for solar energy conversion facilities that meet all of the following requirements:

(i) The facility has a generating capacity of one and one-half megawatts or less.

(ii) The facility is owned, in whole or in part, directly or indirectly, or is contracted for, by utilities described in section 476C.1, subsection 6, paragraph *"b"*, subparagraphs (4) and (5).

(iii) The facility is located in this state.

(iv) The facility meets the requirements of section 476C.1, subsection 6, paragraphs *"d"* through *"f"*.

(b) A solar energy conversion facility that meets the requirements of and is found eligible under subparagraph division (a) shall be considered an *"eligible renewable energy facility"* for purposes of this chapter, notwithstanding any contrary provisions of section 476C.1, subsection 6.

5. *a.* Notwithstanding the definition of *"eligible renewable energy facility"* in section 476C.1, subsection 6, unnumbered paragraph 1, of the maximum amount of energy production capacity equivalent of all other facilities found eligible pursuant to subsection 4, paragraph *"b"*, an amount equivalent to ten megawatts of nameplate generating capacity shall be reserved for natural gas, methane and landfill gas, or biogas cogeneration facilities incorporated within or associated with an ethanol plant to assist the ethanol plant in meeting a low carbon fuel standard. Thermal heat generated by the cogeneration facility and used for a commercial purpose may be counted toward satisfying the ten megawatt reservation requirement.

b. A facility that has been granted eligibility pursuant to paragraph *"a"* for a natural gas cogeneration facility incorporated within or associated with an ethanol plant prior to July 1, 2014, shall not be required to submit a new application if the facility constructs or utilizes methane and landfill gas or biogas cogeneration facilities on or after that date and does not make any other significant changes to the facility or to its status as an eligible facility under paragraph *"a"*.

6. The board shall maintain a waiting list of facilities that may have been found eligible under this section but for the maximum capacity restrictions of subsection 4. The priority of the waiting list shall be maintained in the order the applications were received by the board. The board shall remove from the waiting list any facility that has subsequently been found ineligible under this chapter. If additional capacity becomes available within the capacity restrictions of subsection 4, the board shall grant approval to facilities according to the priority of the waiting list before granting approval to new applications. An owner of a facility on the waiting list shall provide the board each year by August 31 with a sworn statement of verification stating that the information contained in the application for eligibility remains true and correct or stating that the information has changed and providing the new information.

7. *a.* An owner meeting the requirements of section 476C.1, subsection 6, paragraph *"b"*, shall not be an owner of more than two eligible renewable energy facilities. A person that has an equity interest equal to or greater than fifty-one percent in an eligible renewable energy facility shall not have an equity interest greater than ten percent in any other eligible renewable energy facility. This paragraph *"a"* shall not apply to facilities described in subsection 4, paragraph *"b"*, subparagraph (3).

b. An entity described in section 476C.1, subsection 6, paragraph *"b"*, subparagraphs (4)

or (5), shall not have an ownership interest in more than four facilities described in subsection 4, paragraph *"b"*, subparagraph (3).

2005 Acts, ch 160, §9, 14; 2006 Acts, ch 1135, §9, 12, 13; 2006 Acts, ch 1171, §8, 9; 2009 Acts, ch 80, §5, 6; 2011 Acts, ch 115, §7 – 9; 2011 Acts, ch 118, §34, 89; 2012 Acts, ch 1138, §32, 33; 2014 Acts, ch 1122, §2; 2015 Acts, ch 124, §6, 9, 10; 2016 Acts, ch 1128, §11, 12, 16, 22, 23

Referred to in §476C.4

2015 amendment to subsection 4, paragraph b, takes effect June 26, 2015, and applies retroactively to January 1, 2015, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

2015 amendment to subsection 4, paragraph b, subparagraphs (1) and (2), takes effect June 26, 2015, and applies retroactively to January 1, 2014, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

2016 amendments to subsection 4, paragraph b, subparagraph (3), and subsection 7 take effect May 27, 2016, and apply retroactively to January 1, 2015, for tax years beginning on or after that date, and apply retroactively to applications for the renewable energy tax credit made on or after June 26, 2015; 2016 Acts, ch 1128, §16, 22, 23

476C.4 Tax credit certificate procedure.

1. A producer or purchaser of renewable energy may apply to the board for the renewable energy tax credit by submitting to the board all of the following:

a. A completed application in a form prescribed by the board.

b. A copy of the determination granting approval of the facility as an eligible renewable energy facility by the board.

c. A copy of a signed power purchase agreement or other agreement to purchase electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose from an eligible renewable energy facility which shall designate either the producer or purchaser of renewable energy as eligible to apply for the renewable energy tax credit.

d. Sufficient documentation that the electricity, heat for a commercial purpose, methane gas or other biogas, or hydrogen fuel has been generated by the eligible renewable energy facility and sold to the purchaser of renewable energy.

e. To the extent the produced electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose is used for on-site consumption, the requirements of paragraphs *"c"* and *"d"* shall not be applicable. For such renewable energy production, the owner must submit a certification under penalty of perjury that the claimed amount of electricity, hydrogen fuel, methane or other biogas, or heat for a commercial purpose was produced by the eligible facility and consumed by the owner.

f. Any other information the board deems necessary.

2. The board shall notify the department of the amount of kilowatt-hours, British thermal units of heat for a commercial purpose, British thermal units of methane gas or other biogas used to generate electricity, or standard cubic feet of hydrogen fuel generated and purchased from an eligible renewable energy facility or generated and used by the producer for on-site consumption. The department shall calculate the amount of the tax credit for which the applicant is eligible and shall issue the tax credit certificate for that amount or notify the applicant in writing of its refusal to do so. An applicant whose application is denied may file an appeal with the department within sixty days from the date of the denial pursuant to the provisions of chapter 17A.

3. Each tax credit certificate shall contain the person's name, address, and tax identification number, the amount of tax credits, the first taxable year the certificate may be used, the type of tax to which the tax credits shall be applied, and any other information required by the department. The tax credit certificate shall only list one type of tax to which the amount of the tax credit may be applied. Once issued by the department, the tax credit certificate shall not be terminated or rescinded.

4. A tax credit certificate may be filed pursuant to any of the following, to the extent applicable:

a. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate shall be issued directly to equity holders or beneficiaries of the applicant in proportion to their pro rata share of the income of such entity. The applicant shall, in the application made under this section, identify its equity holders or

beneficiaries, and the percentage of such entity's income that is allocable to each equity holder or beneficiary.

b. (1) If the tax credit applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificate may be issued to a partner if the business is a partnership, a shareholder if the business is an S corporation, or a member if the business is a limited liability company in the amounts designated by the eligible partnership, S corporation, or limited liability company. In absence of such designation, the credits under this section shall flow through to the partners, shareholders, or members in accordance with their pro rata share of the income of the entity.

(2) The applicant shall, in the application made under this section, identify the equity holders or beneficiaries that are to receive the tax credit certificates and the percentage of the tax credit that is allocable to each equity holder or beneficiary.

c. (1) If an applicant under this section is eligible to receive renewable electricity production credits authorized under section 45 of the Internal Revenue Code, as amended, and the tax credit applicant is a partnership, limited liability company, S corporation, estate, trust, or other reporting entity all of the income of which is taxed directly to its equity holders or beneficiaries, for the taxes imposed under chapter 422, division II or III, the tax credit certificates and all future rights to the tax credit in this section may be distributed to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity.

(2) The applicant shall, in the application made under this section, designate the percentage of the tax credit allocable to the liquidating equity holder or beneficiary that is to receive the current and future tax credit certificates under this section.

d. If the tax credit application is filed by a partnership, limited liability company, S corporation, estate, trust, or other reporting entity, all of the income of which is taxed directly to its equity holders or beneficiaries for the taxes imposed under chapter 422, division V, or under chapter 423, 432, or 437A, the tax credit certificate shall be issued directly to the partnership, limited liability company, S corporation, estate, trust, or other reporting entity.

5. The department shall not issue a tax credit certificate if the facility approved by the board as an eligible renewable energy facility is not operational within eighteen months after the approval is issued, subject to the extension provisions of section 476C.3, subsection 3.

6. The department shall not issue a tax credit certificate to any person who has received a tax credit pursuant to chapter 476B.

7. Once a tax credit certificate is issued pursuant to this section, the tax credit may only be claimed against the type of tax reflected on the certificate.

2005 Acts, ch 160, §10, 14; 2006 Acts, ch 1135, §10, 12; 2011 Acts, ch 25, §143; 2011 Acts, ch 115, §10, 11; 2012 Acts, ch 1021, §92; 2016 Acts, ch 1011, §86

Referred to in §476C.6

476C.5 Certificate issuance period.

A producer or purchaser of renewable energy shall receive renewable energy tax credit certificates for a ten-year period for each eligible renewable energy facility under this chapter. The ten-year period for issuance of the tax credit certificates begins with the date the purchaser of renewable energy first purchases electricity, hydrogen fuel, methane gas or other biogas used to generate electricity, or heat for commercial purposes from the eligible renewable energy facility for which a tax credit is issued under this chapter, or the date the producer of the renewable energy first uses the energy produced by the eligible renewable energy facility for on-site consumption. Renewable energy tax credit certificates shall not be

issued for renewable energy purchased or produced for on-site consumption after December 31, 2027.

2005 Acts, ch 160, §11, 14; 2006 Acts, ch 1135, §11, 12; 2011 Acts, ch 115, §12; 2014 Acts, ch 1122, §3; 2015 Acts, ch 124, §7, 9, 10; 2016 Acts, ch 1128, §13, 16, 21

2015 amendment takes effect June 26, 2015, and applies retroactively to January 1, 2014, for tax years beginning on or after that date; 2015 Acts, ch 124, §9, 10

2016 amendment takes effect May 27, 2016, and applies retroactively to January 1, 2016, for tax years beginning on or after that date; 2016 Acts, ch 1128, §16, 21

476C.6 Transferability and use of tax credit certificates — registration.

1. *a.* Renewable energy tax credit certificates issued under this chapter may be transferred to any person. A tax credit certificate shall only be transferred once. However, for purposes of this transfer provision, a decision between a producer and purchaser of renewable energy regarding who claims the tax credit issued pursuant to this chapter shall not be considered a transfer and must be set forth in the application for the tax credit pursuant to section 476C.4. Within thirty days of transfer, the transferee must submit the transferred tax credit certificate to the department along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each new certificate is to carry and any other information required by the department. Within thirty days of receiving the transferred tax credit certificate and the transferee's statement, the department shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required under section 476C.4, subsection 3, and must have the same effective taxable year and the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than the minimum amount established by rule shall not be transferable. A tax credit shall not be claimed by a transferee under this chapter until a replacement tax credit certificate identifying the transferee as the proper holder has been issued. The replacement tax credit certificate may reflect a different type of tax than the type of tax noted on the original tax credit certificate.

b. The transferee may use the amount of the tax credit transferred against taxes imposed under chapter 422, divisions II, III, and V, and chapter 432 for any tax year the original transferor could have claimed the tax credit. The transferee may claim a refund under chapter 423 or 437A for any tax year within the time period set forth in section 423.47 or 437A.14 for which the original transferor could have claimed the refund. Any consideration received for the transfer of the tax credit shall not be included as income under chapter 422, divisions II, III, and V. Any consideration paid for the transfer of the tax credit shall not be deducted from income under chapter 422, divisions II, III, and V.

2. To claim a renewable energy tax credit under this chapter, a taxpayer must include one or more tax credit certificates with the taxpayer's tax return, or if used against taxes imposed under chapter 423, the taxpayer shall comply with section 423.4, subsection 4, or if used against taxes imposed under chapter 437A, the taxpayer shall comply with section 437A.17B. A tax credit certificate shall not be used or included with a return filed for a taxable year beginning prior to July 1, 2006. The tax credit certificate or certificates included with the taxpayer's tax return shall be issued in the taxpayer's name, expire on or after the last day of the taxable year for which the taxpayer is claiming the tax credit, and show a tax credit amount equal to or greater than the tax credit claimed on the taxpayer's tax return. Any tax credit in excess of the taxpayer's tax liability for the taxable year may be credited to the taxpayer's tax liability for the following seven tax years or until the credit is depleted, whichever is earlier. If the tax credit is applied against the taxes imposed under chapter 423 or 437A, any credit in excess of the taxpayer's tax liability is carried over and can be filed with the refund claim for the following seven tax years or until depleted, whichever is earlier. However, the certificate shall not be used to reduce tax liability for a tax period ending after the expiration date of the certificate.

3. The department shall develop a system for the registration of the renewable energy tax credit certificates issued or transferred under this chapter and a system that permits verification that any tax credit claimed on a tax return is valid and that transfers of the tax credit certificates are made in accordance with the requirements of this chapter. The tax

credit certificates issued under this chapter shall not be classified as a security pursuant to chapter 502.

2005 Acts, ch 160, §12, 14; 2011 Acts, ch 25, §143; 2014 Acts, ch 1093, §18

476C.7 Rules.

The department and the board may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

2005 Acts, ch 160, §13, 14

CHAPTER 476D

SOY-BASED TRANSFORMER FLUID TAX CREDIT

Repealed by its own terms effective December 31, 2009;
2008 Acts, ch 1004, §6

CHAPTER 477

TELEGRAPH AND TELEPHONES — CABLE SYSTEMS

Referred to in §476.27

SUBCHAPTER I

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SUBCHAPTER I

GENERAL PROVISIONS

477.1 Right-of-way.

Any person, firm, and corporation, within or without the state, may construct a telegraph or telephone line or cable system along the public roads of the state, or across or under the rivers or over, under, or through any lands belonging to the state or any private individual, and may erect or install necessary fixtures. However, construction of a telegraph or telephone line or cable system along a primary road is subject to rules adopted by the state department of transportation.

[C51, §780; R60, §1348; C73, §1324; C97, §2158; C24, 27, 31, 35, 39, §**8300;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.1; C77, 79, 81, §477.1]

88 Acts, ch 1173, §1

Authorization in cities, §364.2
Removal from highway, chapter 318

477.2 Removal of lines and cable systems.

When any road along which the telegraph or telephone line or cable system has been constructed or installed is changed, the person, firm or corporation shall, upon ninety days' notice in writing, remove the telegraph or telephone lines or cable system to the road as

established. The notice may be served upon any agent or operator in the employ of the person, firm or corporation.

[C73, §1324; C97, §2158; C24, 27, 31, 35, 39, §**8301;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.2; C77, 79, 81, §477.2]

88 Acts, ch 1173, §2

477.3 Construction — installation — damages.

The fixtures shall not be constructed or installed in a manner which causes inconvenience to the public in the use of any road or in the navigation of any stream; nor shall they be erected or installed on the private grounds of any individual without paying the individual a just equivalent for the damage the individual sustains by the construction or installation.

[C51, §781; R60, §1349; C73, §1325; C97, §2159; C24, 27, 31, 35, 39, §**8302;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.3; C77, 79, 81, §477.3]

88 Acts, ch 1173, §3

477.4 Condemnation.

If the person over or through whose lands this telegraph or telephone line or cable system passes claims more damages than the proprietor of the line or cable system is willing to pay, the amount of damages sustained may be determined in the same manner as provided for taking private property for works of internal improvement.

[C51, §782; R60, §1350; C73, §1326; C97, §2160; C24, 27, 31, 35, 39, §**8303;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.4; C77, 79, 81, §477.4]

88 Acts, ch 1173, §4

Condemnation procedure, chapter 6B

477.5 Equal facilities — delay.

If the proprietor of any telegraph or telephone line within the state, or the person having the control and management thereof, refuses to furnish equal facilities to the public and to all connecting lines for the transmission of communications in accordance with the nature of the business which it undertakes to carry on, or to transmit the same with fidelity and without unreasonable delay, the law in relation to limited partnerships, corporations, and to the taking of private property for works of internal improvement, shall no longer apply to them, and property taken for the use thereof without the consent of the owner may be recovered by the owner.

[C51, §783; R60, §1351; C73, §1327; C97, §2161; C24, 27, 31, 35, 39, §**8304;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.5; C77, 79, 81, §477.5]

2008 Acts, ch 1032, §63

477.6 Delay — willful error — revealing contents.

Any person employed in transmitting messages by telegraph or telephone must do so with fidelity and without unreasonable delay, and if anyone willfully fails thus to transmit them, or intentionally transmits a message erroneously, or makes known the contents of any message sent or received to any person except the person to whom it is addressed, or such person's agent or attorney, or willfully and wrongfully takes or receives any telegraph or telephone message, the person is guilty of a simple misdemeanor.

[C51, §784; R60, §1352; C73, §1328; C97, §2162; C24, 27, 31, 35, 39, §**8305;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.6; C77, 79, 81, §477.6]

477.7 Mistakes and delays.

The proprietor of a telegraph or telephone line is liable for all mistakes in transmitting or receiving messages made by any person in the proprietor's employment, or for any unreasonable delay in their transmission or delivery, and for all damages resulting from failure to perform the foregoing or any other duty required by law, the provisions of any contract to the contrary notwithstanding.

[C51, §785; R60, §1353; C73, §1329; C97, §2163; C24, 27, 31, 35, 39, §**8306;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.7; C77, 79, 81, §477.7]

Referred to in §477.9A

477.8 Negligence presumed.

In any action against any telegraph or telephone company for damages caused by erroneous transmission of a message, or by unreasonable delay in delivery of a message, negligence on the part of the telegraph or telephone company shall be presumed upon proof of erroneous transmission or of unreasonable delay in delivery, and the burden of proof that such error or delay was not due to negligence upon its part shall rest upon such company.

[C97, §2164; C24, 27, 31, 35, 39, §**8307;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.8; C77, 79, 81, §477.8]

477.9 Presentation of claim.

No action for the recovery of such damages shall be maintained unless a claim therefor is presented in writing to such company, officer or agent thereof within sixty days from time cause of action accrues.

[C97, §2164; C24, 27, 31, 35, 39, §**8308;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.9; C77, 79, 81, §477.9]

477.9A Deregulated services.

1. A telegraph or telephone company whose services are deregulated by the board under section 476.1D may use public notice as a means of conveying terms and conditions to customers where identification of those customers is infeasible or impractical. Public notice may also be used to convey changes in terms and conditions, other than price increases or limitations of liability, to all other customers, but only if those customers were put on notice that this means would be used to convey subsequent changes. Notwithstanding section 477.7, when services are deregulated by the board under section 476.1D, a telegraph or telephone company, in any contract, agreement, or by means of public notice, may reasonably limit its liability under section 477.7 in the course of providing the deregulated communications services to its customers, except for acts of willful misconduct. However, this section does not allow a greater limitation on liability than exists in any contract or approved tariff as of the effective date of the deregulation of the services.

2. A telephone company whose services are subject to regulation by the board with respect to terms and conditions, but not rates, shall give notice of rate changes to customers.

89 Acts, ch 321, §31; 92 Acts, ch 1163, §98; 2014 Acts, ch 1099, §18

SUBCHAPTER II

RECIPROCAL SERVICE

477.10 Definitions.

1. *a. "Local exchange"*, within the meaning of this subchapter, shall refer to a telephone line or lines or to a telephone switchboard or switchboards operating by virtue of a franchise granted by a city furnishing telephonic communication between two or more members of the public within the same city, village, community, locality or neighborhood, which said line or lines or switchboard or switchboards shall be under the same management and control.

b. "Local exchange" within the meaning of this subchapter shall not include or refer to privately owned or leased lines or switchboards, operated and used by members of the public other than telephone or telegraph companies as a public utility by which the public is offered telephonic service.

2. *"Local exchange company"* within the meaning of this subchapter, shall refer to any one or more individuals, firms or corporations operating one or more local exchanges as defined in this section.

3. *"Long distance company"* within the meaning of this subchapter shall refer to and include one or more persons, firms or corporations operating connecting lines between two or more local exchanges, one or more of which local exchanges are owned by a local telephone company other than such person, firm or corporation, over which line or lines

telephonic communication is had between members of the public connected with said local exchanges.

[C35, §8308-f1; C39, §**8308.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.10; C77, 79, 81, §477.10]

2013 Acts, ch 90, §142

Referred to in §423.3, 714A.1

477.11 Facilities to local exchange.

Long distance companies shall furnish equal facilities to any local exchange within the state desiring same, and to that end shall immediately make, or at the option of the long distance company, shall immediately permit to be made under its direction and at reasonably accessible places to be designated by such long distance company, the necessary connections between said local exchange and said long distance company telephone system to effect the furnishing of equal facilities to such local exchange.

[C35, §8308-f2; C39, §**8308.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.11; C77, 79, 81, §477.11]

477.12 Transmission of messages.

After such connection has been made said long distance company shall transmit communications and messages to, from and through all local exchanges connected with its system when requested, with fidelity and equality and without discrimination or unreasonable delay.

[C35, §8308-f3; C39, §**8308.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.12; C77, 79, 81, §477.12]

477.13 Facilities to long distance companies.

A connected local exchange company shall accept and furnish telephonic connection for all messages offered over the lines or through the system of any long distance company without discrimination or unreasonable delay, and with equality.

[C35, §8308-f4; C39, §**8308.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.13; C77, 79, 81, §477.13]

477.14 Violations — effect.

Should any local exchange company or long distance company refuse or fail to furnish the connection or service above required, the law in relation to limited partnerships, corporations, or the taking of private property for works of internal improvement shall no longer apply to them and property taken for the use thereof without the consent of the owner may be recovered by the owner.

[C35, §8308-f5; C39, §**8308.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §488.14; C77, 79, 81, §477.14]

CHAPTER 477A

CABLE OR VIDEO SERVICE FRANCHISES

Purpose of chapter; 2007 Acts, ch 201, §1

477A.1 Definitions.
477A.2 Certificate of franchise authority requirement.
477A.3 Application requirements — certificate of franchise authority.
477A.4 Applicability to federal law.
477A.5 Municipality restrictions.
477A.6 Public, educational, and governmental access channels.
477A.7 Fees — financial support.
477A.8 Customer service standards.
477A.9 Nondiscrimination by municipality.
477A.10 Provider discrimination prohibited.
477A.11 Applicability of other law.
477A.12 Rules.

477A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Cable operator"* means the same as defined in 47 U.S.C. §522.

3. *"Cable service"* means the same as defined in 47 U.S.C. §522.

4. *"Cable system"* means the same as defined in 47 U.S.C. §522.

5. *"Competitive cable service provider"* means a person who provides cable service over a cable system in an area other than the incumbent cable provider providing service in the same area.

6. *"Competitive video service provider"* means a person who provides video service other than a cable operator.

7. *"Franchise"* means an initial authorization, or renewal of an authorization, issued by the board or a municipality, regardless of whether the authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, that authorizes the construction and operation of a cable system or video service provider's network in a public right-of-way.

8. *"Franchise fee"* means the fee imposed under section 477A.7.

9. *a.* *"Gross revenues"* means all consideration of any kind or nature, including but not limited to cash, credits, property, and in-kind contributions received from subscribers for the provision of cable service over a cable system by a competitive cable service provider or for the provision of video service by a competitive video service provider within a municipality's jurisdiction. Gross revenues are limited to the following:

(1) Recurring charges for cable service or video service.

(2) Event-based charges for cable service or video service, including but not limited to pay-per-view and video-on-demand charges.

(3) Rental of set-top boxes and other cable service or video service equipment.

(4) Service charges related to the provision of cable service or video service, including but not limited to activation, installation, and repair charges.

(5) Administrative charges related to the provision of cable service or video service, including but not limited to service order and service termination charges.

(6) A pro rata portion of all revenue derived, less refunds, rebates, or discounts, by a cable service provider or a video service provider for advertising over the cable service or video service network to subscribers within the franchise area where the numerator is the number of subscribers within the franchise area, and the denominator is the total number of subscribers reached by such advertising. This subparagraph applies only to municipalities that include this provision in their franchise agreements as of January 1, 2007.

b. *"Gross revenues"* does not include any of the following:

(1) Revenues not actually received, even if billed, including bad debt.

(2) Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the person providing cable service or video service.

(3) Refunds, rebates, or discounts made to third parties, including subscribers, leased access providers, advertisers, or any municipality or other unit of local government.

(4) Regardless of whether the services are bundled, packaged, or functionally integrated with cable service or video service, any revenues derived by the holder of a certificate of franchise authority from services not classified as cable service or video service, including, without limitation, revenue received from telecommunications services, revenue received from information services, revenue received in connection with home-shopping services, or any other revenues attributed by the competitive cable service provider or competitive video service provider to noncable service or nonvideo service in accordance with the holder's books and records kept in the regular course of business and any applicable rules, regulations, standards, or orders.

(5) Revenues paid by subscribers to home-shopping programmers directly from the sale of merchandise through any home-shopping channel offered as part of the cable services or video services.

(6) Revenues from the sale of cable services or video services for resale in which the purchaser is required to collect the franchise fee from the purchaser's customer.

(7) Revenues from any tax of general applicability imposed upon the competitive cable service provider or competitive video service provider or upon subscribers by a city, state, federal, or any other governmental entity and required to be collected by the competitive cable service provider or competitive video service provider and remitted to the taxing entity, including but not limited to sales or use tax, gross receipts tax, excise tax, utility users tax, public service tax, and communication taxes, and including the franchise fee imposed under section 477A.7.

(8) Revenues forgone from the provision of cable services or video services to public institutions, public schools, or governmental entities at no charge.

(9) Revenues forgone from the competitive cable service provider's or competitive video service provider's provision of free or reduced-cost video service to any person, including, without limitation, any municipality and other public institutions or other institutions.

(10) Revenues from sales of capital assets or sales of surplus equipment.

(11) Revenues from reimbursements by programmers of marketing costs incurred by the competitive cable service provider or competitive video service provider for the introduction or promotion of new programming.

(12) Directory or internet advertising revenues including but not limited to yellow page, white page, banner advertisement, and electronic publishing.

(13) Copyright fees paid to the United States copyright office.

(14) Late payment charges.

(15) Maintenance charges.

10. *"Incumbent cable provider"* means the cable operator serving the largest number of cable subscribers in a particular franchise service area on January 1, 2007.

11. *"Institutional network"* means the system of dedicated fibers, coaxial cables, or wires constructed and maintained by an incumbent cable provider which is reserved and dedicated by the municipality for noncommercial purposes.

12. *"Municipality"* means a city.

13. *"Percentage of gross revenues"* means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall be not greater than five percent. However, if the incumbent cable provider is a municipal utility providing telecommunications services under section 388.10, *"percentage of gross revenues"* means the percentage set by the municipality and identified in a written request made under section 477A.7, subsection 1, which shall not be greater than an equitable apportionment of the services and fees that the municipal utility pays to the municipality, or five percent, whichever is less.

14. *"Public right-of-way"* means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the municipality has an interest, including other dedicated rights-of-way for travel purposes and utility easements. *"Public right-of-way"* does not include the airwaves above a public right-of-way with regard

to cellular or other nonwire telecommunications or broadcast services or utility poles owned by a municipality or a municipal utility.

15. *"Video programming"* means the same as defined in 47 U.S.C. §522.

16. *"Video service"* means video programming services provided through wireline facilities located at least in part in the public right-of-way without regard to delivery technology, including internet protocol technology. *"Video service"* does not include any video programming provided by a provider of commercial mobile service as defined in 47 U.S.C. §332, or cable service provided by an incumbent cable provider or a competitive cable service provider or any video programming provided solely as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public internet.

2007 Acts, ch 201, §2, 15; 2008 Acts, ch 1062, §1

477A.2 Certificate of franchise authority requirement.

1. After July 1, 2007, a person providing cable service or video service in this state shall not provide such service without a franchise. The franchise may be issued by either the board pursuant to section 477A.3 or by a municipality pursuant to section 364.2.

2. *a.* A person providing cable service or video service under a franchise agreement with a municipality prior to July 1, 2007, is not subject to this section with respect to such municipality until the franchise agreement expires or is converted pursuant to subsection 6.

b. Upon expiration of a franchise, a person may choose to renegotiate a franchise agreement with a municipality or may choose to obtain a certificate of franchise authority under this chapter. An application for a certificate of franchise authority pursuant to this subsection may be filed within sixty days prior to the expiration of a municipal franchise agreement. A certificate of franchise authority obtained pursuant to an application filed prior to the expiration of a municipal franchise agreement shall take effect upon the expiration date of the municipal franchise agreement.

c. A municipal utility that provides cable service or video service in this state is not subject to this section and shall not be required to obtain a certificate of franchise authority pursuant to this chapter in the municipality in which the provision of cable service or video service by that municipality was originally approved.

3. For purposes of this section, a person providing cable service or video service is deemed to have executed a franchise agreement to provide cable service or video service with a specific municipality if an affiliate or predecessor of the person providing cable service or video service has or had executed an unexpired franchise agreement with that municipality as of May 29, 2007.

4. A competitive cable service provider or competitive video service provider shall provide at least thirty days' notice to each municipality with authority to grant a franchise in the service area, and to the incumbent cable provider, in which the competitive cable service provider or competitive video service provider is granted authority to provide service under a certificate of franchise authority that the competitive cable service provider or competitive video service provider will offer cable services or video services within the jurisdiction of the municipality, and shall not provide service without having provided such thirty days' notice. A copy of the notice shall be filed with the board on the date that the notice is provided. All notices required by this subsection shall be sent by certified mail.

5. As used in this section, *"affiliate"* includes but is not limited to a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a person receiving, obtaining, or operating under a franchise agreement with a municipality to provide cable service or video service through merger, sale, assignment, restructuring, or any other type of transaction.

6. If a competitive cable service provider or a competitive video service provider applies for a certificate of franchise authority to operate within a municipality, the incumbent cable provider may, at its discretion, apply for a certificate of franchise authority for that same municipality. Such application shall be automatically granted on the same day as a competitive cable service provider or competitive video service provider files a thirty days' notice of offering service as required pursuant to subsection 4. The franchise agreement

with the municipality is terminated on the date the board issues the certificate of franchise authority to an incumbent cable provider. The terms and conditions of the certificate of franchise authority shall be the same as the terms and conditions of a competitive cable service provider or a competitive video service provider pursuant to this chapter and shall replace the terms and conditions of the franchise agreement previously granted by the municipality.

2007 Acts, ch 201, §3, 15; 2008 Acts, ch 1062, §2; 2010 Acts, ch 1126, §1, 3
Referred to in §477A.3, 477A.7, 714H.4

477A.3 Application requirements — certificate of franchise authority.

1. The board shall issue a certificate of franchise authority under this chapter within thirty calendar days after receipt of a completed application and affidavit submitted by the applicant and signed by an officer or general partner of the applicant, subject to subsection 3. The application and affidavit shall provide all of the following information:

a. That the applicant has filed or will timely file with the federal communications commission all forms required by the commission in advance of offering cable service or video service in this state.

b. That the applicant agrees to comply with all applicable federal and state statutes, regulations, and rules.

c. That the applicant agrees to comply with all applicable state laws and nondiscriminatory municipal ordinances and regulations regarding the use and occupation of a public right-of-way in the delivery of the cable service or video service, to the extent consistent with this chapter, including the police powers of the municipalities in which the service is delivered.

d. A description of the service area to be served and the municipalities to be served by the applicant which may include certain designations of unincorporated areas. This description shall be updated by the applicant prior to the expansion of cable service or video service to a previously undesignated service area and, upon such expansion, notice shall be given to the board of the service area to be served by the applicant.

e. The address of the applicant's principal place of business and the names of the applicant's principal executive officers.

f. Documentation that the applicant possesses sufficient managerial, technical, and financial capability to provide the cable service or video service proposed in the service area.

g. Copies of advertisements or news releases announcing the applicant's intent to provide cable service or video service in the service area intended for release if the certificate of franchise authority is granted.

h. A schedule of dates by which the applicant intends to commence operation in each municipality proposed to be served within the service area. This schedule shall be timely updated by the applicant as necessary to maintain accuracy.

2. In addition to the notice requirements in section 477A.2, subsection 4, an applicant shall provide notice to each municipality with authority to grant a franchise in the service area on the date that the application is submitted that the applicant has submitted an application to the board pursuant to subsection 1.

3. *a.* The board shall not issue a certificate of franchise authority to an applicant unless the board finds that all of the requirements specified in subsection 1 have been met.

b. The board may take up to an additional sixty calendar days, beyond the thirty-day period for issuance of a certificate of franchise authority specified in subsection 1, if the board determines that additional information will be required to make a determination regarding whether the requirements specified in subsection 1, paragraphs "*f*" through "*h*" have been met, and that the determination cannot be made within the thirty-day period.

c. The board may assess its costs associated with an application or a certificate of franchise authority pursuant to the assessment authority contained in section 476.10, subsection 1, paragraph "*a*".

4. The failure of the board to notify the applicant of the completeness of the applicant's affidavit or issue a certificate of franchise authority before the ninetieth calendar day after

receipt of a completed affidavit shall constitute issuance of the certificate of franchise authority applied for by the applicant without further action by the applicant.

5. The certificate of franchise authority issued by the board shall contain all of the following:

a. A grant of authority to provide cable service or video service in the service area designated in the application.

b. A grant of authority to use and occupy the public right-of-way in the delivery of cable service or video service, subject to the laws of this state, including the police powers of the municipalities in which the service is delivered.

c. A statement that the grant of authority provided by the certificate is subject to the lawful operation of the cable service or video service by the applicant or the applicant's successor.

d. A statement that the franchise is for a term of ten years, is renewable under the terms of this section, and is nonexclusive.

6. *a.* If the holder of a certificate of franchise authority fails to commence operation of a cable system or video service network within twelve months from the date the application is granted, the board may determine that the applicant is not in compliance with the certificate of franchise authority and may revoke the certificate.

b. If a certificate is revoked pursuant to this subsection, and if the franchise agreement previously in effect between an incumbent cable provider and the municipality would have remained in effect for at least a sixty-day period prior to expiration, the previous franchise agreement shall be reinstated for the remaining duration of the previous agreement. The incumbent cable provider shall comply with the terms of the prior franchise agreement within ninety days of notification by the board. This paragraph is applicable to an incumbent cable provider who has not been issued a certificate of franchise authority pursuant to section 477A.2, subsection 6, as of April 12, 2010.

7. *a.* In the event that an applicant granted a certificate of franchise authority subsequently ceases to engage in construction or operation of a cable system or video service network and is no longer providing service, the applicant shall notify the municipality, the board, and the incumbent cable provider on the date that construction or service is terminated.

b. If the franchise agreement previously in effect between an incumbent cable provider and the municipality would have remained in effect for at least a sixty-day period prior to expiration, the previous franchise agreement shall be reinstated for the remaining duration of the previous agreement. The incumbent cable provider shall comply with the terms of the prior franchise agreement within ninety days of notification by the applicant. This paragraph is applicable to an incumbent cable provider who has not been issued a certificate of franchise authority pursuant to section 477A.2, subsection 6, as of April 12, 2010.

8. A certificate of franchise authority issued by the board is fully transferable to any successor of the applicant to which the certificate was initially issued. A notice of transfer shall be filed by the holder of the certificate of franchise authority with the board and the affected municipality and shall be effective fourteen business days after submission. The notice of transfer shall include the address of the successor's principal place of business and the names of the successor's principal executive officers. The successor shall assume all regulatory rights and responsibilities of the holder of the certificate. Neither the board nor an affected municipality shall have authority to review or require approval of such transfer.

9. The certificate of franchise authority issued by the board may be terminated by a person providing cable service or video service by submitting written notice to the board and any affected municipality. Neither the board nor an affected municipality shall have authority to review or require approval of such termination.

10. The board shall only have the authorization to issue a certificate of franchise authority as provided in this section, and shall not impose any additional requirements or regulations upon an applicant.

2007 Acts, ch 201, §4, 15; 2010 Acts, ch 1126, §2, 3; 2018 Acts, ch 1160, §22

Referred to in §477A.2

477A.4 Applicability to federal law.

To the extent required by applicable law, a certificate of franchise authority issued under this chapter shall constitute a "franchise" for the purposes of 47 U.S.C. §541(b)(1). To the extent required for the purposes of 47 U.S.C. §521 – 561, only the state of Iowa shall constitute the exclusive franchising authority for competitive cable service providers and competitive video service providers in this state.

2007 Acts, ch 201, §5, 15

477A.5 Municipality restrictions.

1. A municipality shall not require a holder of a certificate of franchise authority to do any of the following:

a. Comply with a mandatory build-out provision.

b. Obtain a separate franchise.

c. Pay any additional fees, except as provided in this chapter.

d. Be subject to any additional franchise requirement by the municipality, except as provided in this chapter.

2. For purposes of this section, a *"franchise requirement"* includes any provision regulating rates or requiring build-out requirements to deploy any facilities or equipment.

3. Section 364.2 shall not apply to a holder of a certificate of franchise authority issued pursuant to this chapter.

2007 Acts, ch 201, §6, 15

477A.6 Public, educational, and governmental access channels.

1. Not later than one hundred eighty days after a request by a municipality in which a competitive cable service provider or a competitive video service provider is providing cable service or video service, the holder of the certificate of authority for that municipality shall designate a sufficient amount of capacity on the certificate holder's communications network to allow the provision of a comparable number of public, educational, and governmental channels that the incumbent cable provider in the municipality has activated and provided in the municipality under the terms of a franchise agreement with a municipality prior to July 1, 2007. If no such channels are active, the municipality may request a maximum of three public, educational, and governmental channels for a municipality with a population of at least fifty thousand, and a maximum of two public, educational, and governmental channels for a municipality with a population of less than fifty thousand.

a. The public, educational, and governmental content to be provided pursuant to this section and the operation of the public, educational, and governmental channels shall be the responsibility of the municipality receiving the benefit of such capacity. The holder of a certificate of franchise authority shall be responsible only for the transmission of such content, subject to technological restraints.

b. The municipality receiving capacity under this section shall ensure that all transmissions, content, or programming to be transmitted by the holder of the certificate of franchise authority are provided or submitted to the competitive cable service provider or competitive video service provider in a manner or form that is capable of being accepted and transmitted by the competitive cable service provider or competitive video service provider, without requirement for additional alteration or change in the content, over the particular network of the competitive cable service provider or competitive video service provider, which is compatible with the technology or protocol utilized by the competitive cable service provider or competitive video service provider to deliver services. At its election the municipality may reasonably request any cable service provider or video service provider to make any necessary change to the form of any programming, furnished for transmission, which shall be charged to the municipality, not to exceed the provider's incremental costs. The municipality shall have up to twelve months to reimburse the cable service provider or video service provider. The provision of such transmissions, content, or programming to the competitive cable service provider or competitive video service provider shall constitute authorization for such holder to carry such transmissions, content, or programming, at the holder's option, beyond the jurisdictional boundaries stipulated in any franchise agreement.

2. Where technically feasible, a competitive cable service provider or competitive video service provider that is a holder of a certificate of franchise authority and an incumbent cable provider shall use reasonable efforts to interconnect the cable or video communications network systems of the certificate holder and incumbent cable provider for the purpose of providing public, educational, and governmental programming. Interconnection may be accomplished by direct cable, microwave link, satellite, or other reasonable method of connection. A holder of a certificate of franchise authority and an incumbent cable provider shall negotiate in good faith and an incumbent cable provider shall not withhold interconnection of public, educational, or governmental channels.

3. A court of competent jurisdiction shall have exclusive jurisdiction to enforce any requirement under this section.

2007 Acts, ch 201, §7, 15

477A.7 Fees — financial support.

1. *a.* In any service area in which a competitive cable service provider or a competitive video service provider holding a certificate of franchise authority offers or provides cable service or video service, the competitive cable service provider or competitive video service provider shall calculate and pay a franchise fee to the municipality with authority to grant a certificate of franchise authority in that service area upon the municipality's written request. If the municipality makes such a request, the franchise fee shall be due and paid to the municipality on a quarterly basis, not later than forty-five days after the close of the quarter, and shall be calculated as a percentage of gross revenues. The municipality shall not demand any additional franchise fees from the competitive cable service provider or competitive video service provider, and shall not demand the use of any other calculation method for the franchise fee.

b. All cable service providers and video service providers shall pay a franchise fee at the same percent of gross revenues as had been assessed on the incumbent cable provider by the municipality as of January 1, 2007, and such percentage shall continue to apply for the period of the remaining term of the existing franchise agreement with the municipality. Upon expiration of the period of the remaining term of the agreement with the incumbent cable service provider, a municipality may request an increase in the franchise fee up to five percent of gross revenues.

c. A provider who is both a competitive cable service provider and a competitive video service provider shall be subject to and only be required to pay one franchise fee to a municipality under this subsection regardless of whether the provider provides both cable service and video service.

d. At the request of a municipality and not more than once per year, an independent auditor may perform reasonable audits of the competitive cable service provider's or competitive video service provider's calculation of the franchise fee under this subsection. The municipality shall bear the costs of any audit requested pursuant to this subsection, unless the audit discloses that the competitive cable service provider or competitive video service provider has underpaid franchise fees by more than five percent, in which case the competitive cable service provider or competitive video service provider shall pay all of the reasonable and actual costs of the audit.

e. A competitive cable service provider or competitive video service provider may identify and collect the amount of the franchise fee as a separate line item on the regular bill of each subscriber.

2. If an incumbent cable provider pays any fee to a municipality for public, educational, and governmental access channels, any subsequent holder of a certificate of franchise authority that includes that municipality shall pay this fee at the same rate during the remaining term of the existing franchise agreement with the municipality, even if the incumbent cable provider elects to convert to a certificate of franchise authority pursuant to section 477A.2. All fees collected pursuant to this subsection shall be used only for the support of the public, educational, and governmental access channels.

3. *a.* If an incumbent cable provider is required by a franchise agreement as of January 1, 2007, to provide institutional network capacity to a municipality for use by the municipality

for noncommercial purposes, the incumbent cable provider and any subsequent holder of a certificate of franchise authority shall provide support only for the existing institutional network on a pro rata basis per customer. Any financial support provided for an institutional network shall be limited to ongoing maintenance and support of the existing institutional network. This subsection shall be applicable only to a cable service provider's or video service provider's first certificate of franchise authority issued under this chapter, and shall not apply to any subsequent renewals. For the purposes of this subsection, maintenance and support shall only include the reasonable incremental cost of moves, changes, and restoring connectivity of the fiber or coaxial cable lines up to a demarcation point at the building.

b. For purposes of this subsection, the number of customers of a cable service provider or video service provider shall be determined based on the relative number of subscribers in that municipality at the end of the prior calendar year as reported to the municipality by all incumbent cable providers and holders of a certificate of franchise authority. Any records showing the number of subscribers shall be considered confidential records pursuant to section 22.7. The incumbent cable provider shall provide to the municipality, on an annual basis, the maintenance and support costs of the institutional network, subject to an independent audit. A municipality acting under this subsection shall notify and present a bill to competitive cable service providers or competitive video service providers for the amount of such support on an annual basis, beginning one year after issuance of the certificate of franchise authority. The annual institutional network support shall be due and paid by the providers to the municipality in four quarterly payments, not later than forty-five days after the close of each quarter. The municipality shall reimburse the incumbent cable provider for the amounts received from competitive cable service providers or competitive video service providers.

c. This subsection shall not apply if the incumbent cable service provider is a municipal utility providing telecommunications services under section 388.10.

4. A franchise fee may be assessed or imposed by a municipality without regard to the municipality's cost of inspecting, supervising, or otherwise regulating the franchise, and the fees collected may be credited to the municipality's general fund and used for municipal general fund purposes.

5. To the extent that any amount of franchise fees assessed by and paid to a municipality prior to May 29, 2007, pursuant to a franchise agreement between a municipality and any person to erect, maintain, and operate plants and systems for cable television, exceeds the municipality's reasonable costs of inspecting, supervising, or otherwise regulating the franchise, such amount is deemed and declared to be authorized and legally assessed by and paid to the municipality.

2007 Acts, ch 201, §8, 15
Referred to in §477A.1

477A.8 Customer service standards.

1. The holder of a certificate of franchise authority shall comply with customer service requirements consistent with those contained in 47 C.F.R. §76.309, and shall maintain a local or toll-free telephone number for customer service contact.

2. The holder of a certificate of franchise authority shall implement an informal process for handling inquiries from municipalities and customers concerning billing events, service issues, and other complaints. If an issue is not resolved through this informal process, a municipality may request a confidential nonbinding mediation with the holder of a certificate of franchise authority, with the costs of such mediation to be shared equally between the municipality and the holder of a certificate of franchise authority.

2007 Acts, ch 201, §9, 15

477A.9 Nondiscrimination by municipality.

1. A municipality shall allow the holder of a certificate of franchise authority to install, construct, and maintain a communications network within a public right-of-way and shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory, and competitively neutral access to the public right-of-way.

2. A municipality shall not discriminate against the holder of a certificate of franchise authority in providing access to a municipal building or through a municipal utility pole attachment term.

2007 Acts, ch 201, §10, 15

477A.10 Provider discrimination prohibited.

1. The purpose of this section is to prevent discrimination among potential residential subscribers.

2. A competitive cable service provider or competitive video service provider holding a certificate of franchise authority shall not deny access to any group of potential residential subscribers because of the income of residents in the local area in which such group resides.

3. *a.* A video service provider operating under a certificate of franchise authority that is using telecommunication facilities to provide video services and has more than five hundred thousand telecommunication access lines in this state shall extend its system to a potential subscriber, at no cost to the potential subscriber, if all of the following criteria are met:

(1) The potential subscriber is located within its authorized service area.

(2) At least two hundred fifty dwelling units are located within two thousand five hundred feet of a remote terminal.

(3) These dwelling units do not have cable or video service available from another cable service provider or video service provider.

b. This subsection shall be applicable only after the first date on which the video service provider operating under a certificate of franchise authority is providing cable service or video service to more than fifty percent of all cable and video subscribers receiving cable or video service from the holders of certificates of franchise authority and any other providers of cable or video services operating under franchise agreements with a municipality.

2007 Acts, ch 201, §11, 15

477A.11 Applicability of other law.

1. This chapter is intended to be consistent with the federal Cable Act, 47 U.S.C. §521 et seq.

2. Except as otherwise stated in this chapter, this chapter shall not be interpreted to prevent a competitive cable service provider, competitive video service provider, municipality, or other provider of cable service or video service from seeking clarification of any rights and obligations under federal law or to exercise any right or authority under federal or state law.

2007 Acts, ch 201, §12, 15

477A.12 Rules.

The board shall adopt rules necessary to administer this chapter.

2007 Acts, ch 201, §13, 15

CHAPTER 477B

RESERVED

CHAPTER 477C

DUAL PARTY RELAY SERVICE

Referred to in §546.7

477C.1	Dual party relay service — purpose.	477C.4	Telecommunications devices for the deaf.
477C.2	Definitions.	477C.5	Dual party relay council.
477C.3	Dual party relay service.	477C.6	Budget.
		477C.7	Funding.

477C.1 Dual party relay service — purpose.

The general assembly finds that the provision of a statewide dual party relay service will further the public interest and protect the health, safety, and welfare of the people of Iowa through an increase in the usefulness and availability of the telephone system. Many persons who are deaf, hard-of-hearing, or have speech impairments are not able to utilize the telephone system without this type of service. Therefore, it is the purpose of this chapter to enable the orderly development, operation, promotion, and funding of a statewide dual party relay service.

91 Acts, ch 194, §1; 93 Acts, ch 75, §6; 96 Acts, ch 1129, §96

477C.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Board"* means the utilities board within the department of commerce created in section 474.1.

2. *"Communication impairment"* means the inability to use the telephone for communication without a telecommunications device for the deaf.

3. *"Council"* means the dual party relay council established in section 477C.5.

4. *"Dual party relay service"* or *"relay service"* means a communication service which provides communication-impaired persons access to the telephone system functionally equivalent to the access available to persons not communication-impaired.

5. *"Telecommunications device for the deaf"* means any specialized or supplemental telephone equipment used by communication-impaired persons to provide access to the telephone system.

91 Acts, ch 194, §2

477C.3 Dual party relay service.

With the advice of the council, the board shall plan, establish, administer, and promote a statewide program to provide dual party relay service as follows:

1. The board may enter into the necessary contracts and arrangements with private entities to provide for the delivery of relay service.

2. The relay service, to the extent reasonably possible, shall allow persons with communication impairments to use the telephone system in a manner and at a rate equivalent to persons without communication impairments.

3. The relay service may be provided on a stand-alone basis within the state, with other states, or with telephone utilities providing relay service in other states.

4. The board may employ additional personnel, pursuant to section 476.10, to plan, establish, administer, and promote the relay service.

91 Acts, ch 194, §3

Referred to in §8F.2, 477C.6

477C.4 Telecommunications devices for the deaf.

With the advice of the council, the board may plan, establish, administer, and promote a program to secure, finance, and distribute telecommunications devices for the deaf. The board may establish eligibility criteria for persons to receive telecommunications devices for

the deaf, including, but not limited to, requiring certification that the recipient cannot use the telephone for communication without a telecommunications device for the deaf.

91 Acts, ch 194, §4
Referred to in §8F.2, 477C.6

477C.5 Dual party relay council.

1. A dual party relay council is established, consisting of eleven members appointed by the board. The council shall advise the board on all matters concerning relay service and equipment distribution programs.

2. The council shall consist of:

a. Six consumers who have communication impairments.

b. Two representatives from telephone companies.

c. One representative from the office of deaf services of the department of human rights.

d. One representative from the office of the consumer advocate of the department of justice.

e. One member of the board or a designee of the board.

3. Council members who are not state or local government officers or employees shall be reimbursed for their necessary and actual expenses incurred in performance of their duties and shall receive a per diem of fifty dollars when the council is meeting, payable from moneys available to the board pursuant to section 477C.7.

91 Acts, ch 194, §5; 94 Acts, ch 1023, §57
Referred to in §477C.2

477C.6 Budget.

The board shall review and approve the proposed annual budget of the relay service program authorized in section 477C.3 and the equipment distribution program authorized in section 477C.4.

91 Acts, ch 194, §6

477C.7 Funding.

1. The board shall impose an assessment to fund the programs described in this chapter upon all wireless carriers and wire-line local exchange carriers providing telecommunications service in the state in the amount of three cents per month for each telecommunications service phone number provided in this state.

2. The entities subject to assessment shall remit the assessed amounts quarterly to a special fund, as defined under section 8.2, subsection 9. The moneys in the fund are appropriated solely to plan, establish, administer, and promote the relay service and equipment distribution programs.

3. The entities subject to assessment shall provide the information requested by the board necessary for implementation of the assessment.

4. Wire-line local exchange carriers shall not recover from intrastate access charges any portion of such assessment imposed under this section.

91 Acts, ch 194, §7; 92 Acts, ch 1163, §99; 2005 Acts, ch 17, §1; 2018 Acts, ch 1160, §23
Referred to in §476.95, 477C.5

CHAPTER 478

ELECTRIC TRANSMISSION LINES

Referred to in §6B.2A, 6B.42, 306A.3, 318.9, 437A.7, 474.1, 474.9, 476.1A, 476A.1, 546.7, 716.7

478.1 Franchise.
478.2 Petition for franchise — informational meetings held.
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478.4 Franchise — hearing.
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478.6 Taking under eminent domain.
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478.34 and 478.35 Reserved.
478.36 Subsequent construction near buried line. Repealed by 92 Acts, ch 1103, §11, 12.

478.1 Franchise.

1. A person shall not construct, erect, maintain, or operate a transmission line, wire, or cable that is capable of operating at an electric voltage of sixty-nine kilovolts or more along, over, or across any public highway or grounds outside of cities for the transmission, distribution, or sale of electric current without first procuring from the utilities board within the utilities division of the department of commerce a franchise granting authority as provided in this chapter.

2. A franchise shall not be required for electric lines constructed entirely within the boundaries of property owned by a person primarily engaged in the transmission or distribution of electric power or entirely within the boundaries of property owned by the end user of the electric power.

3. If the transmission line, wire, or cable is capable of operating only at an electric voltage of less than sixty-nine kilovolts, no franchise is required. However, the utilities board shall retain jurisdiction over all such lines, wires, or cables.

4. A person who seeks to construct, erect, maintain, or operate a transmission line, wire, or cable that will operate at an electric voltage of less than sixty-nine kilovolts outside of cities and that cannot secure the necessary voluntary easements to do so may petition the board pursuant to section 478.3, subsection 1, for a franchise granting authority for such construction, erection, maintenance, or operation, and for the use of the right of eminent domain.

5. Notwithstanding any other provision of this chapter, if an existing transmission line, wire, or cable is operating at thirty-four and one-half kilovolts, it may be franchised, rebuilt, and upgraded to be capable of operation at sixty-nine kilovolts using an abbreviated franchise process if the upgraded line will meet required safety standards, will be on substantially the same right-of-way, and will have substantially the same effect on the underlying properties. The abbreviated franchise process shall not require published notice or a public informational meeting. The board may adopt rules defining relevant terms, setting forth the steps of the abbreviated process, and specifying the requirements for the

petition and landowner notification. The petitioner shall provide written notice concerning the anticipated construction to the last known address of the owners of record of the property where construction will occur and to the parties residing on such property. The franchise may be granted if the board finds the upgraded line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. The franchise shall not become effective until the petitioner has paid, or agreed to pay, all costs and expenses of the franchise proceeding specified in section 478.4.

[S13, §1527-c, 2120-n; C24, 27, 31, 35, 39, §**8309;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.1; C77, 79, 81, §478.1]

84 Acts, ch 1101, §2; 94 Acts, ch 1136, §1; 97 Acts, ch 113, §1; 2002 Acts, ch 1048, §1, 5; 2009 Acts, ch 66, §1, 2

Referred to in §478.31

Authorization in cities, §364.2

478.2 Petition for franchise — informational meetings held.

1. Any person authorized to transact business in the state including cities may file a verified petition asking for a franchise to erect, maintain, and operate a line or lines for the transmission, distribution, use, and sale of electric current outside cities and for such purpose to erect, use, and maintain poles, wires, guy wires, towers, cables, conduits, and other fixtures and appliances necessary for conducting electric current for light, heat, or power over, along, and across any public lands, highways, streams, or the lands of any person, company, or corporation, and to acquire necessary interests in real estate for such purposes.

2. As conditions precedent to the filing of a petition with the utilities board requesting a franchise for a new transmission line, and not less than thirty days prior to the filing of such petition, the person shall hold informational meetings in each county in which real property or rights will be affected.

a. A member of the board, the counsel of the board, or a presiding officer designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for such meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A, subsection 1. A formal record of the meeting shall not be required.

b. The meeting shall be held at a location reasonably accessible to all persons that may be affected by the granting of the franchise.

3. The person seeking the franchise for a new transmission line shall give notice of the informational meeting to each person, company, or corporation determined to be the landowner affected by the proposed project and any person, company, or corporation in possession of or residing on the property.

a. For the purposes of this section, unless the context otherwise requires:

(1) *"Landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

(2) *"Transmission line"* means any line capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate.

b. The notice shall contain the following:

(1) The name of the applicant.

(2) The applicant's principal place of business.

(3) A general description and purpose of the proposed project.

(4) The general nature of the right-of-way desired.

(5) The possibility that the right-of-way may be acquired by condemnation if approved by the utilities board.

(6) A map showing the route of the proposed project.

(7) A description of the process used by the utilities board in making a decision on whether to approve a franchise or grant the right to take property by eminent domain.

(8) A statement that the landowner has the right to be present at such meetings and to file objections with the utilities board.

(9) The place and time of the meeting.

c. The notice shall be served not less than thirty days prior to the time set for the meeting by certified mail with return receipt requested and shall be published once in a newspaper of general circulation in the county at least one week and not more than three weeks before the time of the meeting and such publication shall be considered notice to landowners whose residence is not known.

4. A person seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8310;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.2; C77, 79, 81, §478.2]

94 Acts, ch 1136, §2; 2000 Acts, ch 1179, §22, 30; 2002 Acts, ch 1048, §2, 5; 2017 Acts, ch 21, §5

Referred to in §6B.2A

478.3 Petition — requirements.

1. All petitions shall set forth:

a. The name of the individual, company, or corporation asking for the franchise.

b. The principal office or place of business.

c. The starting points, routes, and termini of the proposed lines, accompanied with a map or plat showing such details.

d. A general description of the public or private lands, highways, and streams over, across, or along which any proposed line will pass.

e. General specifications as to materials and manner of construction.

f. The maximum voltage to be carried over each line.

g. Whether or not the exercise of the right of eminent domain will be used and, if so, a specific reference to the lands described in paragraph "*d*" which are sought to be subject thereto.

h. An allegation that the proposed construction is necessary to serve a public use.

2. *a.* Petitions for transmission lines capable of operating at sixty-nine kilovolts or more and extending a distance of not less than one mile across privately owned real estate shall also set forth an allegation that the proposed construction represents a reasonable relationship to an overall plan of transmitting electricity in the public interest and substantiation of such allegations, including but not limited to, a showing of the following:

(1) The relationship of the proposed project to present and future economic development of the area.

(2) The relationship of the proposed project to comprehensive electric utility planning.

(3) The relationship of the proposed project to the needs of the public presently served and future projections based on population trends.

(4) The relationship of the proposed project to the existing electric utility system and parallel existing utility routes.

(5) The relationship of the proposed project to any other power system planned for the future.

(6) The possible use of alternative routes and methods of supply.

(7) The relationship of the proposed project to the present and future land use and zoning ordinances.

(8) The inconvenience or undue injury which may result to property owners as a result of the proposed project.

b. The utilities board may waive the proof required for such allegations which are not applicable to a particular proposed project.

c. The petition shall contain an affidavit stating that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

3. For the purpose of this section, the term *"public"* shall not be interpreted to be limited to consumers located in this state.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8311;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §489.3; C77, 79, 81, §478.3]

94 Acts, ch 1136, §3; 2001 Acts, 1st Ex, ch 4, §34, 36; 2002 Acts, ch 1048, §3, 5; 2011 Acts, ch 25, §143

Referred to in §478.1, 478.6A, 478.31

478.4 Franchise — hearing.

The utilities board shall consider the petition and any objections filed to it in the manner provided. It shall examine the proposed route or cause any engineer selected by it to do so. If a hearing is held on the petition it may hear testimony as may aid it in determining the propriety of granting the franchise. It may grant the franchise in whole or in part upon the terms, conditions, and restrictions, and with the modifications as to location and route as may seem to it just and proper. Before granting the franchise, the utilities board shall make a finding that the proposed line or lines are necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest. A franchise shall not become effective until the petitioners shall pay, or file an agreement to pay, all costs and expenses of the franchise proceeding, whether or not objections are filed, including costs of inspections or examinations of the route, hearing, salaries, publishing of notice, and any other expenses reasonably attributable to it. The funds received for the costs and the expenses of the franchise proceeding shall be remitted to the treasurer of state for deposit in the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8312, 8313;** C46, 50, 54, 58, 62, §489.4, 489.5; C66, 71, 73, 75, §489.4; C77, 79, 81, §478.4]

87 Acts, ch 234, §431; 94 Acts, ch 1107, §82; 2009 Acts, ch 181, §53

Referred to in §476.10, 478.1, 478.6A, 478.13

478.5 Notice — objections filed.

Upon the filing of such petition, the utilities board shall cause a notice, addressed to the citizens of each county through which the proposed line or lines will extend, to be published in a newspaper located in each such county for two consecutive weeks. Said notice shall contain a general statement of the contents and purpose of the petition, a general description of the lands and highways to be traversed by the proposed line or lines, and shall state that any objections thereto must be filed in writing with the board not later than twenty days after the date of last publication of the notice. Any person, company, city or corporation whose rights may be affected, shall have the right to file written objections to the proposed improvement or to the granting of such franchise; such objections shall be filed with the board not later than twenty days after the date of last publication and shall state the grounds therefor. The board may allow objections to be filed later in which event the applicant must be given reasonable time to meet such late objections.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8312, 8313;** C46, 50, 54, 58, 62, §489.4, 489.5; C66, 71, 73, 75, §489.5; C77, 79, 81, §478.5]

Referred to in §478.31

478.6 Taking under eminent domain.

1. Upon the filing of objections or when a petition involves the taking of property under the right of eminent domain, the utilities board shall set the matter for hearing and fix a time and place for the hearing. The hearing shall be not less than thirty days from the date of last publication and, where a new proposed transmission line exceeds one mile in length, shall be held in the county seat of the county located at the midpoint of the proposed electric transmission line. Written notice of the time and place of the hearing shall be served by the board, by ordinary mail, on the applicant, and those having filed objections. If no objections are filed and the petition does not involve the taking of property under the right of eminent domain, the board may grant a franchise without a hearing; however, the board may conduct a hearing if the board deems it necessary.

2. Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A, subsection 1.

3. When the board grants a franchise to any person, company, or corporation for the construction, erection, maintenance, and operation of transmission lines, wires, and cables for the transmission of electricity, such person, company, or corporation shall be vested with the power of condemnation to such extent as the board may approve and find necessary for public use.

[C66, 71, 73, 75, §489.6; C77, 79, 81, §478.6; 81 Acts, ch 159, §1]

2000 Acts, ch 1179, §23, 30; 2018 Acts, ch 1041, §127

478.6A Merchant line franchises — requirements — limitations.

1. For purposes of this section, *"merchant line"* means a high-voltage direct current electric transmission line which does not provide for the erection of electric substations at intervals of less than fifty miles, which substations are necessary to accommodate both the purchase and sale to persons located in this state of electricity generated or transmitted by the franchisee.

2. Notwithstanding section 478.21, in addition to any other applicable requirements pursuant to this chapter, if a petition for a franchise to construct a merchant line that involves the taking of property under eminent domain is not approved by the board and a franchise granted within three years following the date the petition is filed with the board pursuant to section 478.3, the board shall reject the petition and make a record of the rejection. If the hearing on the petition conducted pursuant to section 478.4 has been held within the three-year period following the date the petition is filed, but the board has not completed its deliberations within that three-year period, the three-year period may be extended by the board to allow completion of deliberations. A petitioner shall not file a petition for the same or a similar project that has been rejected within sixty months following the date of rejection if the rejection was for failure to be approved within three years following the date the petition was filed as provided in this subsection.

2016 Acts, ch 1129, §9; 2016 Acts, ch 1138, §37 – 39; 2017 Acts, ch 29, §136

Referred to in §6A.21

Section takes effect May 27, 2016, and applies to petitions filed on or after that date and to certain petitions filed on or after November 1, 2014; for nonapplicability of three-year approval period in subsection 2 to petitions filed prior to May 27, 2016, and to time limitations on actions of the Iowa utilities board, see 2016 Acts, ch 1138, §38, 39

478.7 Form of franchise.

The general counsel for the utilities board shall prepare a blank form of franchise, which shall provide space for a general description of the improvement authorized, the name and address of the person or corporation to whom granted, the general terms and conditions upon which the franchise is granted, and other things as necessary. This blank form shall be filled out and signed by the chairperson of the utilities board which grants the franchise, and the official seal shall be attached. The franchise is subject to regulations and restrictions as the general assembly prescribes, and to rules, not inconsistent with statutes, as the utilities board may establish.

[S13, §2120-n; C24, 27, 31, 35, 39, §**8314;** C46, 50, 54, 58, 62, §489.6; C66, 71, 73, 75, §489.7; C77, 79, 81, §478.7]

83 Acts, ch 127, §41

Legislative control in general, §491.39

478.8 Valuation of franchise.

No financial consideration shall be charged for such franchise. In fixing the value for rate-making purposes of the property of any person, company, or corporation owning it or operating under it no account shall be taken of, and no increased value shall be allowed

for, any such franchise, except that the reasonable cost to the petitioners of obtaining said franchise may be included in the cost of constructing said line.

[C24, 27, 31, 35, 39, §**8315;** C46, 50, 54, 58, 62, §489.7; C66, 71, 73, 75, §489.8; C77, 79, 81, §478.8]

478.9 Exclusive rights — duration of franchise.

No exclusive right shall ever be given by franchise or otherwise to any person, company, corporation or city to conduct electrical energy, or to place electric wires, along or over or across any public highway or public place or ground; and no franchise or privilege shall ever be granted for any such purpose for a longer period than twenty-five years.

[C24, 27, 31, 35, 39, §**8316;** C46, 50, 54, 58, 62, §489.8; C66, 71, 73, 75, §489.9; C77, 79, 81, §478.9]

478.10 Franchise transferable — notice.

When any such electric transmission line or lines are sold and transferred either by voluntary or judicial sale, such transfer shall carry with it the franchise under which the said improvement is owned, maintained, or operated. If a transfer of such franchise is made before the improvement for which it was issued is constructed, in whole or in part, such transfer shall not be effective till the person, company, or corporation to whom it was issued shall file in the office of the utilities board granting the franchise a notice in writing stating the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, §**8317;** C46, 50, 54, 58, 62, §489.9; C66, 71, 73, 75, §489.10; C77, 79, 81, §478.10]

478.11 Record of franchises.

The utilities board shall keep a record of all such franchises granted and issued by it, when and to whom issued, with a general statement of the location, route, and termini of the transmission line or lines covered thereby. When any transfer of such franchise has been made as provided in this chapter, the board shall also make note upon its record of the date of such transfer and the name and address of the transferee.

[C24, 27, 31, 35, 39, §**8318;** C46, 50, 54, 58, 62, §489.10; C66, 71, 73, 75, §489.11; C77, 79, 81, §478.11]

478.12 Acceptance of franchise.

Any person, company, or corporation obtaining a franchise as in this chapter provided, or owning or operating under one, shall be conclusively held to an acceptance of the provisions thereof and of all laws relating to the regulation, supervision, or control thereof which are now in force or which may be hereafter enacted, and to have consented to such reasonable regulation as the utilities board may, from time to time, prescribe. The provisions of this chapter shall apply equally to assignees as well as to original owners.

[S13, §2120-p; C24, 27, 31, 35, 39, §**8319;** C46, 50, 54, 58, 62, §489.11; C66, 71, 73, 75, §489.12; C77, 79, 81, §478.12]

478.13 Extension of franchise — public notice.

1. Any person, firm, or corporation owning a franchise granted under this chapter or previously existing law may petition the utilities board for an extension of the franchise. The board shall adopt rules governing extension applications and proceedings with the intent that the extension applications and proceedings are less extensive than original applications and proceedings. Assessment of costs shall be as provided in section 478.4.

2. If the extension of franchise is sought for all lines in a given county or counties, the published notice need not contain a general description of the lands and highways traversed by the lines, but in lieu of containing such description the petitioner may offer to provide to any interested party, free of charge and within ten working days, a current, accurate map showing the location of the lines for which the franchise extension is sought. The public notice shall advise the citizens of the county or counties affected of the availability of such map. If this alternate procedure is not followed, the publication of the description of the lands

and highways traversed by the lines shall be done in the manner as in an original application for franchise.

3. An extension under this section shall be granted only for a valid, existing franchise, and the lands, roads, or streams covered by the franchise over, through, or upon which electric transmission lines have in fact been erected or constructed and are in use or operation at the time of the application for the extension of the franchise.

4. The application for the extension of the franchise shall be accompanied by the written consent of the applicant that the provisions of all laws relating to public utilities, franchises, and transmission lines, or to the regulation, supervision, or control thereof which are then in force or which may be thereafter enacted, shall apply to its existing line or lines, franchises, and rights as if the franchise had been granted, the lines had been constructed, or rights had been obtained under the provisions of this chapter.

5. An extension of a franchise is not required for an electric transmission line that has been permanently retired from operation at sixty-nine kilovolts or more but that remains in service at a lower voltage. The board shall be notified of changes in operating status.

[S13, §2120-o; C24, 27, 31, 35, 39, §**8320;** C46, 50, 54, 58, 62, §489.12; C66, 71, 73, 75, §489.13; C77, 79, 81, §478.13]

94 Acts, ch 1136, §4; 97 Acts, ch 63, §1; 2002 Acts, ch 1048, §4, 5; 2002 Acts, ch 1097, §1

478.14 Service furnished.

1. Any city which owns or operates a system for the distribution of electric light or power, and which has obtained electric energy for such distribution from any person or firm or corporation owning or operating an electric light and power plant or transmission line, shall be entitled to have the service reasonably needed by such municipality and its patrons continued at and for a reasonable rate and charge and under reasonable rules of service.

2. It shall be unlawful for the owner or operator of the light and power plant or transmission line to disconnect or discontinue such service, except during nonpayment of reasonable charges, so long as the operator holds or enjoys any franchise to go upon or use any public streets, highways, or grounds.

3. Until the municipality and the operator shall agree upon a rate or charge for the service the municipality shall pay and the operator shall accept the rate provided in the expired contract if any existed, and, if none existed, then the rate before paid. This shall be without prejudice, however, to the right of either party to test in court or before any lawfully constituted rate-making tribunal the reasonableness of the rate.

4. This section shall not apply if the original service to the municipality was given in case of emergency or for any other temporary purpose.

[C24, 27, 31, 35, 39, §**8321;** C46, 50, 54, 58, 62, §489.13; C66, 71, 73, 75, §489.14; C77, 79, 81, §478.14]

2016 Acts, ch 1011, §87

478.15 Eminent domain — procedure — entering on land — reversion on nonuse.

1. Any person, company, or corporation having secured a franchise as provided in this chapter, shall thereupon be vested with the right of eminent domain to such extent as the utilities board may approve, prescribe and find to be necessary for public use, not exceeding one hundred feet in width for right-of-way and not exceeding one hundred sixty acres in any one location, in addition to right-of-way, for the location of electric substations to carry out the purposes of said franchise; provided however, that where two hundred K V lines or higher voltage lines are to be constructed, the person, company, or corporation may apply to the board for a wider right-of-way not to exceed two hundred feet, and the board may for good cause extend the width of such right-of-way for such lines to the person, company, or corporation applying for the same. The burden of proving the necessity for public use shall be on the person, company, or corporation seeking the franchise. A homestead site, cemetery, orchard, or schoolhouse location shall not be condemned for the purpose of erecting an electric substation. If agreement cannot be made with the private owner of lands as to damages caused by the construction of said transmission line, or electric substations,

the same proceedings shall be taken as provided for taking private property for works of internal improvement.

2. Any person, company, or corporation proposing to construct a transmission line or other facility which involves the taking of property under the right of eminent domain and desiring to enter upon the land, which it proposes to appropriate, for the purpose of examining or surveying the same, shall first file with the utilities board, a written statement under oath setting forth the proposed routing of the line or facility including a description of the lands to be crossed, the names and addresses of owners, together with request that a permit be issued by the board authorizing the person, company, or corporation or its duly appointed representative to enter upon the land for the purpose of examining and surveying and to take and use on the land any vehicle and surveying equipment necessary in making the survey. The board shall within ten days after the request issue a permit, accompanied by such bond in such amount as the board shall approve, to the person, company, or corporation making the application, if in the board's opinion the application is made in good faith and not for the purpose of harassing the owner of the land. If the board is of the opinion that the application is not made in good faith or made for the purpose of harassment to the owner of the land the board shall set the matter for hearing. The matter shall be heard not more than twenty days after filing the application. Notice of the time and place of hearing shall be given by the board, to the owner of the land by registered mail with a return receipt requested, not less than ten days preceding the date of hearing.

3. Any person, company, or corporation that has obtained a permit in the manner prescribed in this section may enter upon the land or lands, as provided in this section, and shall be liable for actual damages sustained in connection with such entry. An action in damages shall be the exclusive remedy.

4. If an electric transmission line right-of-way, or any part thereof, is wholly abandoned for public utility purposes by the relocation of the transmission lines, is not used or operated for a period of five years, or if its construction has been commenced and work has ceased and has not in good faith been resumed for five years, the right-of-way shall revert to the person or persons who, at the time of the abandonment or reversion, are the owners of the tract from which the right-of-way was taken. Following such abandonment of right-of-way, the owner or holder of purported fee title to the real estate may serve notice upon the owner of the right-of-way easement, or the owner's successor in interest, and upon any party in possession of the real estate, a written notice which shall accurately describe the real estate in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

5. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication no affidavit therefor shall be required before publication. If no affidavit disputing the facts contained in the notice is filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached thereto or endorsed thereon, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of the right-of-way.

[S13, §2120-q; C24, 27, 31, 35, 39, §**8322;** C46, 50, 54, 58, 62, §489.14; C66, 71, 73, 75, §489.15; C77, 79, 81, §478.15]

2015 Acts, ch 30, §155

Condemnation procedure, chapter 6B

478.16 Reserved.

478.17 Access to lines — damages.

Individuals or corporations operating such transmission lines shall have reasonable access to the same for the purpose of constructing, reconstructing, enlarging, repairing, or locating

the poles, wires, or construction and other devices used in or upon such line, but shall pay to the owner of such lands and of crops thereon all damages to said lands or crops caused by entering, using, and occupying said lands for said purposes. Nothing herein contained shall prevent the execution of an agreement between the person or company owning or operating such line and the owner of said land or crops with reference to the use thereof.

[S13, §2120-t; C24, 27, 31, 35, 39, §**8324;** C46, 50, 54, 58, 62, §489.16; C66, 71, 73, 75, §489.17; C77, 79, 81, §478.17]

478.18 Supervision of construction — location.

1. The utilities board shall have power of supervision over the construction of a transmission line and over its future operation and maintenance.

2. A transmission line shall be constructed near and parallel to roads, to the right-of-way of the railways of the state, or along the division lines of the lands, according to the government survey, wherever the same is practicable and reasonable, and so as not to interfere with the use by the public of the highways or streams of the state, nor unnecessarily interfere with the use of any lands by the occupant.

[S13, §2120-r; C24, 27, 31, 35, 39, §**8325;** C46, 50, 54, 58, 62, §489.17; C66, 71, 73, 75, §489.18; C77, 79, 81, §478.18]

2002 Acts, ch 1097, §2

Removal from highway, chapter 318

478.19 Manner of construction.

1. Transmission lines shall be built of strong and proper wires attached to strong and sufficient supports properly insulated at all points of attachment; all wires, poles, and other devices which by ordinary wear or other causes are no longer safe shall be removed and replaced by new wires, poles, or other devices, as the case may be, and all abandoned wires, poles, or other devices shall be at once removed. Where wires carrying current are carried across, either above or below wires used for other service, the said transmission line shall be constructed in such manner as to eliminate, so far as practicable, damages to persons or property by reason of said crossing. There shall also be installed sufficient devices to automatically shut off electric current through said transmission line whenever connection is made whereby current is transmitted from the wires of said transmission line to the ground, and there shall also be provided a safe and modern improved device for the protection of said line against lightning. The utilities board shall have power to make and enforce such further and additional rules relating to location, construction, operation and maintenance of transmission lines as may be reasonable.

2. All transmission lines, wires or cables outside of cities for the transmission, distribution or sale of electric current at any voltage shall be constructed and maintained in accordance with standards adopted by rule by the utilities board.

[S13, §2120-r; C24, 27, 31, 35, 39, §**8326;** C46, 50, 54, 58, 62, §489.18; C66, 71, 73, 75, §489.19; C77, 79, 81, §478.19]

84 Acts, ch 1101, §3; 2018 Acts, ch 1026, §147

478.20 Distance from buildings.

No transmission line shall be constructed, except by agreement, within one hundred feet of any dwelling house or other building, except where said line crosses or passes along a public highway or is located alongside or parallel with the right-of-way of any railway company. In addition to the foregoing, each person, company, or corporation shall conform to any other rules, regulations, or specifications established by the utilities board, in the construction, operation, or maintenance of such lines.

[S13, §2120-r; C24, 27, 31, 35, 39, §**8327;** C46, 50, 54, 58, 62, §489.19; C66, 71, 73, 75, §489.20; C77, 79, 81, §478.20]

478.21 Nonuse — revocation of franchise — extensions of time.

1. If the improvement for which a franchise is granted is not constructed in whole or in part within two years from the date the franchise is granted, or within two years after

final unappealable disposition of judicial review of a franchise order or of condemnation proceedings, the franchise shall be forfeited and the utilities board which granted the franchise shall revoke the franchise and make a record of the revocation, unless the person holding the franchise petitions the board for an extension of time.

2. Upon a showing of sufficient justification for the delay of construction, the board may grant one or more extensions of time for periods up to two years for each extension.

[C24, 27, 31, 35, 39, §**8329;** C46, 50, 54, 58, 62, §489.20; C66, 71, 73, 75, §489.21; C77, 79, 81, §478.21]

94 Acts, ch 1136, §5; 2002 Acts, ch 1097, §3

Referred to in §478.6A

478.22 Action for violation.

When the board determines that a person is in violation of this chapter, the board may commence an action in the district court of the county in which the violation is alleged to have occurred, for injunctive relief or other appropriate remedy.

[C24, 27, 31, 35, 39, §**8330;** C46, 50, 54, 58, 62, §489.21; C66, 71, 73, 75, §489.22; C77, 79, 81, §478.22]

91 Acts, ch 112, §1

478.23 Prior franchises — legislative control.

Any such franchise heretofore granted under previously existing law shall not be abrogated by the provisions of this chapter, but all such franchises and all franchises granted under the provisions of this chapter shall be subject to further legislative control.

[C24, 27, 31, 35, 39, §**8331;** C46, 50, 54, 58, 62, §489.22; C66, 71, 73, 75, §489.23; C77, 79, 81, §478.23]

478.24 Violations.

Any person, company or corporation constructing or undertaking to construct or maintain any electric transmission line, without first procuring a franchise for such purpose in accordance with the provisions of this chapter, shall be guilty of a serious misdemeanor; and for violating any of the other provisions of this chapter relating to electric transmission lines or disobeying any order or rule made by the utilities board in relation thereto, shall be guilty of a simple misdemeanor.

[S13, §1527-d; C24, 27, 31, 35, 39, §**8332;** C46, 50, 54, 58, 62, §489.23; C66, 71, 73, 75, §489.24; C77, 79, 81, §478.24]

478.25 Wire crossing railroads — supervision.

The utilities board shall have general supervision over any and all wires whatsoever crossing under or over any railway track and shall make rules prescribing the manner in which such wires shall cross such track; but in no case shall the board prescribe a less height for any wire than twenty-two feet above the top of the rails of any railroad track.

[S13, §2120-d, -e, -h; C24, 27, 31, 35, 39, §**8333;** C46, 50, 54, 58, 62, §489.24; C66, 71, 73, 75, §489.25; C77, 79, 81, §478.25]

478.26 Wires across railroad right-of-way at highways.

The utilities board shall prescribe the manner for the crossing of wires over and across railroad rights-of-way at highways and other places within the state.

[S13, §2120-i; C24, 27, 31, 35, 39, §**8334;** C46, 50, 54, 58, 62, §489.25; C66, 71, 73, 75, §489.26; C77, 79, 81, §478.26]

478.27 Wires — how strung.

No corporation or person shall place or string any such wire for transmitting electric current or any wire whatsoever across any track of a railroad except in the manner prescribed by the utilities board.

[S13, §2120-f; C24, 27, 31, 35, 39, §**8335;** C46, 50, 54, 58, 62, §489.26; C66, 71, 73, 75, §489.27; C77, 79, 81, §478.27]

478.28 Examination of existing wires.

The utilities board shall, either by personal examination or otherwise, obtain information where railroad tracks are crossed by wires contrary to, or not in compliance with, the rules prescribed by it. It shall order such change or changes to be made by the persons or corporations owning or operating such wires as may be necessary to make the same comply with said rules and within such reasonable time as it may prescribe.

[S13, §2120-g; C24, 27, 31, 35, 39, §**8336;** C46, 50, 54, 58, 62, §489.27; C66, 71, 73, 75, §489.28; C77, 79, 81, §478.28]

478.29 Civil penalties.

1. A person who violates a provision of this chapter is subject to a civil penalty, which may be levied by the board, of not more than one hundred dollars per violation or one thousand dollars per day of a continuing violation, whichever is greater. Civil penalties collected pursuant to this section shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

2. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance after notification of a violation.

[S13, §2120-j; C24, 27, 31, 35, 39, §**8337;** C46, 50, 54, 58, 62, §489.28; C66, 71, 73, 75, §489.29; C77, 79, 81, §478.29]

83 Acts, ch 127, §42; 91 Acts, ch 112, §2; 2017 Acts, ch 169, §44, 49; 2018 Acts, ch 1160, §24

478.30 Crossing highway.

Nothing in this chapter shall prevent any such individual or corporation having its high tension line on its own private right-of-way on both sides of any highway, from crossing such public highway under such rules and regulations as the utilities board may prescribe, and subject from time to time to legislative control as to duration and use.

[C24, 27, 31, 35, 39, §**8338;** C46, 50, 54, 58, 62, §489.29; C66, 71, 73, 75, §489.30; C77, 79, 81, §478.30]

478.31 Temporary permits for lines less than one mile.

1. Notwithstanding the provisions of section 478.1, any person, company, or corporation proposing to construct an electric transmission line not exceeding one mile in length and which does not involve the taking of property under the right of eminent domain may obtain a temporary construction permit from the utilities board by proceeding in the manner set forth in this section. The person, company, or corporation shall first file with the board a verified petition setting forth the requirements of section 478.3, subsection 1, paragraphs *"a"* through *"h"*, with the further allegation that the petitioner is the nearest electric utility to the proposed point of service.

2. The petition shall also state that the filing thereof constitutes an application for a temporary construction permit and shall also have endorsed thereon the approval of the appropriate highway authority or railroad concerned if such line is to be constructed over, across, or along a public highway or railroad.

3. Upon receipt of the petition, the utilities board shall consider same and may grant a temporary construction permit in whole or in part or upon such terms, conditions and restrictions, and with such modifications as to location as may seem to it just and proper. A finding of public use shall not be made at the time of the issuance of the permit, but shall be made, if substantiated by petitioner, at the subsequent consideration of the propriety of granting a franchise for the line subject to the permit. The signature of one utilities board member on the permit shall be sufficient. The issuance of the permit shall constitute temporary authority for the permit holder to construct the line for which the permit is granted.

4. Upon the granting of such temporary construction permit, the utilities board shall cause the publication of notice required by section 478.5 and all other requirements shall be complied with as in the manner provided for the granting of a franchise. If a hearing is required, then the petitioner shall make a sufficient and proper showing thereat before a franchise will be issued for the line. Any franchise issued will be subject to all applicable provisions of this chapter.

5. Notwithstanding subsections 1 through 4, if the utilities board shall determine that a franchise should not be granted, or that further restrictions, conditions, or modifications are required, or if the petitioner shall fail to make a sufficient and proper showing of the necessity for the granting of a franchise within six months of the granting of the temporary construction permit, the permit issued hereunder shall become null and void and the permit holder may be required to take such action deemed necessary by the board to remove, modify, or relocate the construction undertaken by virtue of the temporary permit issued hereunder.

[C66, 71, 73, 75, §489.31; C77, 79, 81, §478.31]

2015 Acts, ch 30, §156

478.32 Rehearing — judicial review.

Any person, company, or corporation aggrieved by the action of the utilities board in granting or failing to grant a franchise under the provisions of this chapter, shall be entitled to the rehearing procedure provided in section 476.12. Judicial review of actions of the board may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, §489.32; C77, 79, 81, §478.32]

2003 Acts, ch 44, §114

478.33 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of an electric transmission line shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel any agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record any agreement until after the period for cancellation has expired.

4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each transmission line project.

[C81, §478.33]

478.34 and 478.35 Reserved.

478.36 Subsequent construction near buried line. Repealed by 92 Acts, ch 1103, §11, 12. See chapter 480.

CHAPTER 478A

GAS LAMPS

478A.1 through 478A.6 Repealed by 82 Acts, ch 1163, §1.
478A.7 Decorative gas lamps.

478A.1 through 478A.6 Repealed by 82 Acts, ch 1163, §1.

478A.7 Decorative gas lamps.

1. Commencing January 1, 1979 a person shall not sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978.

2. As used in this section *"decorative gas lamp"* means a device installed for the purpose of producing illumination by burning natural, mixed or liquid petroleum gas and utilizing either a mantle or an open flame, but does not include portable camp lanterns or gas lamps.

3. Persons convicted of violating this section shall be guilty of a simple misdemeanor.

4. Notwithstanding subsection 1, commencing January 1, 1990, a person may sell or offer for sale in this state a decorative gas lamp manufactured after December 31, 1978, if the utilities board within the utilities division of the department of commerce determines, after notice and an opportunity for interested persons to comment at an oral presentation, that the sale or offer for sale of decorative gas lamps does not violate the public interest.

[C79, 81, §478A.7]

89 Acts, ch 297, §14

CHAPTER 479

PIPELINES AND UNDERGROUND GAS STORAGE

Referred to in §6B.2A, 6B.42, 306A.3, 318.9, 428.24, 428.26, 428.28, 437A.3, 437A.5, 438.1, 438.2, 455B.471, 474.1, 474.9, 546.7

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479.1 Purpose — applicability.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to supervise the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state by pipeline, whether specifically mentioned in this chapter or not, and the power and authority to supervise the underground storage of gas, to protect the safety and welfare of the public in its use of public or private highways, grounds, waters, and streams of any kind in this state. However, this chapter does not apply to interstate natural gas or hazardous liquid pipelines, pipeline companies, and underground storage, as these terms are defined in chapters 479A and 479B.

[C35, §8338-f14; C39, §**8338.22;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.1; C77, 79, 81, §479.1]

88 Acts, ch 1074, §27; 95 Acts, ch 192, §5

479.2 Definitions.

As used in this chapter:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Pipeline"* means a pipe, pipes, or pipelines used for the transportation or transmission of a solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas or hazardous liquids.

3. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any solid, liquid, or gaseous substance, except water, within or through this state. However, the term does not include a person owning, operating, or controlling interstate pipelines for the transportation or transmission of natural gas or hazardous liquids.

4. *"Underground storage"* means storage of gas in a subsurface stratum or formation of the earth.

[C31, §8338-d1; C35, §8338-f15; C39, §**8338.23;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.2; C77, 79, 81, §479.2]

88 Acts, ch 1074, §28; 95 Acts, ch 192, §6

Referred to in §352.6

479.3 Conditions attending operation.

No pipeline company shall construct, maintain or operate any pipeline or lines under, along, over or across any public or private highways, grounds, waters or streams of any kind in this state except in accordance with the provisions of this chapter.

[C31, §8338-d2; C35, §8338-f16; C39, §**8338.24;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.3; C77, 79, 81, §479.3]

479.4 Dangerous construction — inspection.

1. The board is vested with power and authority and it shall be the board's duty to supervise all pipelines and underground storage and pipeline companies and, from time to time, to inspect and examine the construction, maintenance, and condition of the pipelines and underground storage facilities. Whenever the board shall determine that any pipeline and underground storage facilities or any apparatus, device, or equipment used in connection therewith is unsafe and dangerous, the board shall immediately in writing notify the pipeline company which is constructing or operating the pipeline and underground storage facilities, device, apparatus, or other equipment to repair or replace any defective or unsafe part or portion of the pipeline and underground storage facilities, device, apparatus, or equipment.

2. All faulty construction, as determined by the inspector, shall be repaired immediately by the contractor operating for the pipeline company and the cost of such repairs shall be paid by the contractor. If such repairs are not made by the contractor, the board shall proceed to collect under the provisions of section 479.26.

[C31, §8338-d29; C35, §8338-f17; C39, §**8338.25;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.4; C77, 79, 81, §479.4]

2018 Acts, ch 1041, §101; 2019 Acts, ch 24, §67

See also §479.29

Subsection 1 amended

479.5 Application for permit.

1. A pipeline company doing business in this state shall file with the board its verified petition asking for a permit to construct, maintain and operate its pipeline or lines along, over or across the public or private highways, grounds, waters and streams of any kind of this state. Any pipeline company now owning or operating a pipeline in this state shall be issued a permit by the board upon supplying the information as provided for in section 479.6.

2. A pipeline company doing business in this state and proposing to engage in underground storage of gas within this state shall file with the board its verified petition asking for a permit to construct, maintain and operate facilities for the underground

storage of gas to include the construction, placement, maintenance and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance and operation of the gas underground storage facilities.

3. *a.* A pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board or a person designated by the board shall serve as the presiding officer at each meeting, shall present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners, and shall distribute and review the statement of individual rights required under section 6B.2A. A formal record of the meeting shall not be required.

b. The meeting shall be held at a location reasonably accessible to all persons, companies, or corporations which may be affected by the granting of the permit.

4. *a.* The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each person determined to be a landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, *"landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and *"pipeline"* means a line transporting a solid, liquid, or gaseous substance, except water, under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

b. The notice shall set forth the name of the applicant; the applicant's principal place of business; the general description and purpose of the proposed project; the general nature of the right-of-way desired; the possibility that the right-of-way may be acquired by condemnation if approved by the utilities board; a map showing the route of the proposed project; a description of the process used by the utilities board in making a decision on whether to approve a permit including the right to take property by eminent domain; that the landowner has a right to be present at such meeting and to file objections with the board; and a designation of the time and place of the meeting. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

5. A pipeline company seeking rights under this chapter shall not negotiate or purchase any easements or other interests in land in any county known to be affected by the proposed project prior to the informational meeting.

[C31, §8338-d3; C35, §8338-f18; C39, §**8338.26;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.5; C77, 79, 81, §479.5]

88 Acts, ch 1074, §29; 95 Acts, ch 192, §7; 2000 Acts, ch 1179, §24, 30; 2014 Acts, ch 1026, §109

Referred to in §6B.2A, 479.30

479.6 Petition.

Said petition shall state:

1. The name of the individual, firm, corporation, company, or association asking for said permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of said proposed line or lines, together with a map thereof.

4. A general description of the public or private highways, grounds and waters, streams and private lands of any kind along, over or across which said proposed line or lines will pass.

5. The specifications of material and manner of construction.

6. The maximum and normal operating pressure under which it is proposed to transport any solid, liquid, or gaseous substance, except water.

7. If permission is sought to construct, maintain and operate facilities for the underground

storage of gas said petition shall include the following information in addition to that stated above:

a. A description of the public or private highways, grounds and waters, streams and private lands of any kind under which such storage is proposed, together with a map thereof.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells and stations necessary for the construction, maintenance and operation of such gas underground storage facilities.

8. The possible use of alternative routes.

9. The relationship of the proposed project to the present and future land use and zoning ordinances.

10. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

11. By affidavit, that informational meetings were held in each county which the proposed project will affect and the time and place of each meeting.

[C31, §8338-d4; C35, §8338-f19; C39, §**8338.27;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.6; C77, 79, 81, §479.6]

Referred to in §479.5, 479.23

479.7 Hearing — notice.

1. Upon the filing of the petition, the board shall fix a date for hearing on the petition and shall cause notice of hearing to be published in some newspaper of general circulation in each county through which the proposed line or lines or gas storage facilities will extend. The notice shall be published for two consecutive weeks.

2. Where a petition seeks the use of the right of eminent domain over specific parcels of real property, the board shall prescribe the notice to be served upon the owners of record and parties in possession of the property over which the use of the right of eminent domain is sought. The notice shall include the statement of individual rights required pursuant to section 6B.2A.

[C31, §8338-d5; C35, §8338-f20; C39, §**8338.28;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.7; C77, 79, 81, §479.7]

2000 Acts, ch 1179, §25, 30; 2018 Acts, ch 1026, §148

479.8 Time and place.

The hearing shall not be less than ten days nor more than thirty days from the date of the last publication and where the proposed new pipeline would operate under pressure exceeding one hundred fifty pounds per square inch and exceed five miles in length, shall be held in the county seat of the county located at the midpoint of the proposed line or lines or the county in which the proposed gas storage facility would be located.

[C31, §8338-d6; C35, §8338-f21; C39, §**8338.29;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.8; C77, 79, 81, §479.8; 81 Acts, ch 159, §10]

479.9 Objections.

Any person, corporation, company or city whose rights or interests may be affected by said pipeline or lines or gas storage facilities may file written objections to said proposed pipeline or lines or gas storage facilities or to the granting of said permit.

[C31, §8338-d7; C35, §8338-f22; C39, §**8338.30;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.9; C77, 79, 81, §479.9]

479.10 Filing.

All such objections shall be on file in the office of said board not less than five days before the date of hearing on said application but said board may permit the filing of said objections later than five days before said hearing, in which event the applicant must be granted a reasonable time to meet said objections.

[C31, §8338-d8; C35, §8338-f23; C39, §**8338.31;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.10; C77, 79, 81, §479.10]

479.11 Examination — testimony.

The said board may examine the proposed route of said pipeline or lines and location of said gas storage area, or may cause such examination to be made by an engineer selected by it. At said hearing the said board shall consider said petition and any objections filed thereto and may in its discretion hear such testimony as may aid it in determining the propriety of granting such permit.

[C31, §8338-d9; C35, §8338-f24; C39, §**8338.32;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.11; C77, 79, 81, §479.11]

479.12 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to safety requirements and as to location and route as determined by it to be just and proper. Before a permit is granted to a pipeline company, the board, after a public hearing as provided in this chapter, shall determine whether the services proposed to be rendered will promote the public convenience and necessity, and an affirmative finding to that effect is a condition precedent to the granting of a permit.

[C31, §8338-d10; C35, §8338-f25; C39, §**8338.33;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.12; C77, 79, 81, §479.12]

88 Acts, ch 1074, §30

Referred to in §479.18

479.13 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to construction inspections conducted by the board or the board's designee.

[C31, §8338-d11, -d12; C35, §8338-f26; C39, §**8338.34;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.13; C77, 79, 81, §479.13]

88 Acts, ch 1074, §31

479.14 Inspection fee.

The board may, in accordance with section 476.10, charge a pipeline company with an annual inspection fee that is directly attributable to the costs of conducting annual inspections pursuant to this chapter.

[C31, §8338-d13; C35, §8338-f27; C39, §**8338.35;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.14; C77, 79, 81, §479.14]

88 Acts, ch 1074, §32; 2018 Acts, ch 1160, §25

479.15 Failure to pay.

It shall be the duty of the board to collect all inspection fees provided in this chapter, and failure to pay any such inspection fee within thirty days after the time the same shall become due shall be cause for revocation of the permit.

[C35, §8338-f28; C39, §**8338.36;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.15; C77, 79, 81, §479.15]

479.16 Receipt of funds.

All moneys received under this chapter shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

[C31, §8338-d14; C35, §8338-f29, -f30; C39, §**8338.37, 8338.38;** C46, 50, 54, 58, 62, 66, 71, §490.16, 490.17; C73, 75, §490.17; C77, 79, 81, §479.16]

87 Acts, ch 234, §432; 94 Acts, ch 1107, §83; 2009 Acts, ch 181, §54

Referred to in §476.10

479.17 Rules.

The said board shall have full authority and power to promulgate such rules as it deems proper and expedient to insure the orderly conduct of the hearings herein provided for and also to prescribe rules for the enforcement of this chapter.

[C31, §8338-d15; C35, §8338-f31; C39, §**8338.39;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.18; C77, 79, 81, §479.17]

479.18 Permit.

The board shall prepare and issue any permit granted in accordance with section 479.12. Said permit shall show the name and address of the pipeline company to which it is issued and identify by reference thereto the decision and order of the board under which said permit is issued. It shall be signed by the chairperson of the board and the official seal of the board shall be affixed thereto.

[C31, §8338-d16; C35, §8338-f32; C39, §**8338.40;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.19; C77, 79, 81, §479.18]

479.19 Limitation on grant.

No exclusive right shall ever be granted to any pipeline company to construct, maintain, and operate its pipeline or lines along, over or across any public highway, grounds or waters and no such permit shall ever be granted for a longer period than twenty-five years.

[C31, §8338-d17; C35, §8338-f33; C39, §**8338.41;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.20; C77, 79, 81, §479.19]

479.20 Sale of permit.

No permit shall be sold until the sale is approved by the board.

[C35, §8338-f34; C39, §**8338.42;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.21; C77, 79, 81, §479.20]

479.21 Transfer of permit.

If a transfer of such permit is made before the construction for which it was issued is completed in whole or in part such transfer shall not be effective until the person, company or corporation to whom it was issued shall file in the office of said board a notice in writing stating the date of such transfer and the name and address of said transferee.

[C31, §8338-d11; C35, §8338-f35; C39, §**8338.43;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.22; C77, 79, 81, §479.21]

479.22 Records.

The board shall keep a record of all permits granted and issued by it, showing when and to whom issued and the location and route of said pipeline or lines or gas storage area covered thereby. When any transfer of such permit has been made as provided in this chapter the said board shall also note upon its record the date of such transfer and the name and address of such transferee.

[C31, §8338-d20; C35, §8338-f36; C39, §**8338.44;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.23; C77, 79, 81, §479.22]

479.23 Extension of permit.

A pipeline company may petition the board for the extension of a permit granted under this chapter by filing a petition containing the information required by section 479.6, subsections 1 through 4, 6, and 7, and section 479.26.

[C31, §8338-d22; C35, §8338-f37; C39, §**8338.45;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.24; C77, 79, 81, §479.23]

95 Acts, ch 192, §8

479.24 Eminent domain.

1. A pipeline company granted a pipeline permit under this chapter shall be vested with the right of eminent domain* to the extent necessary and as prescribed and approved by the

board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

2. A pipeline company having secured a permit for underground storage of gas shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of gas any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of gas, and may appropriate other interests in property, as may be required to adequately examine, prepare, maintain, and operate the underground gas storage facilities. This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

[C31, §8338-d23; C35, §8338-f38; C39, §**8338.46;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.25; C77, 79, 81, §479.24]

95 Acts, ch 192, §9; 2018 Acts, ch 1041, §127

*See *Mid-America Pipeline Company v. Iowa State Commerce Commission*, 253 Iowa 1143 (1962)

Eminent domain, chapters 6A and 6B

479.25 Damages.

A pipeline company operating a pipeline or a gas storage area shall have reasonable access to the pipeline or gas storage area for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus or other stations, wells, devices, or equipment used in or upon the pipeline or gas storage area; shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the land; and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section shall not prevent the execution of an agreement between the pipeline company and the owner of land or crops with reference to the use of the land.

[C31, §8338-d26; C35, §8338-f39; C39, §**8338.47;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.26; C77, 79, 81, §479.25]

95 Acts, ch 192, §10

479.26 Financial condition of permittee — bond.

Before any permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction or operation of its pipeline and gas storage facilities in the state of Iowa. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

[C31, §8338-d27; C35, §8338-f40; C39, §**8338.48;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.27; C77, 79, 81, §479.26; 81 Acts, ch 159, §11]

Referred to in §479.4, 479.23

479.27 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located shall have jurisdiction.

[C31, §8338-d28; C35, §8338-f41; C39, §**8338.49;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.28; C77, 79, 81, §479.27]

95 Acts, ch 192, §11

479.28 Orders — enforcement.

If said pipeline company fails to obey an order within a time prescribed by the said board the said board may commence an equitable action in the district court of the county where said defective, unsafe, or dangerous portion of said pipeline, device, apparatus or equipment is located to compel compliance with its said order. If, after due trial of said action the court finds that said order is reasonable, equitable and just, it shall decree a mandatory injunction compelling obedience to and compliance with said order and may grant such other relief as may be just and proper. Appeal from said decree may be taken in the same manner as in other actions.

[C31, §8338-d30; C35, §8338-f42; C39, §**8338.50;** C46, 50, 54, 58, 62, 66, 71, 73, 75, §490.29; C77, 79, 81, §479.28]

Appeal in civil actions, chapter 625A

479.29 Land restoration.

1. The board shall, pursuant to chapter 17A, adopt rules establishing standards for the restoration of agricultural lands during and after pipeline construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

a. Topsoil separation and replacement.

b. Temporary and permanent repair to drain tile.

c. Removal of rocks and debris from the right-of-way.

d. Restoration of areas of soil compaction.

e. Restoration of terraces, waterways, and other erosion control structures.

f. Revegetation of untilled land.

g. Future installation of drain tile or soil conservation structures.

h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A professional engineer familiar with the standards adopted under this section and licensed under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be borne by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the

standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan, or with an independent agreement on land restoration or line location executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties pursuant to section 479.31.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to insure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The petitioners shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted pursuant to this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For purposes of this section, "*construction*" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

[C73, 75, 77, 79, §479.4; C81, §479.29; 81 Acts, ch 159, §12, 13]

95 Acts, ch 192, §12; 99 Acts, ch 85, §1, 11; 2007 Acts, ch 126, §85; 2008 Acts, ch 1032, §64

Referred to in §331.303

479.30 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine the direction or depth of a pipeline by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479.5 and to any person residing on or in possession of the land. The entry for land surveys authorized in this section shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

[C81, §479.30]

95 Acts, ch 192, §13

479.31 Civil penalty.

1. A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board not to exceed one hundred thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed one million dollars for any related series of violations. Civil penalties collected pursuant to this section shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

2. Any civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

[C71, 73, 75, §490.31; C77, 79, §479.29; C81, §479.31]

91 Acts, ch 112, §3; 95 Acts, ch 192, §14; 2013 Acts, ch 2, §1; 2017 Acts, ch 169, §45, 49; 2018 Acts, ch 1160, §26

Referred to in §479.29

479.32 Rehearing — judicial review.

Rehearing procedure for any person, company or corporation aggrieved by the action of the board in granting or failing to grant a permit under the provisions of this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of the Iowa administrative procedure Act, chapter 17A.

[C71, 73, 75, §490.32; C77, 79, §479.30; C81, §479.32]

2003 Acts, ch 44, §114

479.33 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. §60101 – 60125.

[C71, 73, 75, §490.33; C77, 79, §479.31; C81, §479.33]

88 Acts, ch 1074, §33; 95 Acts, ch 49, §13

479.34 Cancellation.

A person seeking to acquire an easement or other property interest for the construction, maintenance or operation of a pipeline shall:

1. Allow the landowner or a person serving in a fiduciary capacity in the landowner's behalf to cancel an agreement granting an easement or other interest by certified mail with return requested to the company's principal place of business if received by the company within seven days, excluding Saturday and Sunday, of the date of the contract and inform the landowner or such fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or such fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record any agreement until after the period for cancellation has expired.

4. Not include in the agreement any waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

[C81, §479.34]

479.35 through 479.40 Reserved.

479.41 Arbitration agreements.

1. If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a judicial magistrate in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the judicial magistrate by restricted certified mail to the other party and file proof of mailing with the petition. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

2. For purposes of this section only, *"landowner"* means the persons who signed the easement or other written agreement, their heirs, successors, and assigns.

[81 Acts, ch 159, §2, 3]

95 Acts, ch 192, §15; 2018 Acts, ch 1041, §127

479.42 Subsequent pipelines.

1. A pipeline company shall not install a subsequent pipeline upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved, unless the damage claim is under litigation, arbitration, or a proceeding pursuant to section 479.46.

2. With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit in writing their claims for damages caused by installation of the pipeline within one year of final cleanup on the real property.

[81 Acts, ch 159, §2, 4]

95 Acts, ch 192, §16; 2018 Acts, ch 1041, §127

479.43 Damage agreement.

A pipeline company shall not install a pipeline until there is a written statement on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The company shall provide a copy of the statement to the landowner.

[81 Acts, ch 159, §2, 5]

479.44 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross the property, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

[81 Acts, ch 159, §2, 6]

479.45 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the company in writing fourteen days prior to harvest in each year to assess crop deficiency.

[81 Acts, ch 159, §2, 7]

99 Acts, ch 85, §2, 11

479.46 Determination of installation damages.

1. The county board of supervisors shall determine when installation of a pipeline has been completed in that county for the purposes of this section. Not less than ninety days after the completion of installation, and if an agreement cannot be made as to damages, a landowner whose land was affected by the installation of the pipeline or a pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from the installation of the pipeline.

2. *a.* If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district of the county for the appointment of a compensation commission as provided in section 6B.4.

b. The application shall contain the following:

(1) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(2) A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

(3) The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. *a.* After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating the following:

(1) That a compensation commission has been appointed to determine the damages caused by the installation of the pipeline.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or the landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisement of damages shall be consolidated into one application, notice, and appraisement. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the installation of the pipeline and they shall file their report with the sheriff. The appraisement of damages returned by the commissioners is final unless appealed. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisement of damages was made, the amount of the appraisement, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse

the date of mailing of notice on the original appraisement of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the final offer of the pipeline company prior to the determination of damages. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, *"damages"* means compensation for damages to the land, crops, and other personal property caused by the construction activity of installing a pipeline and its attendant structures but does not include compensation for a property interest, and *"landowner"* includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

[81 Acts, ch 159, §2, 8]

95 Acts, ch 192, §17; 2000 Acts, ch 1179, §26, 30; 2011 Acts, ch 25, §143; 2018 Acts, ch 1160, §27

Referred to in §479.42

479.47 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

[81 Acts, ch 159, §2, 9]

83 Acts, ch 128, §1, 2; 87 Acts, ch 23, §56; 92 Acts, ch 1103, §9; 95 Acts, ch 192, §18

Referred to in §479.48

479.48 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of a pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit

with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479.49, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479.47, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §3, 11; 2000 Acts, ch 1139, §1

Manner of service, R.C.P. 1.302 – 1.315

479.49 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §2

Referred to in §479.48

CHAPTER 479A

INTERSTATE NATURAL GAS PIPELINES

Referred to in §6B.42, 474.1, 474.9, 479.1, 546.7

479A.1 Purpose.
479A.2 Definitions.
479A.3 Conditions attending operation. Repealed by 2005 Acts, ch 32, §3.
479A.4 Construction inspection.
479A.5 Notice prior to construction. Repealed by 2005 Acts, ch 32, §3.
479A.6 Cost of construction inspection. Repealed by 2005 Acts, ch 32, §3.
479A.7 Annual inspection fee.
479A.8 Failure to pay — penalties. Repealed by 2005 Acts, ch 32, §3.
479A.9 Deposit of funds.
479A.10 Rules. Repealed by 2005 Acts, ch 32, §3.
479A.11 Damages.
479A.12 through 479A.17 Repealed by 2005 Acts, ch 32, §3.
479A.18 Federal inspection.
479A.19 through 479A.28 Repealed by 2005 Acts, ch 32, §3.

479A.1 Purpose.

It is the purpose of the general assembly in enacting this law to confer upon the utilities board the power and authority to act as an agent for the federal government in determining

pipeline company compliance with the standards of the federal government for pipelines within the boundaries of the state.

88 Acts, ch 1074, §1; 2005 Acts, ch 32, §2

479A.2 Definitions.

As used in this chapter, unless the context requires otherwise:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Pipeline"* means an interstate pipe, pipes, or pipelines used for the transportation or transmission of natural gas within or through this state.

3. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines.

4. *"Underground storage"* means the storage of natural gas in a subsurface stratum or formation of the earth by a pipeline company.

88 Acts, ch 1074, §2

Referred to in §437A.5

479A.3 Conditions attending operation. Repealed by 2005 Acts, ch 32, §3.

479A.4 Construction inspection.

The board shall supervise pipelines, pipeline companies, and underground storage, and shall inspect the construction, maintenance, and condition of pipelines and underground storage facilities in accordance with section 479A.18. When inspecting for safety standard compliance, the board shall apply only United States department of transportation safety standards.

88 Acts, ch 1074, §4

479A.5 Notice prior to construction. Repealed by 2005 Acts, ch 32, §3.

479A.6 Cost of construction inspection. Repealed by 2005 Acts, ch 32, §3.

479A.7 Annual inspection fee.

A pipeline company shall pay an annual inspection fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in this state. The annual inspection fee shall be paid for the calendar year in advance between January 1 and February 1 of each year.

88 Acts, ch 1074, §7

479A.8 Failure to pay — penalties. Repealed by 2005 Acts, ch 32, §3.

479A.9 Deposit of funds.

Moneys received under this chapter shall be credited to the department of commerce revolving fund created in section 546.12 as provided in section 476.10.

88 Acts, ch 1074, §9; 94 Acts, ch 1107, §84; 99 Acts, ch 85, §10, 11; 2009 Acts, ch 181, §55

Referred to in §476.10

479A.10 Rules. Repealed by 2005 Acts, ch 32, §3.

479A.11 Damages.

A pipeline company operating pipelines or underground storage shall be given reasonable access to the pipelines and storage areas for the purpose of constructing, operating, maintaining, or locating their pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon a pipeline or storage area, but shall pay the owner of the lands for the right of entry and the owner of crops on the land all damages caused by entering, using, or occupying the lands for these purposes; and shall pay to the owner of the lands, after the completion of construction of the pipeline or storage, all damages caused by settling of the soil along and above the pipeline, and wash or erosion of the soil along the

pipeline due to the construction of the pipeline. However, this section does not prevent the execution of an agreement with other terms between the pipeline company and the owner of the land or crops with reference to their use.

88 Acts, ch 1074, §11; 95 Acts, ch 192, §19

479A.12 through 479A.17 Repealed by 2005 Acts, ch 32, §3.

479A.18 Federal inspection.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with the applicable standards of pipeline safety as provided by Pub. L. No. 103-272, as codified in 49 U.S.C. §60101 – 60125.

88 Acts, ch 1074, §18; 95 Acts, ch 49, §14

Referred to in §479A.4

479A.19 through 479A.28 Repealed by 2005 Acts, ch 32, §3.

CHAPTER 479B

HAZARDOUS LIQUID PIPELINES AND STORAGE FACILITIES

Referred to in §6B.42, 306A.3, 474.1, 474.9, 479.1, 546.7

479B.1 Purpose — authority.
479B.2 Definitions.
479B.3 Conditions attending operation.
479B.4 Application for permit — informational meeting — notice.
479B.5 Petition.
479B.6 Hearing — notice.
479B.7 Objections.
479B.8 Examination — testimony.
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479B.10 Costs and fees.
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479B.12 Use of funds.
479B.13 Financial condition of permittee — bond.
479B.14 Permits — limitations — sale or transfer — records — extension.
479B.15 Entry for land surveys.
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479B.17 Damages.
479B.18 Venue.
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479B.20 Land restoration standards.
479B.21 Civil penalty.
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479B.23 Authorized federal aid.
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479B.25 Arbitration agreements.
479B.26 Subsequent pipeline or underground storage facility.
479B.27 Damage agreement.
479B.28 Negotiated fee.
479B.29 Particular damage claims.
479B.30 Determination of construction damages.
479B.31 Subsequent tiling.
479B.32 Reversion on nonuse.
479B.33 Farmland improvements.

479B.1 Purpose — authority.

It is the purpose of the general assembly in enacting this law to grant the utilities board the authority to implement certain controls over hazardous liquid pipelines to protect landowners and tenants from environmental or economic damages which may result from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state, to approve the location and route of hazardous liquid pipelines, and to grant rights of eminent domain where necessary.

95 Acts, ch 192, §28

479B.2 Definitions.

As used in this chapter, unless the context appears otherwise:

1. *"Board"* means the utilities board within the utilities division of the department of commerce.

2. *"Hazardous liquid"* means crude oil, refined petroleum products, liquefied petroleum gases, anhydrous ammonia, liquid fertilizers, liquefied carbon dioxide, alcohols, and coal slurries.

3. *"Pipeline"* means an interstate pipe or pipeline and necessary appurtenances used for the transportation or transmission of hazardous liquids.

4. *"Pipeline company"* means a person engaged in or organized for the purpose of owning, operating, or controlling pipelines for the transportation or transmission of any hazardous liquid or underground storage facilities for the underground storage of any hazardous liquid.

5. *"Underground storage"* means storage of hazardous liquid in a subsurface stratum or formation of the earth.

6. *"Utilities division"* means the utilities division of the department of commerce.

95 Acts, ch 192, §29

Referred to in §214A.1

479B.3 Conditions attending operation.

A pipeline company shall not construct, maintain, or operate a pipeline or underground storage facility under, along, over, or across any public or private highways, grounds, waters, or streams of any kind in this state except in accordance with this chapter.

95 Acts, ch 192, §30

479B.4 Application for permit — informational meeting — notice.

1. A pipeline company doing business in this state shall file a verified petition with the board asking for a permit to construct, maintain, and operate a new pipeline along, over, or across the public or private highways, grounds, waters, and streams of any kind in this state. Any pipeline company now owning or operating a pipeline or underground storage facility in this state shall be issued a permit by the board upon supplying the information as provided for in section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

2. A pipeline company doing business in this state and proposing to store hazardous liquid underground within this state shall file with the board a verified petition asking for a permit to construct, maintain, and operate facilities for the underground storage of hazardous liquid which includes the construction, placement, maintenance, and operation of machinery, appliances, fixtures, wells, pipelines, and stations necessary for the construction, maintenance, and operation of the underground storage facilities.

3. The pipeline company shall hold informational meetings in each county in which real property or property rights will be affected at least thirty days prior to filing the petition for a new pipeline. A member of the board, or a person designated by the board, shall serve as the presiding officer at each meeting and present an agenda for the meeting which shall include a summary of the legal rights of the affected landowners. No formal record of the meeting shall be required. The meeting shall be held at a location reasonably accessible to all persons who may be affected by granting the permit.

4. The pipeline company seeking the permit for a new pipeline shall give notice of the informational meeting to each landowner affected by the proposed project and each person in possession of or residing on the property. For the purposes of the informational meeting, *"landowner"* means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property and *"pipeline"* means a line transporting a hazardous liquid under pressure in excess of one hundred fifty pounds per square inch and extending a distance of not less than five miles or having a future anticipated extension of an overall distance of five miles.

5. *a.* The notice shall set forth the following:

(1) The name of the applicant.

(2) The applicant's principal place of business.

(3) The general description and purpose of the proposed project.

(4) The general nature of the right-of-way desired.

(5) A map showing the route or location of the proposed project.

(6) That the landowner has a right to be present at the meeting and to file objections with the board.

(7) A designation of the time and place of the meeting.

b. The notice shall be served by certified mail with return receipt requested not less than thirty days previous to the time set for the meeting, and shall be published once in a newspaper of general circulation in the county. The publication shall be considered notice to landowners whose residence is not known and to each person in possession of or residing on the property provided a good faith effort to notify can be demonstrated by the pipeline company.

6. A pipeline company seeking rights under this chapter shall not negotiate or purchase an easement or other interest in land in a county known to be affected by the proposed project prior to the informational meeting.

95 Acts, ch 192, §31; 2018 Acts, ch 1160, §28; 2019 Acts, ch 24, §68
Referred to in §479B.15
Section amended

479B.5 Petition.

A petition for a permit shall state all of the following:

1. The name of the individual, firm, corporation, company, or association applying for the permit.

2. The applicant's principal office and place of business.

3. A legal description of the route of the proposed pipeline and a map of the route.

4. A general description of the public or private highways, grounds, waters, streams, and private lands of any kind along, over, or across which the proposed pipeline will pass.

5. If permission is sought to construct, maintain, and operate facilities for the underground storage of hazardous liquids the petition shall include the following additional information:

a. A description and a map of the public or private highways, grounds, waters, streams, and private lands of any kind under which the storage is proposed.

b. Maps showing the location of proposed machinery, appliances, fixtures, wells, and stations necessary for the construction, maintenance, and operation of the hazardous liquid storage facilities.

6. The possible use of alternative routes.

7. The relationship of the proposed project to the present and future land use and zoning ordinances.

8. The inconvenience or undue injury which may result to property owners as a result of the proposed project.

9. An affidavit attesting to the fact that informational meetings were held in each county affected by the proposed project and the time and place of each meeting.

95 Acts, ch 192, §32
Referred to in §479B.4, 479B.14

479B.6 Hearing — notice.

1. After the petition is filed, the board shall fix a date for a hearing and shall publish notice for two consecutive weeks, in a newspaper of general circulation in each county through which the proposed pipeline or hazardous liquid storage facilities will extend.

2. The hearing shall not be less than ten days nor more than thirty days from the date of the last publication of the notice. If the pipeline exceeds five miles in length, the hearing shall be held in the county seat of the county located at the midpoint of the proposed pipeline or the county in which the proposed hazardous liquid storage facility would be located.

95 Acts, ch 192, §33; 2018 Acts, ch 1041, §127

479B.7 Objections.

1. A person, including a governmental entity, whose rights or interests may be affected by the proposed pipeline or hazardous liquid storage facilities may file written objections.

2. All objections shall be on file with the board not less than five days before the date of hearing on the application. However, the board may permit the filing of the objections later

than five days before the hearing, in which event the applicant must be granted a reasonable time to meet the objections.

95 Acts, ch 192, §34; 2019 Acts, ch 24, §104
Code editor directive applied

479B.8 Examination — testimony.

The board may examine the proposed route of the pipeline and location of the underground storage facility. At the hearing the board shall consider the petition and any objections and may hear testimony to assist the board in making its determination regarding the application.

95 Acts, ch 192, §35

479B.9 Final order — condition.

The board may grant a permit in whole or in part upon terms, conditions, and restrictions as to location and route as it determines to be just and proper. A permit shall not be granted to a pipeline company unless the board determines that the proposed services will promote the public convenience and necessity.

95 Acts, ch 192, §36

479B.10 Costs and fees.

The applicant shall pay all costs of the informational meetings, hearing, and necessary preliminary investigation including the cost of publishing notice of hearing, and shall pay the actual unrecovered costs directly attributable to inspections conducted by the board.

95 Acts, ch 192, §37

479B.11 Inspection fee.

1. If the board enters into agreements with the United States department of transportation pursuant to section 479B.23, a pipeline company shall pay an annual fee of fifty cents per mile of pipeline or fraction thereof for each inch of diameter of the pipeline located in the state. The inspection fee shall be paid to the board between January 1 and February 1 for the calendar year.

2. The board shall collect all fees. Failure to pay any fee within thirty days from the due date shall be grounds for revocation of the permit or assessment of civil penalties.

95 Acts, ch 192, §38; 2018 Acts, ch 1041, §127

479B.12 Use of funds.

All moneys received under this chapter, other than civil penalties collected pursuant to section 479B.21, shall be remitted monthly to the treasurer of state and credited to the department of commerce revolving fund created in section 546.12.

95 Acts, ch 192, §39; 2009 Acts, ch 181, §56

479B.13 Financial condition of permittee — bond.

Before a permit is granted under this chapter the applicant must satisfy the board that the applicant has property within this state other than pipelines or underground storage facilities, subject to execution of a value in excess of two hundred fifty thousand dollars, or the applicant must file and maintain with the board a surety bond in the penal sum of two hundred fifty thousand dollars with surety approved by the board, conditioned that the applicant will pay any and all damages legally recovered against it growing out of the construction, maintenance, or operation of its pipeline or underground storage facilities in this state. When the pipeline company deposits with the board security satisfactory to the board as a guaranty for the payment of the damages, or furnishes to the board satisfactory proofs of its solvency and financial ability to pay the damages, the pipeline company is relieved of the provisions requiring bond.

95 Acts, ch 192, §40
Referred to in §479B.4, 479B.14

479B.14 Permits — limitations — sale or transfer — records — extension.

1. The board shall prepare and issue permits. The permit shall show the name and address

of the pipeline company to which it is issued and identify the decision and order of the board under which the permit is issued. The permit shall be signed by the chairperson of the board and the official seal of the board shall be affixed to it.

2. The board shall not grant an exclusive right to any pipeline company to construct, maintain, or operate its pipeline along, over, or across any public or private highway, grounds, waters, or streams. The board shall not grant a permit for longer than twenty-five years.

3. A permit shall not be sold until the sale is approved by the board.

4. If a transfer of a permit is made before the construction for which it was issued is completed in whole or in part, the transfer shall not be effective until the pipeline company to which it was issued files with the board a notice in writing stating the date of the transfer and the name and address of the transferee.

5. The board shall keep a record of all permits granted by it, showing when and to whom granted and the location and route of the pipeline or underground storage facility, and if the permit has been transferred, the date and the name and address of the transferee.

6. A pipeline company may petition the board for an extension of a permit granted under this section by filing a petition containing the information required by section 479B.5, subsections 1 through 5, and meeting the requirements of section 479B.13.

95 Acts, ch 192, §41; 2019 Acts, ch 24, §104
Code editor directive applied

479B.15 Entry for land surveys.

After the informational meeting or after the filing of a petition if no informational meeting is required, a pipeline company may enter upon private land for the purpose of surveying and examining the land to determine direction or depth of pipelines by giving ten days' written notice by restricted certified mail to the landowner as defined in section 479B.4 and to any person residing on or in possession of the land. The entry for land surveys shall not be deemed a trespass and may be aided by injunction. The pipeline company shall pay the actual damages caused by the entry, survey, and examination.

95 Acts, ch 192, §42

479B.16 Eminent domain.

1. A pipeline company granted a pipeline permit shall be vested with the right of eminent domain, to the extent necessary and as prescribed and approved by the board, not exceeding seventy-five feet in width for right-of-way and not exceeding one acre in any one location in addition to right-of-way for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline. The board may grant additional eminent domain rights where the pipeline company has presented sufficient evidence to adequately demonstrate that a greater area is required for the proper construction, operation, and maintenance of the pipeline or for the location of pumps, pressure apparatus, or other stations or equipment necessary to the proper operation of its pipeline.

2. A pipeline company granted a permit for underground storage of hazardous liquid shall be vested with the right of eminent domain to the extent necessary and as prescribed and approved by the board in order to appropriate for its use for the underground storage of hazardous liquid any subsurface stratum or formation in any land which the board shall have found to be suitable and in the public interest for the underground storage of hazardous liquid, and may appropriate other interests in property, as may be required adequately to examine, prepare, maintain, and operate the underground storage facilities.

3. This chapter does not authorize the construction of a pipeline longitudinally on, over, or under any railroad right-of-way or public highway, or at other than an approximate right angle to a railroad track or public highway without the consent of the railroad company, the state department of transportation, or the county board of supervisors, and this chapter does not authorize or give the right of condemnation or eminent domain for such purposes.

95 Acts, ch 192, §43; 2018 Acts, ch 1041, §127

479B.17 Damages.

A pipeline company operating a pipeline or an underground storage facility shall have reasonable access to the pipeline or underground storage facility for the purpose of constructing, operating, maintaining, or locating pipes, pumps, pressure apparatus, or other stations, wells, devices, or equipment used in or upon the pipeline or underground storage facility. A pipeline company shall pay the owner of the land for the right of entry and the owner of crops for all damages caused by entering, using, or occupying the lands and shall pay to the owner all damages caused by the completion of construction of the pipeline due to wash or erosion of the soil at or along the location of the pipeline and due to the settling of the soil along and above the pipeline. However, this section does not prevent the execution of an agreement between the pipeline company and the owner of the land or crops with reference to the use of the land.

95 Acts, ch 192, §44, 62

479B.18 Venue.

In all cases arising under this chapter, the district court of any county in which property of a pipeline company is located has jurisdiction of a case involving the pipeline company.

95 Acts, ch 192, §45

479B.19 Orders — enforcement.

If the pipeline company fails to obey an order within the period of time determined by the board, the board may commence an equitable action in the district court of the county where the pipeline, device, apparatus, equipment, or underground storage facility is located to compel compliance with its order. If, after trial, the court finds that the order is reasonable, equitable, and just, the court shall decree a mandatory injunction compelling obedience to and compliance with the order and may grant other relief as may be just and proper. Appeal from the decree may be taken in the same manner as in other actions.

95 Acts, ch 192, §46

479B.20 Land restoration standards.

1. The board, pursuant to chapter 17A, shall adopt rules establishing standards for the restoration of agricultural lands during and after pipeline or underground storage facility construction. In addition to the requirements of section 17A.4, the board shall distribute copies of the notice of intended action and opportunity for oral presentations to each county board of supervisors. Any county board of supervisors may, under the provisions of chapter 17A, and subsequent to the rulemaking proceedings, petition under those provisions for additional rulemaking to establish standards for land restoration after pipeline construction within that county. Upon the request of the petitioning county, the board shall schedule a hearing to consider the merits of the petition. Rules adopted under this section shall not apply to land located within city boundaries unless the land is used for agricultural purposes. Rules adopted under this section shall address, but are not limited to, all of the following subject matters:

a. Topsoil separation and replacement.

b. Temporary and permanent repair to drain tile.

c. Removal of rocks and debris from the right-of-way.

d. Restoration of areas of soil compaction.

e. Restoration of terraces, waterways, and other erosion control structures.

f. Revegetation of untilled land.

g. Future installation of drain tile or soil conservation structures.

h. Restoration of land slope and contour.

i. Restoration of areas used for field entrances and temporary roads.

j. Construction in wet conditions.

k. Designation of a pipeline company point of contact for landowner inquiries or claims.

2. The county board of supervisors shall cause an on-site inspection for compliance with the standards adopted under this section to be performed at any pipeline construction project in the county. A licensed professional engineer familiar with the standards adopted under this

section and registered under chapter 542B shall be responsible for the inspection. A county board of supervisors may contract for the services of a licensed professional engineer for the purposes of the inspection. The reasonable costs of the inspection shall be paid by the pipeline company.

3. If the inspector determines that there has been a violation of the standards adopted under this section, of the land restoration plan, or of an independent agreement on land restoration or line location executed in accordance with subsection 10, the inspector shall give oral notice, followed by written notice, to the pipeline company and the contractor operating for the pipeline company and order corrective action to be taken in compliance with the standards. The costs of the corrective action shall be borne by the contractor operating for the pipeline company.

4. An inspector shall adequately inspect underground improvements altered during construction of the pipeline. An inspection shall be conducted at the time of the replacement or repair of the underground improvements. An inspector shall be present on the site at all times at each phase and separate activity of the opening of the trench, the restoration of underground improvements, and backfilling. The pipeline company and its contractor shall keep an inspector continually informed of the work schedule and any schedule changes. If proper notice is given, construction shall not be delayed due to an inspector's failure to be present on the site.

5. If the pipeline company or its contractor does not comply with the requirements of this section, with the land restoration plan or line location, or with an independent agreement on land restoration executed in accordance with subsection 10, the county board of supervisors may petition the board for an order requiring corrective action to be taken. In addition, the county board of supervisors may file a complaint with the board seeking imposition of civil penalties under section 479B.21.

6. The pipeline company shall allow landowners and the inspector to view the proposed center line of the pipeline prior to commencing trenching operations to ensure that construction takes place in its proper location.

7. An inspector may temporarily halt the construction if the construction is not in compliance with this chapter and the standards adopted pursuant to this chapter, the land restoration plan, or the terms of an independent agreement with the pipeline company regarding land restoration or line location executed in accordance with subsection 10, until the inspector consults with the supervisory personnel of the pipeline company.

8. The board shall instruct inspectors appointed by the board of supervisors regarding the content of the statutes and rules and the inspectors' responsibility to require construction conforming with the standards provided by this chapter.

9. Petitioners for a permit for pipeline construction shall file with the petition a written land restoration plan showing how the requirements of this section, and of rules adopted pursuant to this section, will be met. The company shall provide copies of the plan to all landowners of property that will be disturbed by the construction.

10. This section does not preclude the application of provisions for protecting or restoring property that are different than those prescribed in this section, in rules adopted under this section, or in the land restoration plan, if the alternative provisions are contained in agreements independently executed by the pipeline company and the landowner, and if the alternative provisions are not inconsistent with state law or with rules adopted by the board. Independent agreements on land restoration or line location between the landowner and pipeline company shall be in writing and a copy provided to the county inspector.

11. For the purposes of this section, "*construction*" includes the removal of a previously constructed pipeline.

12. The requirements of this section shall apply only to pipeline construction projects commenced on or after June 1, 1999.

95 Acts, ch 192, §47; 99 Acts, ch 85, §7, 11

479B.21 Civil penalty.

1. A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand

dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations. Civil penalties collected pursuant to this section shall be forwarded by the chief operating officer of the board to the treasurer of state to be credited to the general fund of the state and appropriated to the division of community action agencies of the department of human rights for purposes of the low income home energy assistance program and the weatherization assistance program.

2. A civil penalty may be compromised by the board. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owed by the state to the person charged, or may be recovered in a civil action.

95 Acts, ch 192, §48; 2017 Acts, ch 169, §46, 49; 2018 Acts, ch 1160, §29
Referred to in §479B.12, 479B.20

479B.22 Rehearing — judicial review.

Rehearing procedure for any person aggrieved by actions of the board under this chapter shall be as provided in section 476.12. Judicial review may be sought in accordance with the terms of chapter 17A.

95 Acts, ch 192, §49

479B.23 Authorized federal aid.

The board may enter into agreements with and receive moneys from the United States department of transportation for the inspection of pipelines to determine compliance with applicable standards of pipeline safety, and for enforcement of the applicable standards of pipeline safety as provided by 49 U.S.C. §60101 et seq.

95 Acts, ch 192, §50
Referred to in §479B.11

479B.24 Cancellation.

A pipeline company seeking to acquire an easement or other property interest for the construction, maintenance, or operation of a pipeline or underground storage facility shall do all of the following:

1. Allow the landowner or a person serving in a fiduciary capacity on the landowner's behalf to cancel an agreement granting an easement or other interest by restricted certified mail to the pipeline company's principal place of business if received by the pipeline company within seven days, excluding Saturday and Sunday, of the date of the agreement and inform the landowner or the fiduciary in writing of the right to cancel prior to the signing of the agreement by the landowner or the fiduciary.

2. Provide the landowner or a person serving in a fiduciary capacity in the landowner's behalf with a form in duplicate for the notice of cancellation.

3. Not record an agreement until after the period for cancellation has expired.

4. Not include in the agreement a waiver of the right to cancel in accordance with this section. The landowner or a person serving in a fiduciary capacity in the landowner's behalf may exercise the right of cancellation only once for each pipeline project.

95 Acts, ch 192, §51

479B.25 Arbitration agreements.

1. If an easement or other written agreement between a landowner and a pipeline company provides for the determination through arbitration of the amount of monetary damages sustained by a landowner and caused by the construction, maintenance, or repair of a pipeline or underground storage facility, and if either party has not appointed its arbitrator or agreed to an arbitrator under the agreement within thirty days after the other party has invoked the arbitration provisions of the agreement by written notice to the other party by restricted certified mail, the landowner or the pipeline company may petition a magistrate

in the county where the real property is located for the appointment of an arbitrator to serve in the stead of the arbitrator who would have been appointed or agreed to by the other party. Before filing the petition the landowner or pipeline company shall give notice of the petitioning of the magistrate by restricted certified mail to the other party and file proof of mailing with the petition.

2. If after hearing, the magistrate finds that the landowner or pipeline company has not been diligent in appointing or reasonable in agreeing to an arbitrator, the magistrate shall appoint an impartial arbitrator who shall have all of the powers and duties of an arbitrator appointed or agreed to by the other party under the agreement.

3. For purposes of this section only, *"landowner"* means the person who signed the easement or other written agreement, or the person's heirs, successors, and assigns.

95 Acts, ch 192, §52, 62; 2018 Acts, ch 1041, §127

479B.26 Subsequent pipeline or underground storage facility.

1. A pipeline company shall not construct a subsequent pipeline or underground storage facility upon its existing easement when a damage claim from the installation of its previous pipeline on that easement has not been resolved unless that claim is under litigation or arbitration, or is the subject of a proceeding pursuant to section 479B.30.

2. With the exception of claims for damage to drain tile and future crop deficiency, for this section to apply, landowners and tenants must submit their claims in writing for damages caused by construction of the pipeline or underground storage facility within one year of final cleanup on the real property by the pipeline company.

95 Acts, ch 192, §53; 2018 Acts, ch 1041, §127

479B.27 Damage agreement.

A pipeline company shall not construct a pipeline or underground storage facility until a written statement is on file with the board as to how damages resulting from the construction of the pipeline shall be determined and paid, except in cases of eminent domain. The pipeline company shall provide a copy of the statement to the landowner.

95 Acts, ch 192, §54

479B.28 Negotiated fee.

In lieu of a one-time lump sum payment for an easement or other property interest allowing a pipeline to cross property or allowing underground storage of hazardous liquids, a landowner and the pipeline company may negotiate an annual fee, to be paid over a fixed number of years. Unless the easement provides otherwise, the annual fee shall run with the land and shall be payable to the owner of record.

95 Acts, ch 192, §55

479B.29 Particular damage claims.

1. Compensable losses shall include, but are not limited to, all of the following:

a. Loss or reduced yield of crops or forage on the pipeline right-of-way, whether caused directly by construction or from disturbance of usual farm operations.

b. Loss or reduced yield of crops or yield from land near the pipeline right-of-way resulting from lack of timely access to the land or other disturbance of usual farm operations, including interference with irrigation.

c. Fertilizer, lime, or organic material applied by the landowner to restore land disturbed by construction to full productivity.

d. Loss of or damage to trees of commercial or other value that occurs at the time of construction, restoration, or at the time of any subsequent work by the pipeline company.

e. The cost of or losses in moving or relocating livestock, and the loss of gain by or the death or injury of livestock caused by the interruption or relocation of normal feeding.

f. Erosion on lands attributable to pipeline construction.

g. Damage to farm equipment caused by striking a pipeline, debris, or other material reasonably associated with pipeline construction while engaged in normal farming operations as defined in section 480.1.

2. A claim for damage for future crop deficiency within the easement strip shall not be precluded from renegotiation under section 6B.52 on the grounds that it was apparent at the time of settlement unless the settlement expressly releases the pipeline company from claims for damage to the productivity of the soil. The landowner shall notify the pipeline company in writing fourteen days prior to harvest in each year to assess crop deficiency.

95 Acts, ch 192, §56, 62; 99 Acts, ch 85, §8, 11

479B.30 Determination of construction damages.

1. The county board of supervisors shall determine when construction of a pipeline or underground storage facility has been completed in that county for the purposes of this section. Not less than ninety days after the completion of construction and if an agreement cannot be made as to damages, a landowner whose land was affected by the construction of the pipeline or underground storage facility or the pipeline company may file with the board of supervisors a petition asking that a compensation commission determine the damages arising from construction of the pipeline.

2. If the board of supervisors by resolution approves the petition, the landowner or pipeline company shall commence the proceeding by filing an application with the chief judge of the judicial district for the county for the appointment of a compensation commission as provided in section 6B.4. The application shall contain all of the following information:

a. The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

b. A description of the nature of the damage claimed to have occurred and the amount of the damage claimed.

c. The name and address of the pipeline company claimed to have caused the damage or the name and address of the affected landowner.

3. *a.* After the commissioners have been appointed, the applicant shall serve notice on the pipeline company or the landowner stating all of the following:

(1) That a compensation commission has been appointed to determine the damages caused by the construction of the pipeline or underground storage facility.

(2) The name and address of the applicant and a description of the land on which the damage is claimed to have occurred.

(3) The date, time, and place when the commissioners will view the premises and proceed to appraise the damages and that the pipeline company or landowner may appear before the commissioners.

b. If more than one landowner petitions the county board of supervisors, the application to the chief judge, notice to the pipeline company, and appraisement of damages shall be consolidated into one application, notice, and appraisement. The county attorney may assist in coordinating the consolidated application and notice, but does not become an attorney for the landowners by doing so.

4. The commissioners shall view the land at the time provided in the notice and assess the damages sustained by the landowner by reason of the construction of the pipeline or underground storage facility and they shall file their report with the sheriff. The appraisement of damages returned by the commissioners is final unless appealed. After the appraisement of damages has been delivered to the sheriff by the compensation commission, the sheriff shall give written notice by ordinary mail to the pipeline company and the landowner of the date the appraisement of damages was made, the amount of the appraisement, and that any interested party may appeal to the district court within thirty days of the date of mailing. The sheriff shall endorse the date of mailing of notice on the original appraisement of damages. At the time of appeal, the appealing party shall give written notice to the adverse party or the party's attorney and the sheriff.

5. Chapter 6B applies to this section to the extent it is applicable and consistent with this section.

6. The pipeline company shall pay all costs of the assessment made by the commissioners and reasonable attorney fees and costs incurred by the landowner as determined by the commissioners if the award of the commissioners exceeds one hundred ten percent of the

final offer of the pipeline company prior to the determination of damages. The pipeline company shall file with the sheriff an affidavit setting forth the most recent offer made to the landowner. Commissioners shall receive a per diem of fifty dollars and actual and necessary expenses incurred in the performance of their official duties. The pipeline company shall also pay all costs occasioned by the appeal, including reasonable attorney fees to be taxed by the court, unless on the trial of the appeal the same or a lesser amount of damages is awarded than was allowed by the commission from which the appeal was taken.

7. As used in this section, *"damages"* means compensation for damages to the land, crops, and other personal property caused by the construction of a pipeline and its attendant structures or underground storage facility but does not include compensation for a property interest, and *"landowner"* includes a farm tenant.

8. The provisions of this section do not apply if the easement provides for any other means of negotiation or arbitration.

95 Acts, ch 192, §57, 62; 2000 Acts, ch 1179, §28, 30; 2011 Acts, ch 25, §143; 2018 Acts, ch 1160, §30

Referred to in §479B.26

479B.31 Subsequent tiling.

All additional costs of new tile construction caused by an existing pipeline or underground storage facility shall be paid by the pipeline company. To receive compensation under this section, the landowner or agent of the landowner shall either present an invoice specifying the additional costs caused by the presence of the pipeline which is accompanied by a written verification of the additional costs by the county engineer or soil and water conservation district conservationist or reach an agreement with the pipeline company on the project design and share of the cost to be paid by the pipeline company during the planning of the tiling project.

95 Acts, ch 192, §58, 62

Referred to in §479B.32

479B.32 Reversion on nonuse.

1. If a pipeline right-of-way, or any part of the pipeline right-of-way, is wholly abandoned for pipeline purposes by the relocation of the pipeline, is not used or operated for a period of five consecutive years, or if the construction of the pipeline has been commenced and work has ceased and has not in good faith resumed for five years, the right-of-way may revert as provided in this section to the person who, at the time of the abandonment or nonuse, is the owner of the tract from which such right-of-way was taken. For purposes of this section, a pipeline or a pipeline right-of-way is not considered abandoned or unused if it is transporting product or is being actively maintained with reasonable anticipation of a future use.

2. To effect a reversion on nonuse of right-of-way, the owner or holder of purported fee title to such real estate shall serve notice upon the owner of such right-of-way easement and, if filed of record, successors in interest and upon any party in possession of the real estate. The written notice shall accurately describe the real estate and easement in question, set out the facts concerning ownership of the fee, ownership of the right-of-way easement, and the period of abandonment or nonuse, and notify the parties that such reversion shall be complete and final, and that the easement or other right shall be forfeited, unless the parties shall, within one hundred twenty days after the completed service of notice, file an affidavit with the county recorder of the county in which the real estate is located disputing the facts contained in the notice.

3. The notice shall be served in the same manner as an original notice under the Iowa rules of civil procedure, except that when notice is served by publication an affidavit shall not be required before publication. If an affidavit disputing the facts contained in the notice is not filed within one hundred twenty days, the party serving the notice may file for record in the office of the county recorder a copy of the notice with proofs of service attached and endorsed, and when so recorded, the record shall be constructive notice to all persons of the abandonment, reversion, and forfeiture of such right-of-way.

4. Upon reversion of the easement, the landowner may require the pipeline company to

remove any pipe or pipeline facility remaining on the property. Provisions of this chapter relating to damages shall apply when the pipeline is removed.

5. Unless otherwise agreed to in writing by the landowner and the pipeline company, if a pipeline right-of-way is abandoned for pipeline use, but the pipe is not removed from the right-of-way, the pipeline company shall remain subject to section 479B.33, shall remain responsible for the additional costs of subsequent tiling as provided for in section 479B.31, shall mark the location of the line in response to a notice of proposed excavation in accordance with chapter 480, and shall remain subject to the damage provisions of this chapter in the event access to or excavation relating to the pipe is required. The landowner shall provide reasonable access to the pipeline in order to carry out the responsibilities of this subsection.

99 Acts, ch 85, §9, 11; 2000 Acts, ch 1139, §5
Service of original notice, R.C.P. 1.302 – 1.315

479B.33 Farmland improvements.

A landowner or contractor may require a representative of the pipeline company to be present on site, at no charge to the landowner, at all times during each phase and separate activity related to a farmland improvement within fifty feet of either side of a pipeline. If the pipeline company and the landowner or contractor constructing the farmland improvement mutually agree that a representative of the pipeline company is not required to be present, the requirements of this section are waived in relation to the farmland improvement which would have otherwise made the requirements of this section applicable. A farmland improvement includes, but is not limited to, the terracing of farmland and tiling.

2000 Acts, ch 1139, §6
Referred to in §479B.32

CHAPTER 480

UNDERGROUND FACILITIES INFORMATION

Referred to in §68A.406, 479.48, 479B.32

480.1 Definitions.
480.1A Applicability — prohibition.
480.2 Public deposit of location information. Repealed by 92 Acts, ch 1103, §11, 12.
480.3 Notification center established — participation.
480.4 Required notice — location and marking of underground facilities — exception.
480.5 Damage to underground facility — report to operator.
480.6 Civil penalties.
480.7 Injunction.
480.8 Local ordinances and regulations unaffected.
480.9 Liability for owner of farmland.
480.10 Communications not precluded.

480.1 Definitions.

1. *"Board"* means the board of directors of the notification center.

2. *"Damage"* means any impact with, destruction, impairment, or penetration of, or removal of support from an underground facility, including damage to its protective coating, housing, or device.

3. *"Emergency"* means a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property.

4. *a.* *"Excavation"* means an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes but is not limited to grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures.

b. *"Excavation"* does not include normal farming operations, residential, commercial, or similar gardening, the opening of a grave site in a cemetery, normal activities involved in

land surveying pursuant to chapter 542B, operations in a solid waste disposal site which has planned for underground facilities, the replacement of an existing traffic sign at its current location and at no more than its current depth, and normal road or highway maintenance which does not change the original grade of the roadway or the ditch.

5. *"Excavator"* means a person proposing to engage or engaging in excavation.

6. *"Normal farming operations"* means plowing, cultivation, planting, harvesting, and similar operations routine to most farms, but excludes chisel plowing, sub-soiling, or ripping more than fifteen inches in depth, drain tile excavating, terracing, digging or driving a post in a new location other than replacing a post while repairing a fence in its existing location, and similar operations.

7. *"Notification center"* means the statewide notification center established in section 480.3.

8. *"Operator"* means a person owning or operating an underground facility including but not limited to public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property.

9. *"Person"* means a person as defined in section 4.1, subsection 20.

10. *"Underground facility"* means an item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other substances, and includes but is not limited to pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.

87 Acts, ch 135, §1; 92 Acts, ch 1103, §1; 2015 Acts, ch 29, §62
Referred to in §479.45, 479B.29

480.1A Applicability — prohibition.

This chapter applies to any excavation unless otherwise provided by law. A person shall not engage in any excavation unless the requirements of this chapter have been satisfied.

92 Acts, ch 1103, §2

480.2 Public deposit of location information. Repealed by 92 Acts, ch 1103, §11, 12.

480.3 Notification center established — participation.

1. *a.* A statewide notification center is established and shall be organized as a nonprofit corporation pursuant to chapter 504.

(1) The center shall be governed by a board of directors which shall represent and be elected by operators, excavators, and other persons who participate in the center. The board, with input from all interested parties, shall determine the operating procedures and technology needed for a single statewide notification center and establish a notification process.

(2) In addition, the board shall either establish a competitive bidding procedure to select a vendor to provide the notification service or retain sufficient and necessary staff to provide the notification service.

(a) If a vendor is selected, the vendor contract shall be for a three-year period, which may be extended upon the approval of the board for a period not exceeding an additional three years. The terms of the vendor contract may be modified from time to time by the board and the vendor. The contract shall be reviewed, with an opportunity to receive new bids, at the end of the term of the contract.

(b) If the board retains staff to provide the notification service, the board, at the board's discretion, may review the notification service at any time and make a determination to use the competitive bidding procedure to select a vendor.

b. Upon the selection of a vendor pursuant to paragraph *"a"*, the board shall notify the chairperson of the utilities board in writing of the selection. The board shall submit an annual

report to the chairperson of the utilities board including an annual audit and review of the services provided by the notification center and the vendor.

c. The board is subject to chapters 21 and 22.

2. The board shall implement the latest and most cost-effective technological improvements for the center in order to provide operators and excavators with the most accurate data available and in a timely manner to allow operators and excavators to perform their responsibilities with the minimum amount of interruptions.

3. Every operator shall participate in and share in the costs of the notification center. The financial condition and the transactions of the notification center shall be audited at least once each year by a certified public accountant. The notification center shall not provide any form of aid or make a contribution to a political party or to the campaign of a candidate for political or public office. In addition to any applicable civil penalty, as provided in section 480.6, a violation of this section constitutes a simple misdemeanor.

87 Acts, ch 135, §3; 92 Acts, ch 1103, §3; 95 Acts, ch 112, §1; 98 Acts, ch 1049, §1; 2002 Acts, ch 1054, §1; 2004 Acts, ch 1049, §191; 2004 Acts, ch 1175, §393

Referred to in §423.3, 480.1

480.4 Required notice — location and marking of underground facilities — exception.

1. *a.* Except as otherwise provided in this section, prior to any excavation, an excavator shall contact the notification center and provide notice of the planned excavation. This notice must be given at least forty-eight hours prior to the commencement of the excavation, excluding Saturdays, Sundays, and legal holidays. Notices received after 5:00 p.m. shall be processed as if received at 8:00 a.m. the next business day. The notice shall be valid for twenty calendar days from the date the notice was provided to the notification center. If all locating and marking of underground facilities is completed prior to the expiration of the forty-eight-hour period, the excavator may proceed with excavation upon being notified by the notification center that the locating and marking of all underground facilities is complete. The notification center shall establish a toll-free telephone number to allow excavators to provide the notice required pursuant to this subsection.

b. A notice provided pursuant to this subsection for a location within a city shall include the following information:

(1) A street address or block and lot numbers, or both, of the proposed area of excavation.
(2) The name and address of the excavator.
(3) The excavator's telephone number.
(4) The type and extent of the proposed excavation.
(5) Whether the discharge of explosives is anticipated.
(6) The date and time when excavation is scheduled to begin.
(7) Approximate location of the excavation on the property.
(8) If known, the name of the housing development and property owner.

c. A notice provided pursuant to this subsection for a location outside a city shall include the following information:

(1) The name of the county, township, range, and section.
(2) The name and address of the excavator.
(3) The excavator's telephone number.
(4) The type and extent of the proposed excavation.
(5) Whether the discharge of explosives is anticipated.
(6) The date and time when excavation is scheduled to begin.
(7) Approximate location of the excavation on the property.
(8) If known, the quarter section, 911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

d. For purposes of the requirements of this section, an excavation commences the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

e. At the time of giving notice to the notification center pursuant to this subsection, an

excavator shall use white paint, white flags, white stakes, or a combination thereof, to mark the proposed area of excavation, unless one of the following applies:

(1) The precise location, direction, size, and length of the proposed excavation area can be clearly and adequately defined and described during the call to the notification center or during an onsite preconstruction meeting.

(2) Electronic means of white-lining is supported by the notification center and used by the excavator.

(3) Physical premarking can be shown to be impractical.

2. The notification center, upon receiving notice from an excavator, shall immediately transmit the information contained in the notice to each operator in the area of the proposed excavation and provide the names of all operators in that area to the excavator. The notification center shall assign an inquiry identification number to each notice and shall maintain a record of each notice for at least six years from the date the notice is received. The notification center shall not assess an operator who requests in writing not to receive a notification of its own excavations for any portion of the costs associated with such excavations.

3. *a.* (1) An operator who receives notice from the notification center shall mark the horizontal location of the operator's underground facility and the excavator shall use due care in excavating in the marked area to avoid damaging the underground facility. The operator shall complete such locating and marking, and shall notify the notification center that the marking is complete within forty-eight hours after receiving the notice, excluding Saturdays, Sundays, and legal holidays, unless otherwise agreed by the operator and the excavator. No later than the expiration of the forty-eight-hour period, excluding Saturdays, Sundays, and legal holidays, the notification center shall notify the excavator of the underground facility locating and marking status, or the failure of the operator to notify the center that the locating and marking is complete. The locating and marking of the underground facilities shall be completed at no cost to the excavator. If, in the opinion of the operator, the planned excavation requires that the precise location of the underground facilities be determined, the excavator, unless otherwise agreed upon between the excavator and the operator, shall hand dig test holes to determine the location of the facilities unless the operator specifies an alternate method.

(2) The marking required under this subsection shall be done in a manner that will last for a minimum of five working days on any nonpermanent surface, or a minimum of ten working days on any permanent surface. If the excavation will continue for any period longer than such periods, the operator shall remark the location of the underground facility upon the request of the excavator. The request shall be made through the notification center.

(3) Unless otherwise agreed by the operator and excavator in writing, no excavation shall be performed within twenty-five feet of an underground natural gas transmission line as defined in 49 C.F.R. §192.3 unless a representative of the operator of the underground natural gas transmission line is present at the planned excavation area. This requirement shall not apply, however, when a representative of the operator fails to be present at the proposed excavation area at the time work is scheduled to commence or as otherwise agreed by the operator and excavator in writing. In this event, the excavator shall notify the operator that the representative failed to appear, and excavation operations can begin, provided the excavator uses due care to avoid damaging the underground facilities.

b. An operator who receives notice from the notification center and who determines that the operator does not have any underground facility located within the proposed area of excavation shall notify the notification center concerning this determination within forty-eight hours after receiving the notice, excluding Saturdays, Sundays, and legal holidays. No later than the expiration of the forty-eight-hour period, excluding Saturdays, Sundays, and legal holidays, the notification center shall notify the excavator that the operator does not have any underground facilities within the proposed area of excavation.

c. For purposes of this chapter, the "*horizontal location of any underground facility*" is defined as including an area eighteen inches on either side of the underground facility.

d. For the purposes of this chapter, notifications provided to the excavator by the operator

or by the notification center shall be provided in a consistent manner to be established by the board.

4. An excavator is responsible for preserving the markings required in subsection 3 at all times during the excavation. If the markings will be destroyed or otherwise altered during the excavation, the excavator must establish suitable reference points which will enable the excavator to locate the underground facility at all times during the excavation.

5. The operator shall mark the location of any underground facility to conform with the uniform color code established by the American public works association's utility location and coordination council.

6. The only exception to this section shall be when an emergency exists. Under such conditions, excavation operations can begin immediately, provided reasonable precautions are taken to protect the underground facilities. The excavator shall notify the notification center of the excavation as soon as practical.

92 Acts, ch 1103, §4; 98 Acts, ch 1049, §2; 2014 Acts, ch 1047, §1 – 6; 2018 Acts, ch 1026, §149

480.5 Damage to underground facility — report to operator.

1. An excavator shall as soon as practical notify the operator when any damage occurs to an underground facility as a result of an excavation. The notice shall include the type of facility damaged and the extent of the damage. If damage occurs, an excavator shall refrain from backfilling in the immediate area of the underground facilities until the damage has been investigated by the operator, unless the operator authorizes otherwise.

2. If the damage results in an emergency, the excavator shall take all reasonable actions to alleviate the emergency including but not limited to the evacuation of the affected area. The excavator shall leave all equipment situated where the equipment was at the time the emergency was created and immediately contact the operator and appropriate authorities and necessary emergency response agencies.

92 Acts, ch 1103, §5; 2019 Acts, ch 24, §104
Code editor directive applied

480.6 Civil penalties.

1. A person who violates a provision of this chapter is subject to a civil penalty as follows:

a. For a violation related to natural gas and hazardous liquid pipelines, an amount not to exceed ten thousand dollars for each violation for each day the violation continues, up to a maximum of five hundred thousand dollars.

b. For a violation related to any other underground facility, an amount not to exceed one thousand dollars for each violation for each day the violation continues, up to a maximum of twenty thousand dollars.

2. The attorney general, upon the receipt of a complaint, may institute any legal proceedings necessary to enforce the penalty provisions of this chapter.

3. All amounts collected pursuant to this section shall be remitted to the treasurer of state, who shall deposit the amount in the general fund of the state.

92 Acts, ch 1103, §6
Referred to in §480.3

480.7 Injunction.

Any affected person may make application to the district court for injunctive relief from any violation of this chapter.

92 Acts, ch 1103, §7

480.8 Local ordinances and regulations unaffected.

This chapter does not affect or impair any local ordinances or other provisions of law requiring permits to be obtained before excavation. However, a permit issued by any governing body does not relieve the excavator from complying with the requirements of this chapter, unless the governing body is the excavator and the governing body and the

operator have agreed in writing to waive notification under this chapter. However, such an agreement shall not be considered in the issuance of any required permit.

92 Acts, ch 1103, §8

480.9 Liability for owner of farmland.

An owner of farmland used in a farm operation, as defined in section 352.2, who complies with the requirements of this chapter shall not be held responsible for any damages to an underground facility, including fiberoptic cable, if the damage occurred on the farmland in the normal course of the farm operation, unless the owner intentionally damaged the underground facility or acted with wanton disregard or recklessness in causing the damage to the underground facility. For purposes of this section, an *"owner"* includes a family member, employee, or tenant of the owner.

95 Acts, ch 192, §59

480.10 Communications not precluded.

This chapter shall not be interpreted to preclude an excavator, an operator, or the notification center from having or engaging in communications in addition to the notification requirements specified in this chapter.

2014 Acts, ch 1047, §7

CHAPTER 480A

PUBLIC UTILITIES IN PUBLIC RIGHTS-OF-WAY

Referred to in §8C.7A, 476.6

480A.1 Purpose.
480A.2 Definitions.
480A.3 Fees.
480A.4 In-kind services.
480A.5 Arbitration.
480A.6 Franchise ordinance not superseded.

480A.1 Purpose.

The general assembly finds that it is in the public interest to define the right of local governments to charge public utilities for the location and operation of public utility facilities in local government rights-of-way.

98 Acts, ch 1148, §3, 9

480A.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Local government"* means a county, city, township, school district, or any special-purpose district or authority.

2. *"Management costs"* means the reasonable, direct, and fully documented costs a local government actually incurs to manage public rights-of-way.

3. *"Public right-of-way"* means the area on, below, or above a public roadway, highway, street, bridge, cartway, bicycle lane, or public sidewalk in which the local government has an interest, including other dedicated rights-of-way for travel purposes and utility easements. A public right-of-way does not include the airwaves above a public right-of-way with regard to cellular or other nonwire telecommunications or broadcasts service or utility poles owned by a local government or a municipal utility.

4. *"Public utility"* means a person owning or operating a facility used for furnishing natural gas by piped distribution system, electricity, communications services not including cable television systems, or water by piped distribution system, to the public for compensation.

98 Acts, ch 1148, §4, 9; 2019 Acts, ch 121, §1

Subsection 2 amended

480A.3 Fees.

1. A local government shall not recover any fee from a public utility for the use of its available right-of-way, other than a permit fee for management costs attributable to the public utility's requested use of the local government's right-of-way. A fee or other obligation under this section shall be imposed on a competitively neutral basis. When a local government's management costs cannot be attributed to only one entity, those costs shall be allocated among all users of the public rights-of-way, including the local government itself. The allocation shall reflect proportionately the costs incurred by the local government as a result of the various types of uses of the public rights-of-way.

2. This section does not:

a. Prohibit the collection of a franchise fee as permitted in section 480A.6.

b. Prohibit voluntary agreements between a public utility and local government to share services for the purpose of reducing costs and preserving public rights-of-way for future public safety purposes.

98 Acts, ch 1148, §5, 9; 2019 Acts, ch 121, §2
Referred to in §480A.6
Section amended

480A.4 In-kind services.

A local government, in lieu of a fee imposed under this chapter, shall not require in-kind services by a public utility right-of-way user or require in-kind services as a condition of the use of the local government's public right-of-way, unless pursuant to a voluntary agreement between a public utility and local government to share services for the purpose of reducing costs and preserving public rights-of-way for future public safety purposes.

98 Acts, ch 1148, §6, 9; 2019 Acts, ch 121, §3
Section amended

480A.5 Arbitration.

1. A public utility that is denied registration, denied a right-of-way permit, that has its right-of-way permit revoked, or that believes that the fees imposed on such user by the local government do not conform to the requirements of this chapter may request in writing that such denial, revocation, or fee imposition be reviewed by the governing body of the local government. The governing body of the local government shall act within sixty days on a timely written request. A decision by the governing body affirming the denial, revocation, or fee imposition must be in writing and supported by written findings establishing the reasonableness of the decision.

2. Upon affirmation by the governing body of the denial, revocation, or fee imposition, the public utility may do either of the following:

a. With the consent of the governing body, have the matter finally resolved by binding arbitration. Binding arbitration must be before an arbitrator agreed to by both the local government and the public utility. If the parties are unable to agree on an arbitrator, the matter shall be resolved by a three-person arbitration panel made up of one arbitrator selected by the local government, one arbitrator selected by the public utility, and one arbitrator selected by the other two arbitrators. The cost and expense of a single arbitrator shall be borne equally by the local government and the public utility. If a three-person arbitration panel is selected, each party shall bear the expense of its own arbitrator and the parties shall jointly and equally bear the cost and expense of the third arbitrator, and of the arbitration. Each party to the arbitration shall pay its own costs, disbursements, and attorney fees.

b. Bring an action in district court to review a decision of the governing body made under this section.

98 Acts, ch 1148, §7, 9

480A.6 Franchise ordinance not superseded.

This chapter does not modify or supersede the rights and obligations of a local government and the public utility established by the terms of any existing or future franchise granted, approved, and accepted pursuant to section 364.2, subsection 4. A city which collects a city

franchise fee from an entity pursuant to section 364.2, subsection 4, under an existing or future franchise, shall not also collect a fee from that entity under section 480A.3.

98 Acts, ch 1148, §8, 9

Referred to in §480A.3

SUBTITLE 6

WILDLIFE

Referred to in §170.6, 170.7, 170.8

CHAPTER 481

RESERVED

CHAPTER 481A

WILDLIFE CONSERVATION

Referred to in §232.8, 321K.1, 350.5, 455A.4, 455A.5, 456A.14, 456A.24, 482.1, 483A.21, 483A.32, 484B.3, 717B.2, 717B.3A, 717D.3, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 109 in Code 1993

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SUBCHAPTER I

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481A.1 Definitions.

Words and phrases as used in this chapter and chapters 350, 456A, 456B, 457A, 461A through 461C, 462A, 462B, 463B, 464A, 465A through 465C, 481B, 482, 483A, 484A, and 484B and such other chapters as relate to the subject matter of these chapters shall be construed as follows:

1. *"Alien"* shall not be construed to mean any person who has applied for naturalization papers.

2. *"Amphibian"* means a member of the class Amphibia.

3. *"Aquaculture"* means the controlled propagation, growth, and harvest of aquatic organisms, including, but not limited to fish, amphibians, reptiles, mollusks, crustaceans, gastropods, algae, and other aquatic plants, by an aquaculturist.

4. *"Aquaculture unit"* means all private waters for aquaculture with or without buildings, used for the purpose of propagating, raising, holding, or harvesting aquatic organisms for commercial purposes.

5. *"Aquaculturist"* means an individual involved in producing, transporting, or marketing aquatic products from private waters for commercial purposes.

6. *"Bag limit"* or *"possession limit"* is the number of any kind of game, fish, bird or animal or other wildlife form permitted to be taken or held in a specified time.

7. *"Bait"* includes but is not limited to minnows, green sunfish, orange-spotted sunfish, gizzard shad, frogs, crayfish, and salamanders.

8. *"Biological balance"* means that condition when the number of animals present over the long term is at or near the number of animals of a particular species that the available habitat is capable of supporting.

9. *"Bird"* means a member of the class Aves.

10. *"Buy"* means to purchase, offer to purchase, barter for, trade for, or lease.

11. *"Closed season"* is that period of time during which hunting, fishing, trapping or taking is prohibited.

12. *"Commercial purposes"* means selling, giving, or furnishing to others.

13. *"Commission"* means the natural resource commission.

14. *"Contraband"* as used in the laws pertaining to the work of the commission shall mean anything, the possession of which was illegally procured, or the possession of which is unlawful.

15. *"Department"* means the department of natural resources.

16. *"Director"* means the director of the department or the director's designee.

17. *"Farm deer"* means the same as defined in section 170.1.

18. *"Fish"* means a member of the class Pisces.

19. *"Frog"* means a member of the order Anura.

20. *"Fur-bearing animals"* means the following which are declared to be fur-bearing animals for the purpose of regulation and protection under the Code: beaver, badger, mink, otter, muskrat, raccoon, skunk, opossum, spotted skunk or civet cat, weasel, coyote, bobcat, wolf, groundhog, red fox, and gray fox. This chapter does not apply to domesticated fur-bearing animals.

21. *"Game"* means all of the animals specified in this subsection except those designated

as not protected, and includes the heads, skins, and any other parts, and the nests and eggs of birds and their plumage.

a. The Anatidae: such as swans, geese, brant, and ducks.

b. The Rallidae: such as rails, coots, mudhens, and gallinules.

c. The Limicolae: such as shorebirds, plovers, surfbirds, snipe, woodcock, sandpipers, tattlers, godwits, and curlews.

d. The Gallinae: such as wild turkeys, grouse, pheasants, partridges, and quail.

e. The Columbidae: such as mourning doves and wild rock doves only.

f. The Sciuridae: such as gray squirrels and fox squirrels.

g. The Leporidae: cottontail rabbits and jackrabbits only.

h. The Cervidae: such as elk or deer, other than farm deer.

22. "*Measurement of fish*" is the length from end of nose to longest tip of tail.

23. "*Minnows*" means chubs, suckers, shiners, dace, stonerollers, mud minnows, redhorse, blunt-nose, and fathead minnows.

24. "*Mussels*" means the pearly fresh water mussels, clams or naiads, and their shells.

25. "*Open season*" is that period of time during which hunting, fishing, trapping or taking is permitted.

26. "*Person*" shall mean any person, firm, partnership or corporation.

27. "*Possession*" is both active and constructive possession and any control of things referred to.

28. "*Private waters for aquaculture*" means waters confined within an artificial containment, such as man-made ponds, vats, tanks, raceways, and other indoor or outdoor facilities constructed wholly within or on the land of an owner or lessee and used for aquaculture.

29. "*Reptile*" means a member of the class Reptilia.

30. "*Sell*" or "*sale*" is selling, bartering, exchanging, offering or exposing for sale.

31. "*Spawn*" means any of the eggs of any fish, amphibian, or mussel.

32. "*Take*" or "*taking*" or "*attempting to take*" or "*hunt*" is any pursuing, or any hunting, fishing, killing, trapping, snaring, netting, searching for or shooting at, stalking or lying in wait for any game, animal, bird, or fish protected by the state laws or rules adopted by the commission whether or not such animal be then subsequently captured, killed, or injured.

33. "*Transport*" or "*transportation*" is all carrying or moving or causing to be carried or moved.

34. "*Turtle*" means any member of the order Testudines.

35. "*Whitetail*" means an animal belonging to the Cervidae family and classified as part of the Virginianus species of the Odocoileus genus, commonly referred to as whitetail.

36. "*Wild animal*" means a wild mammal, bird, fish, amphibian, reptile, or other wildlife found in this state, whether game or nongame, migratory or nonmigratory, the ownership and title to which is claimed by this state.

37. "*Wild mammal*" means a member of the class Mammalia.

[C39, §**1703.60;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.1]

83 Acts, ch 168, §5; 86 Acts, ch 1245, §1850 – 1852; 88 Acts, ch 1216, §1, 2; 92 Acts, ch 1160, §17; 92 Acts, ch 1186, §1; 92 Acts, ch 1216, §1

C93, §481A.1

93 Acts, ch 99, §1; 95 Acts, ch 134, §5; 2003 Acts, ch 149, §14 – 16, 23; 2012 Acts, ch 1118, §4; 2014 Acts, ch 1026, §110

Referred to in §456A.37, 556H.1, 717B.1, 717B.2, 717B.3A, 717B.6, 717D.3

481A.2 State ownership and title — exceptions.

The title and ownership of all fish, mussels, clams, and frogs in any of the public waters of the state, and in all ponds, sloughs, bayous, or other land and waters adjacent to any public waters stocked with fish by overflow of public waters, and of all wild game, animals, and birds, including their nests and eggs, and all other wildlife, found in the state, whether game or nongame, native or migratory, except deer in parks and in public and private preserves, the ownership of which was acquired prior to April 19, 1911, are hereby declared to be in

the state, except as otherwise provided in this chapter. The title and ownership of all aquatic organisms in aquaculture units and private aquacultural waters shall be in private persons.

[S13, §2562-c, 2563-j; SS15, §2562-b; C24, 27, 31, 35, 39, §**1704;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.2]

90 Acts, ch 1044, §1; 92 Acts, ch 1216, §2

C93, §481A.2

Referred to in §1.9

481A.3 Conclusive presumption.

Any person catching, taking, killing, or having in possession any of such fish, mussels, clams, frogs, game, animals, or birds, their nests or eggs, or other wildlife in violation of the provisions of this chapter, shall be held to consent that the title to the same shall be and remain in the state for the purpose of regulating and controlling the catching, taking, or having in possession the same, and disposing thereof after such catching, taking, or killing.

[S13, §2562-c; SS15, §2562-b; C24, 27, 31, 35, 39, §**1705;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.3]

C93, §481A.3

481A.4 Fish hatcheries — game farms.

The commission may establish and control the state hatcheries and game farms, which shall be used for the purpose of stocking the waters of the state with fish and the natural covers with game birds to the extent of the means provided for that purpose; and for impartially and equitably distributing all birds, eggs, and fry raised by or furnished to the state, or for the state through other sources, in the streams, lakes, and natural covers of the state.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §**1709;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.4]

C93, §481A.4

2019 Acts, ch 24, §69

Section amended

481A.5 State game refuges.

1. The commission may establish state game refuges or sanctuaries on any land owned by the state of Iowa suitable for this purpose when necessary for the preservation of biological balance pursuant to the provisions of section 481A.39, for the protection of public parks, for the protection of the public health, safety and welfare, or to effect sound wildlife management.

2. In emergency situations when the maintenance of the biological balance as provided in section 481A.39 is threatened, the director may establish temporary state game refuges in conformity with sound wildlife management. The establishment of a temporary refuge shall be accomplished by posting notices in conspicuous places around the refuge. The establishment of a temporary refuge by the director shall be effective until five days after the next meeting of the commission or for such longer time as the commission may determine is necessary to maintain a biological balance as provided in section 481A.39 and to effect sound wildlife management.

[C27, 31, 35, §1709-a1; C39, §**1709.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.5]

C93, §481A.5

481A.6 Game management area.

The commission may establish a game management area upon any public lands or waters, or with the consent of the owner upon any private lands or waters, when necessary to maintain a biological balance as provided in section 481A.39 or to provide for public hunting, fishing, or trapping in conformity with sound wildlife management; and when a game management area is established, the commission shall with the consent of the owner,

if any, have the right to post and prohibit, and to regulate or limit the lands or waters against trespassing, hunting, fishing, or trapping, and any violation of the regulations is unlawful.

[C35, §1709-e1; C39, §**1709.2;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.6]

90 Acts, ch 1216, §6

C93, §481A.6

Referred to in §805.8B(3)(c)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.6A Pen-reared pheasants — release by landowners and tenants.

1. As used in this section, *"pen-reared pheasant"* means a Chinese ring-necked pheasant (Phasianus colchicus torquatus) and its subspecies which originates from a captive population and which has been propagated and held by a hatchery. For the purposes of this section *"pen-reared pheasant"* does not include a Reeves (Syrmaticus reevesii) or Lady Amherst (Chrysolophus amherstiae) pheasant, a subspecies of the Chinese ring-necked pheasant classified as a Japanese (Phasianus versicolor) or a Black-necked (P. colchicus colchicus) pheasant, or a melanistic mutant (black, white, or other color mix) of the Chinese ring-necked pheasant. This subsection is not applicable to game birds released for officially sanctioned field meets or trials and retriever meets or trials on private land pursuant to section 481A.22, pen-raised game birds used on private land pursuant to section 481A.56, or game birds released on hunting preserves pursuant to chapter 484B.

2. Notwithstanding section 481A.60, an owner or tenant of land may obtain pen-reared pheasants from a hatchery approved by the department, and raise or release the pen-reared pheasants on the owner's or tenant's land. A person shall not relocate a pen-reared pheasant to any other land.

3. A person taking a pen-reared pheasant shall comply with all requirements provided in this chapter and chapter 483A.

2010 Acts, ch 1180, §1; 2012 Acts, ch 1118, §5; 2013 Acts, ch 90, §143

Referred to in §484B.3

481A.6B Pheasant population studies — reports. Repealed by its own terms; 2012 Acts, ch 1106, §1.

481A.7 Hunting on game refuges.

1. It shall be unlawful to hunt, pursue, kill, trap or take any wild animal, bird, or game on any state game refuge so established at any time of the year, and no one shall carry firearms thereon, providing, however, that predatory birds and animals may be killed or trapped under the authority and direction of the director.

2. The commission may specify the distance from a state game refuge where shooting is prohibited, and shall have notice of same posted at such distance in conspicuous places around the refuge, provided, however, this prohibition shall not apply to owners or tenants hunting on their own land outside of a state game refuge. The commission may prohibit shooting at any reasonable distance from a state game refuge deemed necessary to accomplish the purposes for which the refuge is established.

[C27, 31, 35, §1709-a2; C39, §**1709.3;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.7]

86 Acts, ch 1245, §1855

C93, §481A.7

Referred to in §805.8B(3)(d)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.8 Notice of establishment.

When any such refuge or preserve is established by the commission, it shall post notices of such establishment in conspicuous places around the refuge.

[C27, 31, 35, §1709-a3; C39, §**1709.4;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.8]

C93, §481A.8

481A.9 Spawning grounds.

To effect sound wildlife management and maintain biological balance as provided in section 481A.39, the commission may set aside certain portions of any state waters for spawning

grounds where the same are suitable for this purpose for such length of time as it may deem advisable by the posting of notices in conspicuous places around such area, and it shall be unlawful for any person to fish or to in any manner interfere with the spawning of fish in this area. Any person violating any of the provisions of this section shall be guilty of a simple misdemeanor.

[C31, 35, §1709-c1; C39, §**1709.5;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.9]
C93, §481A.9

481A.10 Reports and accounting.

At the time provided by law, the director shall make a report to the governor of the director's doings for the preceding biennial period, including therein an itemized statement of all receipts and disbursements; also all contracts for the taking of soft fish from the waters of this state, with the profits accruing from such contracts; also such other information upon the subject of the culture of fish and the protection of game as may be of value. All funds derived under said contracts shall be paid into the state fish and game protection fund.

[C97, §2539; SS15, §2539; C24, 27, 31, 35, 39, §**1710;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.10]
C93, §481A.10

481A.10A Farmer advisory committee.

1. The director shall establish a farmer advisory committee for the purpose of providing information to the department regarding crop and tree damage caused by deer, wild turkey, and other predators.

2. Members of the committee shall include a representative designated by each of the following organizations:

a. The Iowa corn growers association.
b. The Iowa farm bureau federation.
c. The Iowa farmers union.
d. The Iowa state horticulture society.
e. The Iowa Christmas tree growers association.
f. The Iowa nursery and landscape association.
g. The department of agriculture and land stewardship.
h. The Iowa state university agricultural extension service.

3. The committee shall meet with a representative of the department of natural resources on a semiannual basis. The committee shall serve without compensation or reimbursement for expenses.

87 Acts, ch 233, §224
CS87, §109.10A
C93, §481A.10A
2008 Acts, ch 1037, §1, 6; 2014 Acts, ch 1026, §111
Referred to in §481C.2

481A.11 Seized or accidentally killed game — disposition.

Except as provided in section 481A.13 or 481A.13A, any game or fish seized by the commission under section 481A.12 or any game accidentally killed by a motor vehicle on a public highway shall, when salvageable, be disposed of as determined by the commission or its designee.

[C77, 79, 81, §109.11]
C93, §481A.11
2018 Acts, ch 1150, §1

481A.12 Seizure of wildlife taken or handled illegally.

The director or any peace officer shall seize with or without warrant and take possession of, or direct the disposal of, any fish, furs, birds, animals, mussels, clams, or frogs, which have been caught, taken, or killed at a time, in a manner, or for a purpose, or had in possession or under control, or offered for shipment, or illegally transported in the state or to a point

beyond its borders, contrary to the Code. All fish, furs, birds, animals, mussels, clams, or frogs seized under this section shall be relinquished to a representative of the commission, disposed of, or kept as provided in section 481A.13.

[SS15, §2539; C24, 27, 31, 35, 39, §**1714;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.12]

88 Acts, ch 1216, §3

C93, §481A.12

94 Acts, ch 1148, §1; 2018 Acts, ch 1150, §2

Referred to in §331.653, 481A.11, 481A.13A, 483A.33, 716.8

481A.13 Search warrants.

1. Any court having jurisdiction of the offense, upon receiving proof of probable cause for believing that any fish, mussels, clams, frogs, birds, furs, or animals caught, taken, killed, had in possession, under control, or shipped, contrary to the Code, or hidden or concealed in any place, shall issue a search warrant and cause a search to be made in any place therefor.

2. The property so seized under warrant shall be safely kept under the direction of the court so long as necessary for the purpose of being used as evidence in any trial. If a trial results in a conviction, the property seized shall be confiscated by the director or the director's officers. If the trial does not result in a conviction, the property shall be returned to the person pursuant to section 481A.13A unless the property is fish or wildlife that is illegal to possess, including fish or wildlife that was taken, possessed, or transported unlawfully.

[SS15, §2539; C24, 27, 31, 35, 39, §**1716;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.13]

88 Acts, ch 1216, §4

C93, §481A.13

2018 Acts, ch 1150, §3; 2019 Acts, ch 24, §70

Referred to in §481A.11, 481A.12, 481A.13A

Search warrant proceedings, chapters 808 and 809

Section amended

481A.13A Conviction required for property confiscation — return of property.

1. The state shall not confiscate property seized under section 481A.12 or 481A.13 unless the person from whom the property was seized is convicted of the violation for which the property was seized. However, the state shall not return any fish or wildlife that is illegal to possess, including fish or wildlife that was taken, possessed, or transported unlawfully.

2. If the person from whom the property was seized is not convicted of the violation for which the property was seized, the department, law enforcement agency, or other governmental agency in possession of the seized property shall return the seized property to the person within thirty days of any of the following:

a. The date the person is found not guilty of the violation.

b. The date the action involving the violation is dismissed.

c. The date the statute of limitations expires for the alleged violation for which the property was seized.

3. For purposes of this section, *"convicted"* includes a finding of guilt, payment of a scheduled fine, a plea of guilty, deferred judgment, deferred or suspended sentence, adjudication of delinquency, or circumstance where a person is not charged with a criminal offense related to the violation based in whole or in part on the person's agreement to provide information regarding the criminal activity of another person.

2018 Acts, ch 1150, §4

Referred to in §481A.11, 481A.13, 483A.32, 483A.33

481A.14 Dams — fishways.

It shall be unlawful for any person, firm, or corporation to place, erect, or cause to be placed or erected, any dam or other device or contrivance in such manner as to hinder or obstruct the free passage of fish up, down, or through such waters, except as otherwise provided in this chapter. Dams for manufacturing or other lawful purposes may be erected across the waters of the state. No permanent dam or obstruction across such waters shall be erected or maintained which is not provided with a fishway, except by written approval of the director,

nor shall any pumping station or plant except sand pumping and dredging machines, in or connected with such waters be constructed or operated except by written approval of the director, which is not provided with screens to prevent fish from entering the pumping station or plant. Such fishways and screens shall be constructed and used according to the plans and specifications prepared and furnished by the director. Any dam, obstruction, or pumping plant which is not so constructed is a public nuisance and may be abated accordingly.

[C97, §2540, 2547, 2548; S13, §2547; SS15, §2540, 2548; C24, 27, 31, 35, 39, §**1741;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.14]

86 Acts, ch 1245, §1855

C93, §481A.14

Nuisances in general, chapter 657

481A.15 Destruction or alteration of dam.

It is unlawful for any owner or the owner's agent to remove or destroy any existing dam, or alter it in a way so as to lower the water level, without having received written approval from the environmental protection commission of the department.

[C24, 27, 31, 35, 39, §**1742;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.15; 82 Acts, ch 1199, §54, 96]

86 Acts, ch 1245, §1853

C93, §481A.15

481A.16 Taking by director for stocking and exchange.

The director may take from the public waters of the state, at any time and in any manner, any fish for the purpose of propagating or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or private fish hatcheries.

[C97, §2546; S13, §2546; C24, 27, 31, 35, 39, §**1744;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.16]

83 Acts, ch 110, §1

C93, §481A.16

481A.17 Target shooting sports program.

The department shall establish a target shooting sports program to promote recreational target shooting sports. The purposes of the program shall be to introduce more Iowans to target shooting sports, promote existing target shooting programs, provide more target shooting facilities, and improve existing target shooting facilities. The commission may adopt rules to achieve these purposes.

2012 Acts, ch 1118, §6

481A.18 Hunting incidents — mandatory reporting.

This section applies to a person who is involved in a hunting incident with a firearm or a fall from a device that allows or assists a person to hunt from an elevated location, if the hunting incident results in an injury to a person, or property damage exceeding one hundred dollars. The person shall report the hunting incident to the sheriff's office in the county where the hunting incident occurred or to the department within twelve hours after the hunting incident occurred. However, if an injury caused by the hunting incident prevents timely reporting, the person shall make the report as soon as practicable. A person who fails to report the hunting incident as required in this section is guilty of a simple misdemeanor.

90 Acts, ch 1198, §1

C91, §109.18

C93, §481A.18

2008 Acts, ch 1161, §15

481A.19 Reciprocity of states.

1. *a.* Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in the waters forming the boundary between such state and Iowa, may take such fish, game,

mussels, or fur-bearing animals from that portion of said waters lying within the territorial jurisdiction of this state, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

b. Any person licensed by the authority of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota to take fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of any of those states may take such fish, game, mussels, or fur-bearing animals from or in lands under the jurisdiction of the commission when such land is adjacent to that respective state but is separated from other land in Iowa by a body of water, without having procured a license from the director of this state, in the same manner that persons holding Iowa licenses may do, if the laws of Illinois, Minnesota, Missouri, Wisconsin, Nebraska, or South Dakota, respectively, extend a similar privilege to persons so licensed under the laws of Iowa.

2. Any privileges conferred by this section shall be subject to a reciprocal agreement as negotiated by the commission and the authority of a state provided in subsection 1 which confers upon a licensee of this state reciprocal rights, privileges, and immunities as provided in section 483A.31. Such agreements may include determination of which state's seasons and limits shall apply for specific geographical areas.

[C24, 27, 31, 35, 39, §**1762;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.19]
86 Acts, ch 1245, §1855
C93, §481A.19
2008 Acts, ch 1161, §16; 2009 Acts, ch 144, §15, 16; 2011 Acts, ch 34, §108

481A.20 Parrots and canaries.

This chapter shall not be construed to forbid the selling or shipping of parrots, canaries, or any other cage birds which are imported from other countries or not native to any part of the United States.

[S13, §2563-r; C24, 27, 31, 35, 39, §**1777;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.20]
C93, §481A.20

481A.21 Birds as targets.

A person shall not keep or use any live pigeon or other bird as a target, to be shot at for amusement or as a test of skill in marksmanship, or shoot at a bird kept or used for such purpose, or be a party to such shooting, or lease any building, room, field, or premises, or knowingly permit the use thereof, for the purpose of such shooting. This section does not prevent any person from shooting at live pigeons, sparrows, and starlings when used in the training of hunting dogs. This section does not prevent any person from shooting at a game bird that is released a minimum of twenty-five yards from that person on a licensed hunting preserve. For the purposes of this section, *"game bird"* means the same as defined in section 484B.1.

[S13, §2563-i; C24, 27, 31, 35, 39, §**1778;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.21]
88 Acts, ch 1216, §5
C93, §481A.21
2009 Acts, ch 179, §213, 217; 2010 Acts, ch 1154, §1
Referred to in §481A.22, 805.8B(3)(c)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.22 Field and retriever meets — permits and tags required.

1. *a.* All officially sanctioned field meets or trials and retriever meets or trials where the skill of dogs is demonstrated in pointing, retrieving, trailing, or chasing any game bird, game animal, or fur-bearing animal shall require a field trial permit. Except as otherwise provided by law, it shall be unlawful to kill any wildlife in such events. Notwithstanding the provisions of section 481A.21 it shall be lawful to hold field meets or trials and retriever meets or trials where dogs are permitted to work in exhibition or contest whereby the skill of dogs is

demonstrated by retrieving dead or wounded game birds which have been propagated by licensed game breeders within the state or secured from lawful sources outside the state and lawfully brought into the state. All of the birds must be released on the day of trials on premises where the trials are held.

b. Any birds released may be shot by official guns after having secured a permit as provided in this section.

c. The permits may be issued by the director of the department upon proper application and the payment of a fee of two dollars for each trial held. A representative of the department shall attend all such trials and enforce the laws and regulations governing same.

2. The person or persons designated by the committee in charge to do the shooting for the trials shall be known as the official guns, and no other person shall be permitted to kill or attempt to kill any of the birds released for such trials.

3. Before any birds are released under this section, they must each have attached a tag provided by the department and attached by a representative of the department at a cost of not more than ten cents for each tag. All tags are to remain attached to birds until prepared for consumption.

4. It is unlawful for any person to hold, conduct, or to participate in a field or retriever trial before the permit required by this section has been secured or for any person to possess or remove from the trial grounds any birds which have not been tagged as required in this section.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.22]

86 Acts, ch 1244, §24; 90 Acts, ch 1216, §7

C93, §481A.22

2015 Acts, ch 30, §157; 2016 Acts, ch 1011, §88

Referred to in §481A.6A, 805.8B(3)(c)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.23 Transportation for sale prohibited.

It shall be unlawful for any person, firm, or corporation, except as otherwise provided, to offer for transportation or to transport by common carrier or vehicle of any kind, to any place within or without the state, for the purposes of sale, any of the fish, game, animals, or birds taken, caught, or killed within the state, or to peddle any of such fish, game, animals, or birds.

[C97, §2555; SS15, §2540, 2555; C24, 27, 31, 35, 39, §**1780;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.23]

C93, §481A.23

See also §481A.32 and 481A.38

481A.24 Use of mobile radio transmitter prohibited — exceptions.

1. For the purposes of this section:

a. *"One-way mobile radio transmitter"* means a radio capable of transmitting a signal only but not capable of transmitting a voice signal. The signal may be tracked or located by radio telemetry or located by an audible sound.

b. *"Two-way mobile radio transmitter"* means a radio capable of transmitting and receiving voice messages including, but not limited to, a citizen band radio or a cellular telephone.

2. Except as otherwise provided in this section, a person who is hunting shall not use a one-way or two-way mobile radio transmitter to communicate the location or direction of game or fur-bearing animals or to coordinate the movement of other hunters. This subsection does not apply to the hunting of coyotes except during the shotgun deer season as set by the commission under section 481A.38.

3. A licensed falconer may use a one-way mobile radio transmitter to recover a free-flying bird of prey properly banded and covered on the falconry permit.

4. A person hunting with the aid of a dog may use at any time a one-way mobile transmitter designed to track or aid in the recovery of the dog.

[C79, 81, §109.24]

88 Acts, ch 1216, §6

C93, §481A.24
93 Acts, ch 119, §1; 94 Acts, ch 1147, §1
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.25 Reserved.

481A.26 Unlawful transportation.

No person, except as otherwise provided, shall ship, carry or transport in any one day, game, fish, birds, or animals, except fur-bearing animals in excess of the number legally permitted to be in possession of such a person.

[C97, §2555; SS15, §2555; C24, 27, 31, §1783; C35, §1782-e1; C39, §**1782.1;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.26]

C93, §481A.26
Referred to in §805.8B(3)(c)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.27 through 481A.29 Reserved.

481A.30 Entire shipment contraband.

In the shipping of fish, game, animals, birds, or furs, whenever a container includes one or more fish, game, animals, birds or furs that are contraband, the entire contents of the container shall be deemed contraband, and shall be seized by the director or the director's officers.

[C24, 27, 31, 35, 39, §**1787;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.30]

C93, §481A.30

481A.31 Game brought into the state.

It shall be lawful for any person, firm, or corporation to have in possession any fish or game lawfully taken outside the state and lawfully brought into the state, but the burden of proof shall be upon the person in such possession to show that such fish or game was lawfully killed and lawfully brought into the state.

[SS15, §2555; C24, 27, 31, 35, 39, §**1788;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.31]

C93, §481A.31

481A.32 Violations — penalties.

1. A person who does any of the following is guilty of a simple misdemeanor and shall be assessed a minimum fine of twenty dollars for each offense for which no other punishment is provided:

a. Takes, catches, kills, injures, destroys, has in possession, buys, sells, ships, or transports any frogs, fish, mussels, birds, their nests, eggs, or plumage, fowls, game, or animals or their fur or raw pelt in violation of the provisions of this chapter or of administrative rules of the commission.

b. Uses any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means, the use of which is prohibited by this chapter.

c. Uses any device, equipment, seine, trap, net, tackle, firearm, drug, poison, explosive, or other substance or means at a time, place, or in a manner or for a purpose prohibited.

d. Does any other act in violation of the provisions of this chapter or of administrative rules of the commission.

2. Each fish, fowl, bird, bird's nest, egg, or plumage, and animal unlawfully caught, taken, killed, injured, destroyed, possessed, bought, sold, or shipped shall be a separate offense.

3. A person convicted of taking a deer, antelope, moose, buffalo, or elk with a prohibited

weapon as defined by rules of the department, is subject to a fine of one hundred dollars for each offense committed while taking the animal with the prohibited weapon.

[R60, §4381 – 4383; C73, §4048, 4053, 4063; C97, §2543, 2544, 2551, 2552, 2556, 2558, 2561; S13, §2547-e, 2551-b, 2561, 2563-a8, -i, -o, -s, -v; SS15, §2540-a, 2544, 2551, 2552, 2556; C24, 27, 31, 35, 39, §**1789;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.32]

88 Acts, ch 1216, §7, 8

C93, §481A.32

2002 Acts, ch 1147, §1; 2018 Acts, ch 1026, §150

Referred to in §481A.59

See also §481A.23 and 481A.38 and applicable scheduled fine under §805.8B, subsection 3, paragraphs f and g

481A.33 Violations relating to dams.

Whoever shall erect any dam or other obstruction prohibited by this chapter or at a place or in a manner prohibited shall be guilty of a simple misdemeanor, or shall injure or destroy any dam lawfully erected, shall be guilty of an aggravated misdemeanor.

[C97, §2548, 2550; SS15, §2548; C24, 27, 31, 35, 39, §**1790;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.33]

C93, §481A.33

481A.34 Violations by common carrier.

A common carrier which violates any of the provisions of this chapter relating to receiving, having in possession, shipping, or delivering any fish, fowl, birds, birds' nests, eggs, or plumage, fur, raw pelts, game, or animals, in violation of the provisions of the Code or contrary to the regulations and restrictions provided in this chapter, and any agent, employee, or servant of a common carrier violating such provisions, is guilty of a simple misdemeanor.

[C73, §4049; C97, §2557; C24, 27, 31, 35, 39, §**1791;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.34]

88 Acts, ch 1216, §9

C93, §481A.34

481A.35 Attorney general and county attorneys.

It shall be the duty of the attorney general, when requested by the director, to give the attorney general's opinion in writing upon any question of law arising under this chapter; and it shall be the duty of all county attorneys in this state when requested by the director or any officer appointed by the commission, to prosecute all criminal actions brought in their respective counties for violations of the provisions of this chapter. Nothing in this chapter shall be construed as prohibiting any person from instituting legal proceedings for the enforcement of any of the provisions thereof.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §**1792;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.35]

C93, §481A.35

Referred to in §331.756(23)

481A.36 Information — venue.

1. In all prosecutions under this chapter, any number of violations may be charged in one information, but each charge shall be set out in a separate count if more than one charge is included in one information.

2. Prosecutions for violations may be brought in the county in which any fish, fowl, bird, bird's nest, eggs, or plumage, or animals protected by this chapter were unlawfully caught, taken, killed, trapped, ensnared, bought, sold, or shipped unlawfully, or in any county into or through which they were received, transported, or found in the possession of any person.

[R60, §4385; C73, §4051; C97, §2559; SS15, §2559; C24, 27, 31, 35, 39, §**1793;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.36]

C93, §481A.36

2018 Acts, ch 1041, §127; 2019 Acts, ch 24, §71

Subsection 2 amended

481A.37 Presumptive evidence.

It shall be presumptive evidence of a violation of the provisions of this chapter for any person to:

1. Have in possession any fish, game, furs, birds, birds' nests, eggs or plumage, or animals, which have been unlawfully caught, taken, or killed.

2. Be in possession of such fish, game, furs, birds, or animals at a time when or place where it shall be unlawful to take, catch, or kill the same, except game, birds or animals, during the first ten days of the closed season.

3. Have in possession any implements, devices, equipment, or means whatever of taking fish, birds, or animals protected by the Code at any place where the possession or use thereof is prohibited.

[C97, §2554; S13, §2563-a10; SS15, §2554, 2555; C24, 27, 31, 35, 39, §**1794;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.37]

88 Acts, ch 1216, §10, 11

C93, §481A.37

SUBCHAPTER II

PROPAGATION AND PROTECTION OF FISH, GAME, WILD BIRDS, AND ANIMALS

481A.38 Prohibited acts — restrictions on the taking of wildlife — special licenses.

It is unlawful for a person to take, pursue, kill, trap or ensnare, buy, sell, possess, transport, or attempt to so take, pursue, kill, trap or ensnare, buy, sell, possess, or transport any game, protected nongame animals, fur-bearing animals or fur or skin of such animals, mussels, frogs, spawn or fish or any part thereof, except upon the terms, conditions, limitations, and restrictions set forth herein, and administrative rules necessary to carry out the purposes set out in section 481A.39, or as provided by the Code.

1. *a.* The commission may upon its own motion and after an investigation, alter, limit, or restrict the methods or means employed and the instruments or equipment used in taking wild mammals, birds subject to section 481A.48, fish, reptiles, and amphibians, if the investigation reveals that the action would be desirable or beneficial in promoting the interests of conservation, or the commission may, after an investigation when it is found there is imminent danger of loss of fish through natural causes, authorize the taking of fish by means found advisable to salvage imperiled fish populations.

b. The commission shall adopt a rule permitting a crossbow to be used only by individuals with disabilities who are physically incapable of using a bow and arrow under the conditions in which a bow and arrow is permitted. The commission shall prepare an application to be used by an individual requesting the status. The application shall require the individual's physician to sign a statement declaring that the individual is not physically able to use a bow and arrow.

2. If the commission finds that the number of hunters licensed or the type of license issued to take deer or wild turkey should be limited or further regulated, the commission shall adopt procedures, by rule, for issuing the licenses. This subsection does not apply to the hunting of wild turkey on a hunting preserve licensed under chapter 484B.

3. The department and the commission shall exercise regulatory authority regarding seasons, bag limits, possession limits, locality, the method of taking, or the taking of fish and wildlife within the boundaries of the Sac and Fox tribe settlement in Tama county only to the extent provided in a written agreement between the tribal council of the Sac and Fox tribe of the Mississippi in Iowa and the department. The written agreement shall not be construed to supersede or impair the regulatory authority exercised by the commission pursuant to the federal Migratory Bird Treaty Act, the federal Migratory Bird Stamp Hunting Act, the federal Endangered Species Act, or other federal law, and shall not be construed to supersede or impair the regulatory authority exercised by the Sac and Fox tribe of the Mississippi in Iowa pursuant to any federal act, statute, or law. The department and the commission shall not unreasonably fail to enter into an agreement and shall pursue such an

agreement in an expedient manner. This subsection shall become effective upon signing of the written agreement by the director of the department and the chairperson of the Sac and Fox tribe of the Mississippi in Iowa.

[R60, §4381; C73, §4048; C97, §2551, 2555; S13, §2562-c, 2563-j, -k, -m, -n; SS15, §2540, 2551, 2555, 2562-b, -c, 2563-a1, -a2, -u; C24, 27, 31, §1718, 1719, 1755, 1767, 1774; C35, §1718-c1; C39, §**1794.001;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.38; 82 Acts, ch 1037, §1]

84 Acts, ch 1213, §1; 84 Acts, ch 1260, §1; 88 Acts, ch 1216, §12; 89 Acts, ch 87, §1; 90 Acts, ch 1109, §1; 92 Acts, ch 1160, §18

C93, §481A.38

96 Acts, ch 1129, §97; 99 Acts, ch 39, §1; 2001 Acts, ch 134, §1, 2; 2007 Acts, ch 189, §1, 2; 2011 Acts, ch 25, §143

Referred to in §456A.24, 481A.24, 481A.48, 481A.67, 483A.24, 483A.28, 805.8B(3)(f), 805.8B(3)(g)

See also §481A.23 and 481A.32

For applicable scheduled fines, see §805.8B, subsection 3, paragraphs f and g

481A.39 Biological balance maintained.

The commission is designated the sole agency to determine the facts as to whether biological balance does or does not exist. The commission shall, by administrative rule, extend, shorten, open, or close seasons and set, increase, or reduce catch limits, bag limits, size limits, possession limits, or territorial limitations or further regulate taking conditions in accordance with sound fish and wildlife management principles.

[C39, §**1794.002;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.39]

88 Acts, ch 1216, §13

C93, §481A.39

Referred to in §481A.5, 481A.6, 481A.9, 481A.38, 481A.48, 481A.67, 483A.6A, 483A.28

481A.40 Use of drugs on wildlife — penalty.

1. For the purposes of this section, *"drug"* means any chemical substance, other than food, that affects the structure or biological function of any wildlife under the jurisdiction of the department of natural resources.

2. Except with written authorization from the director or the director's designee or as otherwise provided by law, a person shall not administer any drug to any wildlife under the jurisdiction of the department of natural resources, including but not limited to drugs used for fertility control, disease prevention or treatment, immobilization, or growth stimulation.

3. This section does not prohibit the treatment of sick or injured wildlife by a licensed veterinarian or holder of a wildlife rehabilitation permit.

4. This section shall not be construed to limit employees of agencies of the state, the United States, or local animal control officers, licensed animal shelters, or licensed pounds in the performance of their official duties related to public health, wildlife management, or wildlife removal. However, a drug shall not be administered by any person for fertility control or growth stimulation except as provided in subsection 2.

5. An officer of the department may take possession of or dispose of any wildlife under the jurisdiction of the department of natural resources that the officer reasonably believes has been administered drugs in violation of this section.

6. A person who violates this section is guilty of a serious misdemeanor.

2007 Acts, ch 56, §1

481A.41 Reserved.

481A.42 Nongame protected — exclusion.

Protected nongame species include wild fish, wild birds, wild bats, wild reptiles, and wild amphibians, an egg, a nest, a dead body or part of a dead body, and a product made from part of a body of a wild fish, wild bird, wild bat, wild reptile, or wild amphibian. However, nongame does not include game, fish that may be taken pursuant to regulations established under the Code or departmental rule, fur-bearing animals, turtles, or frogs, as defined in this chapter. The commission shall designate by rule those species of nongame which by their

abundance or habits are declared a nuisance, and these species shall not be protected. Rules adopted shall include but are not limited to a provision that states that any bat, except for the Indiana bat, which is found within a building that is occupied by human beings is not a protected nongame species.

[S13, §2563-q; C24, 27, 31, §1776; C39, §**1794.005;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.42]

83 Acts, ch 168, §6; 92 Acts, ch 1107, §1

C93, §481A.42

93 Acts, ch 20, §1

Referred to in §717B.1

481A.43 through 481A.46 Reserved.

481A.47 Importing fish and game — permits.

1. Unless application is first made in writing to the commission for a permit and a permit is granted, a person, firm, or corporation shall not, except as otherwise provided, bring into the state of Iowa for the purpose of propagating or introducing, or place or introduce into any of the inland or boundary waters of the state, any fish or spawn thereof that are not native to such waters, or introduce or stock any bird or animal.

2. A permit shall be granted only after the commission has made such investigation or inspection of the fish, birds, or animals as the commission may deem necessary to determine whether or not such fish, birds, or animals are free from disease and whether or not such introduction will be beneficial or detrimental to the native wildlife and the people of the state, and may or may not approve such planting, releasing, or introduction according to its findings.

3. Nothing in this section shall prohibit licensed game breeders from securing native or exotic birds or animals from outside the state and bringing them into the state and a game breeder shall not be required to have a permit as provided in this section when such birds or animals are not released to the wild but are held on the game breeder's premises as breeding stock.

[C39, §**1794.010;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.47]

C93, §481A.47

2018 Acts, ch 1026, §151

Referred to in §805.8B(3)(d)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

SUBCHAPTER III

TERRITORIES, OPEN SEASONS, AND BAG AND POSSESSION LIMITS FOR GAME

481A.48 Restrictions on game birds and animals.

1. A person, except as otherwise provided by law, shall not willfully disturb, pursue, shoot, kill, take or attempt to take, or have in possession any of the following game birds or animals except within the open season established by the commission: gray or fox squirrel, bobwhite quail, cottontail or jackrabbit, duck, snipe, pheasant, goose, woodcock, partridge, mourning dove, coot, rail, ruffed grouse, wild turkey, pigeon, or deer. The seasons, bag limits, possession limits, and locality shall be established by the department or commission under the authority of sections 456A.24, 481A.38, and 481A.39.

2. The commission may adopt rules for the taking and possession of migratory birds which are subject to the federal Migratory Bird Treaty Act and Migratory Bird Stamp Hunting Act during the time and in the manner permitted under those federal Acts. The commission shall not adopt a rule for the taking or possession of a migratory bird for which an open season is not authorized by another paragraph of this section.

3. The commission may by rule permit the taking and possession of designated raptors and crows during the time and in the manner permitted under the federal Migratory Bird Treaty Act.

4. The commission shall establish methods by which pigeons may be taken which may include but are not limited to the use of trapping, chemical repellants, or toxic perches.

5. The commission shall establish one or more pistol or revolver seasons for hunting deer as separate firearm seasons or to coincide with one or more other firearm deer hunting seasons. Any pistol or revolver firing a magnum three hundred fifty-seven thousandths of one inch caliber or larger, centerfire, straight wall ammunition propelling an expanding-type bullet is legal for hunting deer during the pistol or revolver seasons. The commission shall adopt rules to allow black powder pistols or revolvers for hunting deer. The rules shall not allow pistols or revolvers with shoulder stock or long-barrel modifications. The barrel length of a pistol or revolver used for deer hunting shall be at least four inches. The rules may limit types of ammunition. A person who is sixteen years of age or less shall not hunt deer with a pistol or revolver. A person possessing a prohibited pistol or revolver while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph "*h*", subparagraph (5).

6. The commission shall adopt rules pursuant to chapter 17A allowing the use of straight wall cartridge rifles to hunt deer as follows:

a. A straight wall cartridge rifle may be used to hunt deer during youth and disabled deer hunting season and first and second shotgun deer hunting seasons by a person who has a valid deer hunting license and is otherwise qualified to hunt.

b. A straight wall cartridge rifle that is allowed pursuant to this subsection shall be of the same caliber and use the same straight wall ammunition as is allowed for use in a pistol or revolver for hunting deer as provided in subsection 5. In addition, the commission shall provide, by rule, for the use of straight wall ammunition under this subsection that meets ballistics specifications similar to the requirements for straight wall ammunition allowed for use in a pistol or revolver for hunting deer as provided in subsection 5.

c. A person possessing a prohibited rifle while hunting deer commits a scheduled violation under section 805.8B, subsection 3, paragraph "*h*", subparagraph (6). In addition, the hunting privileges of a person convicted of possessing a prohibited rifle while hunting deer shall be suspended for two years.

[R60, §4381; C73, §4048; C97, §2551, 2552; S13, §2563-q; SS15, §2551, 2552, 2563-u; C24, §1767, 1768, 1776; C27, 31, §1767, 1767-a1, 1768, 1776; C39, §**1794.011;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.48]

86 Acts, ch 1133, §2, 3

C93, §481A.48

97 Acts, ch 141, §1; 2001 Acts, ch 137, §5; 2011 Acts, ch 3, §1; 2017 Acts, ch 68, §1

Referred to in §170.8, 481A.38, 805.8B(3)(h)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph h

481A.49 Reserved.

481A.50 Selling birds.

No part of the plumage, skin or body of any bird protected by this chapter shall be sold or had in possession for sale, irrespective of whether said bird was captured or killed within or without the state, except as otherwise provided.

[C39, §**1794.013;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.50]

C93, §481A.50

Referred to in §481A.55, 805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.51 Hunting license not trapping license.

A hunting license shall not permit the holder to trap any fur-bearing animal as defined in this chapter.

[SS15, §2563-a1; C24, 27, §1718; C31, §1718-c1; C39, §**1794.014;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.51]

C93, §481A.51

481A.52 Exhibiting catch to officer.

A person who has in possession any game bird or game animal, fish or fur or part thereof shall upon request of the director or any officer appointed by the department exhibit it to the director or officer, and a refusal to do so is a violation of the Code.

[C31, §1768-c1; C39, §**1794.015;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.52]
88 Acts, ch 1216, §14
C93, §481A.52
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.53 Chasing from dens.

It is unlawful to have in possession while hunting or to use while hunting any ferret or any device or any substance to be used for chasing animals from their dens.

[C31, §1767-c1; C39, §**1794.016;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.53]
88 Acts, ch 1216, §15
C93, §481A.53
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.54 Shooting rifle, shotgun, pistol, or revolver over water, highway, or railroad right-of-way.

1. A person shall not shoot any rifle on or over any of the public waters or public highways of the state or any railroad right-of-way.

2. A person shall not shoot a shotgun with a slug load, pistol, or revolver on or over a public roadway as defined in section 321.1, subsection 65.

3. This section does not apply to any peace officers or military personnel in the performance of their official duties.

[C31, §1772-c2; C39, §**1794.017;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.54]
91 Acts, ch 234, §1
C93, §481A.54
Referred to in §805.8B(3)(b)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.55 Selling game.

1. Except as otherwise provided, a person shall not buy or sell, dead or alive, a bird or animal or any part of one which is protected by this chapter, but this section does not apply to fur-bearing animals, bones of wild turkeys that were legally taken, and the skins, plumage, and antlers of legally taken game. This section does not prohibit the purchase of jackrabbits from sources outside this state. A person shall not purchase, sell, barter, or offer to purchase, sell, or barter for millinery or ornamental use the feathers of migratory game birds; and a person shall not purchase, sell, barter, or offer to purchase, sell, or barter mounted specimens of migratory game birds.

2. Section 481A.50 and this section do not apply to a game species, fur-bearing animal species, or variety of fish protected under this chapter which is sold by a nonprofit corporation as a part of a meal. The number of game of a game species or fur-bearing animal species, or a variety of fish protected by this chapter which are donated by a person to a nonprofit corporation plus any additional game of the same species or same variety of fish in the person's possession must not exceed the person's legal possession limit.

[C97, §2554; SS15, §2554; C24, 27, 31, §1769; C39, §**1794.018;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.55]
87 Acts, ch 176, §1; 88 Acts, ch 1216, §16
C93, §481A.55
2007 Acts, ch 28, §13
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.56 Training dogs.

1. *a.* A person having a valid hunting license may train a bird dog on any game birds and a person having a valid fur harvester license may train a coonhound, foxhound, or trailing

dog on any fur-bearing animals at any time of the year including during the closed season on such birds or animals. However, the animals when pursued to a tree or den shall not be further chased or removed in any manner from the tree or den. A person having a hunting license may train a dog on coyote or groundhog.

b. Only a pistol, revolver, or other gun shooting blank cartridges shall be used while training dogs during closed season except as provided in subsection 2 of this section.

2. Any pen-raised game bird may be used and may be shot in the training of bird dogs. Before any bird is released or used in the training of dogs, the bird shall have attached a band procured from the commission. The commission may charge a fee for such bands but the fee shall not exceed ten cents for each band.

3. A call back pen or live trap may be used for the purpose of retrieving banded birds when released in the wild for training purposes. Any bird not so banded when taken in a call back pen or trap shall be immediately returned unbanded to the wild. All call back pens or live traps when in use shall have attached a metal tag plainly labeled with the owner's name and address. Conservation officers shall have authority to confiscate such traps when found in use and not properly labeled.

4. The commission shall have the power to adopt rules prohibiting the training of any hunting dog on any game bird, game animal, or fur-bearing animal in the wild at any time when it has been determined that such training might have an adverse effect on the populations of these species.

[C39, §**1794.019;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.56]
85 Acts, ch 10, §1; 86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §17
C93, §481A.56
2011 Acts, ch 25, §143
Referred to in §481A.6A, 484B.10, 805.8B(3)(c)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.57 Possession and storage.

A person having lawful possession of game or fur-bearing animals or their pelts lawfully taken by that person with a valid hunting or trapping license, may hold, possess, or store the game or fur-bearing animals or their pelts in an amount that does not exceed the possession limit for the game or fur-bearing animal, from the date of taking until the day before the first day of the next open season for that game or fur-bearing animal. Any person may possess up to twenty-five pounds of deer venison if the deer was obtained from a lawful source.

[C39, §**1794.020;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.57]
88 Acts, ch 1216, §18
C93, §481A.57
2002 Acts, ch 1147, §2; 2016 Acts, ch 1021, §1
Referred to in §805.8B(3)(e)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

481A.58 Trapping birds or poisoning animals.

No person except those acting under the authority of the director shall capture or take or attempt to capture or take, with any trap, snare or net, any game bird, nor shall any person use any poison or any medicated or poisoned food or any other substance for the killing, capturing or taking of any game bird or animal.

[R60, §4381; C73, §4048; C97, §2551; SS15, §2539, 2551; C24, 27, 31, §1773; C39, §**1794.021;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.58]
86 Acts, ch 1245, §1855
C93, §481A.58
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.59 Pigeons — interference prohibited.

1. It shall be unlawful for any person or persons, except the owner or the owner's representatives, to shoot, kill, maim, injure, steal, capture, detain, or to interfere with any homing pigeon, commonly called "carrier pigeon", which shall at the time, have the name, initials, or other identification of its owner, stamped, marked, or attached thereon; or to

remove any mark, band, or other means of identification from such pigeon which has the name, initials, or emblem of the owner stamped or marked upon it.

2. A person who violates the provisions of this section shall be punished as is provided in section 481A.32.

[C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.59]
C93, §481A.59
2018 Acts, ch 1026, §152

SUBCHAPTER IV

GAME BREEDERS

481A.60 Raising game — rulemaking authority.

A person shall not raise or sell game or fur-bearing animals of the kinds protected by this chapter, except rock doves and pigeons, without first procuring a game breeder's license as provided by law. The commission may adopt rules which ensure that all game birds, game animals, and fur-bearing animals handled and confined by licensed game breeders are provided with humane care and treatment. A violation of a rule adopted by the commission is a cause for license revocation. This section does not apply to governmental zoos and exhibits.

[C39, §**1794.022;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.60]
88 Acts, ch 1216, §19; 91 Acts, ch 237, §1
C93, §481A.60
Referred to in §481A.6A, 805.8B(3)(c)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.61 Licensed game breeders — marketing game — penalty.

1. Except as otherwise provided by law, a licensed game breeder whose original stock is obtained from a lawful source may possess any game bird, game animal, or fur-bearing animal, or any of their parts. Possession and use of the game birds, game animals, or fur-bearing animals obtained from a licensed game breeder are lawful.

2. Fur-bearing animals shall not be acquired for breeding or propagating purposes from any source unless they have been pen-raised for at least two successive generations.

3. A game breeder's license is not a license to possess, breed, propagate, sell, or dispose of any species which is defined as endangered or threatened under state law unless the species is listed on the license. Its possession, breeding, propagation, sale, and disposal are subject to all applicable state and federal statutes.

4. A licensed game breeder shall not acquire protected live game animals, game birds, their eggs, or fur-bearing animals taken from the wild within this state.

5. Game birds or game animals may be sold for food only under the following conditions:

a. The licensed game breeder shall file with the commission a facsimile of a stamp of similar type to that used by the United States department of agriculture in grading meat.

b. Licensed game breeders may sell dressed game birds or game animals to markets for resale providing each game bird or game animal has affixed upon it in a conspicuous and legible manner the imprint of the game breeder's stamp.

c. The stamp shall bear the name and number of the game breeder in letters of at least twelve point type size.

6. Markets selling stamped game shall:

a. Maintain the stamp on each game bird or game animal until the bird or animal is disposed of or sold.

b. Keep a record showing the total number of game birds or game animals sold together with the name and address of the game breeder from whom purchased and the number of game birds and animals in each purchase.

7. Markets selling stamped game, together with their records, are subject to inspection by an authorized representative of the commission at any reasonable time.

8. Violation of a provision of this section may be cause for license revocation.
[C39, §**1794.023;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.61]
86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §20
C93, §481A.61
Referred to in §805.8B(3)(c)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.62 Records — reports — inspection.

1. A holder of a game breeder's license shall keep the records and make the reports required by this section on forms provided by the department. The records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. At the time of every sale or conveyance of an animal, animal parts, or products, the licensee shall complete a game breeder's sales receipt on forms provided by the department. The forms shall require the following information:

a. The name, address, county, and license number assigned to the breeder.

b. The name and address of the purchaser.

c. The number, species, sex, and age of the animals or birds conveyed.

3. *a.* Licensees shall maintain business records for all species in an annual report record book. The records shall include the following information:

(1) For each animal acquired other than by birth on the licensee's game farm, the sex and species, the date of acquisition, the number acquired, and the name and address of the source from which acquired.

(2) For each animal born on the licensee's game farm, the sex, species, date of birth, and number of any band, tag, or tattoo subsequently attached to the animal.

(3) For each animal sold or disposed of other than by death the same information required by the game breeder's sales receipt.

(4) For each animal which dies, disappears, or is destroyed on the licensee's game farm, the sex, species, date of death, and the number of any band, tag, or tattoo attached to the animal.

b. The licensee's copies of the required sales receipts shall be kept with the record book and are considered a part of it.

c. Records required by this section shall be entered in the annual report record book within forty-eight hours of the event.

4. Each licensee shall file an annual report with the commission on or before January 31. The report shall detail the game breeder's operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the breeder's file for a period of three years from the date of expiration of the breeder's last license issued. Failure to keep or submit the required records and report are grounds for a refusal to renew a license for the succeeding year.

5. An on-site inspection of facilities shall be conducted by an officer of the commission prior to the initial issuance of a game breeder's license. The facilities may be reinspected by an officer of the commission at any reasonable time.

6. Any officer of the commission may enter any place where any game bird, game animal, or fur-bearing animal is at the time located, or where it has been kept, or where the carcass of such animal may be, for the purpose of examining it in any way that may be necessary to determine whether it was or is infected with any contagious or infectious disease.

7. For the purpose of this section, infectious and contagious disease includes rabies, hoof-and-mouth disease, leptospirosis, blackhead, or any other communicable disease so designated by the commission.

8. The commission may regulate or prohibit the importation into the state and exportation from the state of any species of game bird, game animal, or fur-bearing animal, domesticated or not, which in its opinion, for any reason, is determined to be detrimental to the health of animals within or without the state.

9. The commission may quarantine or destroy any game bird, game animal, or fur-bearing animal which is found to be infected with any contagious or infectious disease.

10. A licensed game breeder or other person having control of any game bird, game

animal, or fur-bearing animal shall not knowingly offer for sale, sell, or barter such birds or animals which have an infectious or contagious disease, or allow those birds or animals to run at large or come in contact with any other game birds, game animals, or fur-bearing animals.

[C39, §**1794.024;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.62]
88 Acts, ch 1216, §21
C93, §481A.62
2011 Acts, ch 25, §143
Referred to in §805.8B(3)(c)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.63 Sale of bait — license. Repealed by 93 Acts, ch 99, §6. See §481A.144.

481A.64 Reserved.

SUBCHAPTER V

SCIENTIFIC COLLECTING

481A.65 Licenses.

The director, after investigation, may issue to any person a scientific collector's license, a wildlife salvage permit, educational project permit, or a wildlife rehabilitation permit. A scientific collector's license will authorize the licensee to collect for scientific purposes only, any birds, nests, eggs, or wildlife. A wildlife salvage permit will authorize the permittee to salvage for educational purposes, any birds, nests, eggs, or animals according to the rules of the department. An educational project permit authorizes the permittee to collect, keep, or possess for educational purposes birds, fish, or wildlife which are not endangered, threatened, or otherwise specially managed according to the rules of the department. A wildlife rehabilitation permit will authorize the permittee to possess for rehabilitation purposes only, any orphaned or injured wildlife according to the rules of the department. A person to whom a license or permit is issued shall not dispose of any birds, nests, eggs, or wildlife or their parts except upon written permission of the director. The application for such licenses and permits shall be made upon blanks furnished by the department. The commission shall establish, by rule, the tenure and applicable fee for each permit authorized in this section. Each holder of a license or permit shall, by January 31 of each year, file with the department a report showing all specimens collected or possessed under authority of the license or permit. Upon a showing of cause the department may enter and inspect the premises and collections authorized by this section. A license or permit may be revoked by the director, after due notice, at any time for cause.

[S13, §2563-o, -p; C24, 27, 31, §1779; C39, §**1794.027;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.65]
88 Acts, ch 1216, §23
C93, §481A.65
95 Acts, ch 46, §1
Referred to in §717F.7

481A.66 Banding or marking.

It shall be unlawful for any person to capture birds or animals for banding purposes except that the commission may, after investigation, issue a permit to any person permitting the person to capture birds or animals for the purpose of banding or marking same for scientific study, but no such birds or animals may be killed or injured or retained in possession, but must be liberated safely and promptly. Such permit may be revoked at any time for cause. Each holder of such permit shall report to the commission once each month the number, kind of birds or animals banded, and the band numbers.

[C39, §**1794.028;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.66]
C93, §481A.66

SUBCHAPTER VI

ANGLING LAWS

481A.67 Seasons and limits — turtle harvesting restrictions.

1. It is unlawful for a person, except as otherwise expressly provided, to take, capture, or kill fish, frogs, or turtles except during the open season established by the commission. It is unlawful during open season to take in any one day an amount in excess of the daily catch limit designated for each variety or each locality, or have in possession any variety of fish, frog, or turtle in excess of the possession limit, or have in possession any frog, fish, or turtle at any time under the minimum length or weight. The open season, possession limit, daily catch limit, and the minimum length or weight for each variety of fish, frog, or turtle shall be established by rule of the department or commission under the authority of sections 456A.24, 481A.38, 481A.39, and 482.1.

2. Notwithstanding any provision of law to the contrary, the natural resource commission shall adopt rules pursuant to chapter 17A establishing seasons and daily catch limits for the noncommercial harvest of turtles in any waters of the state pursuant to section 483A.28. Seasons established pursuant to this subsection shall not apply to the noncommercial harvest of snapping turtles.

3. Notwithstanding any provision of law to the contrary, the natural resource commission shall adopt rules pursuant to chapter 17A establishing seasons and daily catch limits for the commercial harvest of turtles in any waters of the state.

4. Beginning no later than January 1, 2017, and ending no earlier than January 1, 2021, the commission shall conduct a review of the status of the turtle population in the state by region, in cooperation with appropriate organizations and in accordance with sound fish and wildlife management principles, and shall report its recommendations to the general assembly on whether restrictions on noncommercial and commercial turtle harvesting in the state should be revised no later than June 30, 2021. This subsection is repealed effective July 1, 2021.

[C97, §2540; SS15, §2540; C24, 27, 31, §1731, 1732, 1733; C39, §**1794.029;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.67]

86 Acts, ch 1245, §1854; 88 Acts, ch 1216, §24

C93, §481A.67

2016 Acts, ch 1024, §1, 2

Referred to in §805.8B(3)(i)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph i

481A.68 Tip-up fishing device.

1. As used in this section, *"tip-up fishing device"* means an ice fishing mechanism with an attached flag or signal to indicate fishing action, used to hold a fishing rod or pole with line and hook.

2. A person shall not use more than three tip-up fishing devices for fishing in the waters of the Mississippi river, the Missouri river, and the Big Sioux river, and their connected backwaters. A person may use two or three hooks on the same line, but the total number of hooks used by each person shall not exceed three. Each tip-up fishing device used in fishing shall have attached a tag plainly labeled with the owner's name and address. A person shall not use a tip-up fishing device for fishing within three hundred feet of a dam or spillway or in a part of the river which is closed or posted against use of the device. Three tip-up fishing devices may be used in addition to the two lines with no more than two hooks per line, as specified in section 481A.72.

3. An untagged tip-up fishing device found in use shall be confiscated by any officer appointed pursuant to section 456A.13 or 456A.14.

88 Acts, ch 1041, §1

C89, §109.68

C93, §481A.68

2003 Acts, ch 31, §1

481A.69 Fish designated.

The commission may adopt rules designating game fish, commercial fish, and rough fish.

88 Acts, ch 1216, §25

C89, §109.69

C93, §481A.69

Referred to in §805.8B(3)(b)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.70 Reserved.

481A.71 Releasing unlawful catch.

Any fish caught that is less than lawful minimum length or weight shall be handled with wet hands and released under water immediately with as little injury as possible.

[C39, §**1794.033;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.71]

C93, §481A.71

Referred to in §805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

481A.72 Hooks and lines.

1. Except as otherwise provided in this chapter, a person shall not at any time take from the waters of the state any fish except with hook, line, and bait. A person shall not use more than three lines nor more than two hooks on each line in still fishing or trolling. In fly fishing not more than two flies may be used on one line, and in trolling and bait casting not more than two trolling spoons or artificial bait may be used on one line.

2. A person shall not leave fish line or lines and hooks in the water unattended by being out of visual sight of the lines and hooks.

3. One hook means a single, double, or treble pointed hook, and all hooks attached as a part of an artificial bait or lure shall be counted as one hook.

88 Acts, ch 1216, §26

C89, §109.72

C93, §481A.72

2012 Acts, ch 1096, §2, 23; 2013 Acts, ch 90, §144

Referred to in §481A.68, 483A.28, 805.8B(3)(b)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

481A.73 Trotlines and tagged lines.

In the waters of the state open to their use, a person shall not use more than five tagged lines set to take fish such as trotlines or throw lines. Such tagged lines shall not have in the aggregate more than fifteen hooks. Each separate line when in use shall have attached a tag plainly labeled with the owner's name and address, shall be checked at least once each twenty-four hours, and a person shall not use tagged lines in a stocked lake or within three hundred feet of a dam or spillway or in a stream or portion of stream, which is closed or posted against the use of such tackle. One end of such lines shall be set from the shore and be visible above the shore waterline, but no such line shall be set entirely across a stream or body of water. Any untagged or unlawful lines when found in use shall be confiscated by any officer appointed by the director.

[C73, §4052; C97, §2540, 2542; SS15, §2540; C24, 27, 31, §1734; C39, §**1794.035, 1794.037;** C46, 50, 54, 58, 62, 66, 71, 73, §109.73, 109.75; C75, 77, 79, 81, §109.73]

88 Acts, ch 1216, §27

C93, §481A.73

Referred to in §805.8B(3)(j)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph j

481A.74 Where permitted.

Trotlines and throw lines may be used in the border rivers of the state and in the inland waters. However, the commission may by rule prohibit the use of trotlines or throw lines in certain inland waters.

[C73, §4052; C97, §2540, 2542; C24, 27, 31, §1734; C39, §**1794.036;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.74]

C93, §481A.74

481A.75 Reserved.

481A.76 Unlawful means — exception.

It is unlawful, except as otherwise provided, to use on or in the waters of the state any grabhook, snaghook, any kind of a net, seine, trap, firearm, dynamite, or other explosives, or poisonous or stupefying substances, lime, ashes, electricity, or hand fishing in the taking or attempting to take any fish, except that gaffhooks or landing nets may be used to assist in landing fish. The commission may permit designated fish to be taken by hand fishing, by snagging, by spearing, by bow and arrow, and with artificial light at the times and at the places as determined by rules of the commission.

[C97, §2540; SS15, §2540; C24, 27, 31, §1735; C39, §**1794.038;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.76]

88 Acts, ch 1216, §28

C93, §481A.76

2000 Acts, ch 1116, §1

Referred to in §805.8B(3)(d)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.77 Reserved.

481A.78 Stocking private water.

No private water may be stocked by the commission unless the owner agrees that such waters shall be open to the public for fishing, except that the commission may, after investigation to determine their suitability as to size, depth, living conditions for fish, and management, provide a breeding stock of fish for privately owned farm ponds on request of the owner.

[C39, §**1794.040;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.78]

C93, §481A.78

Referred to in §481A.141

481A.79 Reserved.

481A.80 through 481A.82 Repealed by 93 Acts, ch 99, §6. See §481A.1, 481A.144, and 481A.145.

481A.83 Prohibited stocking.

A person shall not stock or introduce into the waters of the state a live fish, except for hooked bait, without the permission of the director. This section does not apply to privately owned ponds and lakes.

88 Acts, ch 1216, §30

C89, §109.83

C93, §481A.83

Referred to in §805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.84 Frogs — catching — selling.

1. Frogs may be taken by holders of a fishing license only and they may be used for bait or food purposes, but no person shall take more than four dozen frogs in any one day or have in possession at any one time more than eight dozen frogs. Licensed bait dealers authorized

by law to sell bait may have in their possession to supply the bait needs of their customers, not more than twenty dozen frogs.

2. No person shall use any device, net, barrier or fence of any kind which prevents frogs from having free access to and egress from the water.

3. Transportation out of the state in any manner or for any purposes, of frogs taken in Iowa, is prohibited.

4. Nothing in this chapter shall be construed to prevent the purchase, sale or possession of frogs or any portion of the carcasses of frogs that have been legally taken and shipped in from without the state.

5. Nothing herein shall prevent any person from catching frogs on the person's own premises for the person's private use.

[C39, §**1794.046;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.84]

C93, §481A.84

Referred to in §805.8B(3)(c)

See §481A.67

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.85 Prohibited areas.

It shall be unlawful for any person at any time, except as otherwise provided, to take any fish, minnows, frogs, or other aquatic, biological life from any state fish hatchery, nursery or other area under the jurisdiction of the commission operated for fish production purposes.

[C39, §**1794.047;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.85]

C93, §481A.85

Referred to in §805.8B(3)(e)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

481A.86 Federal employees excepted.

Authorized employees of the United States bureau of sport fisheries and wildlife are hereby authorized to conduct fish culture operations, rescue work on the boundary waters of the state, and other operations necessary for rescue and hatchery work.

[C39, §**1794.048;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.86]

C93, §481A.86

SUBCHAPTER VII

TRAPPING OR HUNTING OF FUR-BEARING ANIMALS

481A.87 Open seasons.

Except as otherwise provided, a person shall not take, capture, kill, or have in possession a fur-bearing animal or any of its parts at any time except during the open season as set by the commission except where the killing, trapping, or ensnaring is for the protection of a person or public or private property with the prior permission of a duly appointed representative of the commission. If prior permission is impractical or impossible to obtain and the fur-bearing animal represents a threat to a person, domestic animal, or private property, the fur-bearing animal may be taken without prior permission. All fur-bearing animals and all parts thereof taken as provided in this section shall be disposed of on the site or shall be relinquished to a representative of the commission.

[C97, §2553; SS15, §2553; C24, §1766; C27, 31, §1766, 1766-a1; C39, §**1794.049;** C46, §109.87, 109.93; C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.87]

88 Acts, ch 1216, §31

C93, §481A.87

94 Acts, ch 1148, §2

Referred to in §805.8B(3)(l)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph "l"

481A.88 Reserved.

481A.89 Permit to hold hides.

Upon application, which shall be filed with the commission within ten days after the close of the open season, any person may be permitted to hold hides or skins of fur-bearing animals lawfully taken for a longer time than specified above. Such application shall be verified and shall show the number and varieties of the skins or hides to be held by the applicant. The commission shall thereupon issue a permit to such applicant to hold such skins or hides, which permit shall authorize the holder to sell or otherwise dispose of such skins or hides.

[C31, §1766-c4; C39, §**1794.051;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.89]
C93, §481A.89

481A.90 Disturbing dens.

1. A person shall not molest or disturb, in any manner, any den, lodge, or house of a fur-bearing animal or beaver dam except by written permission of an officer appointed by the director.

2. This section does not prohibit the owner from destroying a den to protect the owner's property.

[C39, §**1794.052;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.90]
88 Acts, ch 1216, §32; 89 Acts, ch 83, §23
C93, §481A.90
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.91 Shooting or spearing.

A person shall not kill a beaver, mink, otter, or muskrat with a shotgun or spear. A person shall not possess a beaver, mink, otter, or muskrat or the carcasses, skins, or parts of any one of those animals that have been killed with a shotgun or spear.

[C31, §1767-c2; C39, §**1794.053;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.91]
C93, §481A.91
2016 Acts, ch 1073, §137
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.92 Traps — disturbing dens — tags for traps.

1. A person shall not use or attempt to use colony traps in taking, capturing, trapping, or killing any game or fur-bearing animals except muskrats as determined by rule of the commission. Box traps capable of capturing more than one game or fur-bearing animal at each setting are prohibited. A valid hunting license is required for box trapping cottontail rabbits and squirrels. All traps and snares used for the taking of fur-bearing animals shall have a metal tag attached plainly labeled with the user's name and address. All traps and snares, except those which are placed entirely under water, shall be checked at least once every twenty-four hours. Officers appointed by the department may confiscate such traps and snares found in use that are not properly labeled or checked.

2. Except as otherwise provided, a person shall not use chemicals, explosives, smoking devices, mechanical ferrets, wire, tool, instrument, or water to remove fur-bearing animals from their dens. Humane traps, or traps designed to kill instantly, with a jaw spread, as originally manufactured, exceeding eight inches are unlawful to use except when placed entirely under water.

3. Conibear type traps and snares shall not be set on the right-of-way of a public road within two hundred yards of the entry to a private drive serving a residence without the permission of the occupant.

4. A snare when set shall not have a loop larger than eight inches in horizontal measurement except for a snare set with at least one-half of the loop under water. A snare set on private land other than roadsides within thirty yards of a pond, lake, creek, drainage ditch, stream, or river shall not have a loop larger than eleven inches in horizontal measurement.

5. All snares shall have a functional deer lock which will not allow the snare loop to close smaller than two and one-half inches in diameter.

[R60, §4381; C73, §4048; C97, §2551, 2558; SS15, §2539, 2551; C24, 27, 31, §1771, 1773; C39, §**1794.054;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.92]

88 Acts, ch 1216, §33

C93, §481A.92

99 Acts, ch 40, §1

Referred to in §805.8B(3)(c)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph c

481A.93 Hunting by artificial light.

1. A person shall not throw or cast the rays of a spotlight, headlight, or other artificial light on a highway, or in a field, woodland, or forest for the purpose of spotting, locating, or taking or attempting to take or hunt a bird or animal, except raccoons or other fur-bearing animals when treed with the aid of dogs, while having in possession or control, either singly or as one of a group of persons, any firearm, bow, or other implement or device whereby a bird or animal could be killed or taken.

2. This section does not apply to any of the following:

a. Deer being taken by or under the control of a local governmental body within its corporate limits pursuant to an approved special deer population control plan.

b. A person who is totally blind using a laser sight on a bow or gun while hunting, if all of the following apply:

(1) The person's total blindness is supported by medical evidence produced by an eye care professional who is an ophthalmologist, optometrist, or medical doctor. The eye care professional must certify that the person has no vision or light perception in either eye. The certification must be carried on the person of the totally blind person and made available for inspection by the department.

(2) The totally blind person is accompanied and aided by a person who is at least eighteen years of age and whose vision is not seriously impaired. The accompanying person must purchase a hunting license that includes the wildlife habitat fee as provided in rules adopted pursuant to section 483A.1 if applicable. If the accompanying person is not required to have a hunting license the person is not required to pay the wildlife habitat fee. During the hunt, the accompanying adult must be within arm's reach of the totally blind person, and must be able to identify the target and the location of the laser sight beam on the target. A person other than the totally blind person shall not shoot the laser sight-equipped gun or bow.

[C62, 66, 71, 73, 75, 77, 79, 81, §109.93]

88 Acts, ch 1216, §34

C93, §481A.93

98 Acts, ch 1203, §1; 2008 Acts, ch 1161, §20; 2012 Acts, ch 1096, §3, 23; 2018 Acts, ch 1159, §14, 28

Referred to in §805.8B(3)(e)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

SUBCHAPTER VIII

FUR DEALERS

481A.94 Definition.

The term "*fur dealer*" as used in this chapter shall mean any person, firm, partnership, or corporation engaged in the business of buying, bartering, trading or otherwise obtaining raw hides or skins of fur-bearing animals.

[C39, §**1794.055;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.94]

C93, §481A.94

481A.95 License — reciprocity.

1. A license shall be required of each fur dealer and each employee, agent, or representative of a fur dealer except when the employee, agent, or representative is

operating solely on the premises of a licensed fur dealer. A fur dealer shall conduct business only at the location specified on the dealer's license, at an established fur auction, at the nonadvertised residence of a licensed fur harvester, or at the place of business specified on the license of any fur dealer. A nonresident licensed fur dealer may purchase location permits to operate at locations other than at the location specified on the fur dealer's license. A resident licensed fur dealer may obtain location permits without fee. Each location permit shall be valid only for the one location specified on the location permit and shall entitle the fur dealer and employee, agent, or representative of the licensed fur dealer to operate at that location. The commission shall, upon application and the payment of the required license fee, if any, furnish the proper license and location permits to the dealer.

2. A resident of another state shall pay the fee provided by statute for the nonresident fur dealer's license unless that state has a reciprocity agreement with this state. The reciprocity agreement must provide that each state will charge nonresidents from the other state the same fee for the nonresident fur dealer's license and the fee under the agreement must be less than the statutory fee of this state for nonresidents and higher than the statutory fee of this state for residents.

[C31, §1766-c3; C35, §1794-e1; C39, §**1794.056;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.95]

84 Acts, ch 1199, §1; 89 Acts, ch 90, §1; 91 Acts, ch 237, §2

C93, §481A.95

Referred to in §805.8B(3)(e)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

481A.96 Possession by dealer.

A licensed fur dealer may have in possession at any time skins or hides of animals which have been lawfully taken.

[C31, §1766-c4; C39, §**1794.058;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.96]

C93, §481A.96

481A.97 Reports.

Fur dealers shall keep accurate, current records of their transactions. The records shall show the number and kinds of hides and skins which have been purchased, the date of purchase, and the name and address of the seller. Such records shall be open at all reasonable times to inspection by the commission. On or before May 15 of each year, each fur dealer shall file a verified inventory with the commission. The inventory shall include all transactions for the preceding year.

[C31, §1766-c1; C39, §**1794.059;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.97]

C93, §481A.97

Referred to in §805.8B(3)(d)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.98 Reporting violations.

Each fur dealer shall report to the commission, the name of any person if known to the dealer, who attempts to sell any skins or hides which appear to have been unlawfully taken, or possessed by that person.

[C31, §1766-c2; C39, §**1794.060;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.98]

88 Acts, ch 1216, §35

C93, §481A.98

481A.99 through 481A.119 Reserved.

SUBCHAPTER IX

PROHIBITED ACTS

481A.120 Hunting from aircraft or snowmobiles prohibited.

A person, either singly or as one of a group of persons, shall not intentionally kill or wound, attempt to kill or wound, or pursue any animal, fowl, or fish from or with an aircraft in flight or from or with any self-propelled vehicles designed for travel on snow or ice which utilize sled type runners, or skis, or an endless belt tread, or wheel or any combination thereof and which are commonly known as snowmobiles.

[C50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §109.120]
88 Acts, ch 1216, §36
C93, §481A.120
Referred to in §805.8B(3)(e)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

481A.121 Turtles and crayfish — taking by nonresidents or aliens.

It shall be unlawful for any nonresident or alien to take turtles or crayfish in Iowa, by any means or method, except from the Missouri and Mississippi rivers and the Big Sioux river.

[C62, 66, 71, 73, 75, 77, 79, 81, §109.121]
C93, §481A.121

481A.122 Hunters' orange apparel.

1. A person shall not hunt deer with firearms unless the person is at the time wearing one or more of the following articles of visible, external apparel: A vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be solid blaze orange.

2. A person shall not hunt upland game birds, as defined by the department, unless the person is at the time wearing one or more of the following articles of visible, external apparel: A hat, cap, vest, coat, jacket, sweatshirt, sweater, shirt, or coveralls, the color and material of which shall be at least fifty percent solid blaze orange.

3. This section is not applicable to a person who is legally hunting with a raptor.

[C71, 73, 75, 77, 79, 81, §109.122]
88 Acts, ch 1216, §37
C93, §481A.122
2004 Acts, ch 1115, §1; 2009 Acts, ch 144, §17
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

481A.123 Prohibited hunting near buildings, feedlots.

1. A person shall not discharge a firearm or shoot or attempt to shoot a game or fur-bearing animal within two hundred yards of a building inhabited by people or domestic livestock or within two hundred yards of a feedlot unless the owner or tenant has given consent. However, within the corporate limits of a city, a person may take deer with a firearm within fifty yards of a building inhabited by people or domestic livestock, or a feedlot pursuant to an approved special deer population control plan, if the person obtains permission of the owner or tenant of the building or feedlot.

2. As used in this section, "*feedlot*" means a lot, yard, corral, or other area in which livestock are present and confined, for the purposes of feeding and growth before slaughter. The term does not include areas which are used for the raising of crops or other vegetation and upon which livestock are allowed to graze or feed.

3. *a.* This section does not apply to the discharge of a firearm for the purpose of target shooting on premises posted as a target shooting range that is open to the public, if the premises have been used as a target shooting range prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the target shooting range. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a target shooting range that is open to the

public and that is identified as a target shooting range by the city, county, state, or federal government, which erection or construction occurs on or after May 14, 2004.

b. As used in this subsection, *"target shooting"* means the discharge of a firearm at an inanimate object, for amusement or as a test of skill in marksmanship.

4. *a.* This section does not apply to the discharge of a firearm on premises identified as a public hunting area, if the premises have been identified as a public hunting area prior to the erection of a building inhabited by people or domestic livestock, or prior to the construction of a feedlot, located within two hundred yards of the public hunting area. This subsection applies only to the erection of a building inhabited by people or domestic livestock or to the construction of a feedlot located within two hundred yards of a public hunting area, which erection or construction occurs on or after May 14, 2004.

b. As used in this subsection, *"public hunting area"* means public lands or waters available for hunting by the public, and identified as a public hunting area by the city, county, state, or federal government.

5. *a.* This section does not apply to the discharge of a firearm on a farm unit by the owner or tenant of the farm unit or by a family member of the owner or tenant of the farm unit.

b. As used in this subsection, *"family member"*, *"farm unit"*, *"owner"*, and *"tenant"* mean the same as defined in section 483A.24, subsection 2.

6. This section does not apply to the discharge of a firearm for the purpose of developing and retaining the shooting proficiency of certified law enforcement officers on premises owned by the state, a county, or a municipality, and operated by a law enforcement agency, which are not open to the general public and which were in operation prior to March 28, 2013.

7. Subject to subsection 1, an owner or tenant of private premises located in the unincorporated area of a county, or a person to whom the owner or tenant has given consent, may discharge a firearm for the purpose of target shooting on those private premises. The use of such private premises for target shooting shall not be found to be in violation of a noise ordinance or declared a public or private nuisance or be otherwise prohibited under state or local law. As used in this subsection, *"target shooting"* means the discharge of a firearm at an inanimate object, for amusement or as a test of skill in marksmanship.

[C77, 79, 81, §109.123]

88 Acts, ch 1216, §38; 90 Acts, ch 1194, §1; 92 Acts, ch 1149, §1

C93, §481A.123

2000 Acts, ch 1116, §2; 2004 Acts, ch 1160, §1, 2; 2007 Acts, ch 28, §14; 2013 Acts, ch 9, §1, 2; 2017 Acts, ch 69, §48

Referred to in §805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

481A.124 Taking predominantly white deer of the whitetail species prohibited.

1. A person shall not take a predominantly white deer in this state.

2. This section only applies to whitetail, other than farm deer that are kept as provided in chapter 170.

3. A person violating subsection 1 is guilty of a simple misdemeanor.

88 Acts, ch 1184, §1

C89, §109.124

C93, §481A.124

2003 Acts, ch 149, §17, 23

481A.125 Intentional interference with lawful hunting, fishing, or fur-harvesting activities — penalties.

1. As used in this section, *"interfere with hunting, fishing, or fur-harvesting activities"* means one or more of the following:

a. To intentionally place oneself in a location where a human presence may affect the behavior of a fur-bearing animal, game, bird, or fish or the feasibility of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

b. To intentionally create a visual, aural, olfactory, or physical stimulus for the purpose of affecting the behavior of a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

c. To intentionally affect the condition or alter the placement of personal property used for the purpose of killing or taking a fur-bearing animal, game, bird, or fish with the intent of obstructing or harassing another person who is lawfully hunting, fishing, or fur harvesting.

2. A person shall not interfere with the lawful hunting, fishing, or fur-harvesting activities of another person in an area where hunting, fishing, or fur harvesting is authorized by a custodian of public property or an owner or lessee of private property.

3. A person who commits:

a. A first offense of interfering with hunting, fishing, or fur-harvesting activities is guilty of a simple misdemeanor.

b. A second or subsequent offense is punishable as a serious misdemeanor.

4. If a person who commits interfering with hunting, fishing, or fur-harvesting activities possesses a license, certificate, or permit issued by the department, the license, certificate, or permit is subject to suspension or revocation pursuant to section 481A.134.

5. This section shall not prohibit a landowner, tenant, or an employee of a landowner or tenant from performing normal agricultural operations or a law enforcement officer from performing official duties.

91 Acts, ch 234, §2
CS91, §109.125
C93, §481A.125
2000 Acts, ch 1076, §1; 2000 Acts, ch 1232, §76, 77

481A.125A Remote control or internet hunting — criminal and civil penalties.

1. As used in this section, *"remote control or internet hunting"* means use of a computer or other electronic device, equipment, or software to remotely control the aiming or discharge of a firearm or other weapon, allowing a person who is not physically present to take a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C.

2. A person shall not offer for sale, take, or assist in the taking of a wild animal, a game bird or ungulate kept on a hunting preserve under chapter 484B, or a preserve whitetail kept on a hunting preserve under chapter 484C, by remote control or internet hunting.

3. A person who violates this section is guilty of a serious misdemeanor. A second or subsequent violation of this section is punishable as a class "D" felony.

4. In addition, any person who violates this section is subject to a civil penalty, which may be levied by the department, of not more than ten thousand dollars for each violation of this section. The moneys collected from imposition of a civil penalty shall be deposited in the state fish and game protection fund.

2007 Acts, ch 156, §1

SUBCHAPTER X

TAXIDERMY

481A.126 Taxidermy.

1. *"Taxidermist"* as used in this section means a person engaged in the business of preserving or mounting game, fish, or fur-bearing animals as defined in this chapter.

2. A license is required for the practice of taxidermy. The commission, upon application and payment of the required license fee, shall furnish proper certificates to the applicant. The director may revoke the license for good cause.

3. A licensed taxidermist may possess at any time game, fish, or fur-bearing animals which have been lawfully taken.

4. A taxidermist shall keep accurate records of its transactions showing the numbers and

kinds of specimens received for preserving, the date of acquisition, and the name and address of the owner of the specimens.

5. A person shall not put or leave any game, fish, or fur-bearing animal in the custody of another person for the purpose of having taxidermy services performed unless each specimen has a tag attached which is signed by the possessor and states the address of the possessor, the total number and species of the specimens and the date the specimens were killed.

6. All transactions, tags, and specimens left in the custody of the taxidermist by another person shall be open to inspection by a conservation officer at any reasonable hour.

[82 Acts, ch 1010, §1]
C83, §109.126
88 Acts, ch 1216, §39, 40
C93, §481A.126
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.127 through 481A.129 Reserved.

SUBCHAPTER XI

CIVIL DAMAGES — SUSPENSIONS

481A.130 Damages in addition to penalty — animals — ginseng.

1. In addition to the penalties for violations of this chapter and chapters 350, 461A, 481B, and 482, a person convicted of unlawfully selling, taking, catching, killing, injuring, destroying, or having in possession any animal, shall reimburse the state for the value of such as follows:

a. For each elk, antelope, buffalo, or moose, two thousand five hundred dollars.

b. For each wild turkey, two hundred dollars.

c. For each bird or animal or the raw pelt or plumage of such bird or animal for which damages are not otherwise prescribed, fifty dollars.

d. For each reptile, mussel, or amphibian, fifteen dollars.

e. For each beaver, bobcat, mink, otter, red fox, gray fox, or raccoon, two hundred dollars.

f. For each animal classified by the commission as an endangered or threatened species, one thousand dollars.

g. For each antlered deer, reimbursement shall be based on the score of the antlered deer as measured by the Boone and Crockett club's scoring system for whitetail deer as follows:

(1) 150 gross inches or less: A minimum of two thousand dollars and not more than five thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of four thousand dollars and not more than ten thousand dollars, in an amount that is deemed reasonable by the court.

(2) More than 150 gross inches: A minimum of five thousand dollars and not more than ten thousand dollars, and eighty hours of community service or, in lieu of the community service, a minimum of ten thousand dollars and not more than twenty thousand dollars, in an amount that is deemed reasonable by the court.

h. For each deer, except as provided in paragraph "*g*", and for each swan or crane, one thousand five hundred dollars.

i. For each fish, reimbursement shall be as follows:

(1) For each fish of a species other than shovelnose sturgeon, with an established daily limit greater than twenty-five, fifteen dollars.

(2) For each fish of a species other than paddlefish and muskellunge, with an established daily limit of twenty-five or less, fifty dollars.

(3) For each shovelnose sturgeon, paddlefish, and muskellunge, one thousand dollars.

2. In addition to any other penalty, a person convicted of unlawfully harvesting wild ginseng in violation of section 456A.24 shall reimburse the state at one hundred fifty percent of the ginseng's market value, as determined by the department.

3. This section does not apply to a landowner who cooperates with the department

of natural resources and the department of agriculture and land stewardship to remove all whitetail from enclosed land as provided in section 170.5, even if all whitetail are not removed.

4. This section does not apply to a person who is liable to pay restitution to the department pursuant to section 481A.151 for injury to a wild animal caused by polluting a water of this state in violation of state law.

[C75, 77, 79, 81, §109.130; 82 Acts, ch 1211, §1 – 3]
88 Acts, ch 1216, §41; 90 Acts, ch 1142, §1; 92 Acts, ch 1186, §2
C93, §481A.130
93 Acts, ch 38, §2; 98 Acts, ch 1203, §2, 3; 99 Acts, ch 58, §1; 2003 Acts, ch 149, §18, 23; 2004 Acts, ch 1124, §1; 2007 Acts, ch 28, §15; 2009 Acts, ch 144, §18 – 20
Referred to in §481A.131, 481A.132, 481A.133, 716.8

481A.131 Judgment — execution.

1. In each case of conviction of unlawfully taking, catching, killing, injuring, destroying, or having in possession any fish, game, or fur-bearing animal, the court shall enter a judgment in favor of the state of Iowa for liquidated damages in an amount as provided in section 481A.130. If two or more persons who have acted together are convicted of the unlawful taking, catching, killing, injuring, destroying, or having possession of any fish, game, or fur-bearing animal, the judgment shall be entered against them jointly.

2. Any liquidated damages assessed under this section and section 481A.130 shall be paid to the clerk of court. The clerk of court shall remit the damages paid to the department of natural resources. The department of natural resources shall credit such damages to the state fish and game protection fund.

3. The return of any uninjured fish, game, or fur-bearing animal which has been unlawfully taken, caught, or possessed, to the place where taken or caught or to any other place approved by the commission, shall constitute the discharge of any liquidated damages provided under section 481A.130.

4. Civil suits for the collection of judgments may be prosecuted by the attorney general or by county attorneys.

[C75, 77, 79, 81, §109.131; 82 Acts, ch 1211, §4]
86 Acts, ch 1245, §1854
C93, §481A.131
2012 Acts, ch 1118, §7
Referred to in §716.8

481A.132 Service of process or arrest — pendency of damage claim.

Service of process upon or arrest of any person charged with provisions of this chapter for which damages may be assessed pursuant to section 481A.130, shall serve as notice of the pendency of the liquidated damage claim. Trial on the criminal charge may be separated from the determination of the liquidated damage claim in the discretion of the court or by the request of the defendant, but upon conviction of the defendant in the criminal case, the only issue to be determined by the court on the liquidated damage claim is the fact of such conviction.

[C77, 79, 81, §109.132]
C93, §481A.132

481A.133 Suspension of licenses, certificates, and permits.

A person who is assessed damages pursuant to section 481A.130 shall immediately surrender all licenses, certificates, and permits to hunt, fish, or trap in the state to the department. The licenses, permits, and certificates, and the privileges associated with them shall remain suspended until the assessed damages and any accrued interest are paid in full. Upon payment of the assessed damages and any accrued interest, the suspension shall be lifted. Interest shall begin to accrue as of the date of judgment at a rate of ten percent per year.

90 Acts, ch 1198, §2
C91, §109.133

C93, §481A.133
2007 Acts, ch 28, §16

SUBCHAPTER XII

CANCELLATIONS, SUSPENSIONS, REVOCATIONS, AND PENALTIES

481A.134 Authority to cancel, suspend, or revoke license — point system.

The department shall establish rules pursuant to chapter 17A providing for the suspension or revocation of licenses issued by the department. The rules may include procedures for summary cancellation of a license based on documentation that the licensee failed to pay the applicable fee for the license. For purposes of determining when to suspend or revoke a license issued by the department under this section, the department shall adopt a point system pursuant to chapter 17A for the purpose of weighing the seriousness of violations of the provisions of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or of committing trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1. The weighted scale may be amended from time to time as experience dictates.

90 Acts, ch 1198, §3
C91, §109.134
92 Acts, ch 1160, §19
C93, §481A.134
2004 Acts, ch 1070, §1; 2007 Acts, ch 28, §17
Referred to in §481A.125

481A.135 Repeat offender — records, enforcement, and penalties.

1. The commission shall establish by rule, a recordkeeping system and other administrative procedures necessary to administer this section.

2. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a simple misdemeanor if the person has no other violations within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

3. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of a serious misdemeanor if the person has one other violation within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

4. A person who pleads guilty or is convicted of a violation of any provision of this chapter or chapter 481B, 482, 483A, 484A, or 484B, or trespass as defined in section 716.7 while hunting deer, other than farm deer as defined in section 170.1 or preserve whitetail as defined in section 484C.1, while the person's license or licenses are suspended or revoked is guilty of an aggravated misdemeanor when the person has had two or more convictions within the previous three years which occurred while the person's license or licenses have been suspended or revoked.

5. An indictment or trial information for a violation requiring an enhanced penalty under this section shall specify the underlying violation committed by the person.

90 Acts, ch 1198, §4
C91, §109.135
92 Acts, ch 1160, §20
C93, §481A.135
2007 Acts, ch 28, §18; 2010 Acts, ch 1140, §22

481A.136 Unlawful commercialization of wildlife — penalty.

1. A person shall not buy or sell a wild animal or part of a wild animal if the wild animal is taken, transported, or possessed in violation of the laws of this state, or a rule adopted by the department.

2. A person violating subsection 1 is guilty of a serious misdemeanor.

92 Acts, ch 1186, §3

481A.137 Abandonment of dead or injured wildlife.

1. While taking or attempting to take game or fur-bearing animals, a person shall not abandon an injured game or fur-bearing animal without making a reasonable effort to retrieve the animal from the field. A person shall not leave a useable portion of game or a fur-bearing animal in the field.

2. A person violating subsection 1 is subject to a scheduled fine as provided in section 805.8B, subsection 3, paragraph "*e*".

3. As used in this section, "*useable portion*" means the following:

a. For game, that part of an animal which is customarily processed for human consumption.

b. For a fur-bearing animal, the fur or hide of the animal.

4. This section does not apply to pigeons or crows.

92 Acts, ch 1149, §2; 2001 Acts, ch 137, §5

Referred to in §805.8B(3)(e)

481A.138 through 481A.140 Reserved.

SUBCHAPTER XIII

AQUACULTURE

481A.141 Aquaculture — license required.

1. A person shall not engage in the business of aquaculture until that person has applied for and has been issued an aquaculture unit license from the department. The application period extends from January 1, or the date of the application, through December 31. A license shall not be issued to operate an aquaculture unit on private or nonmeandered lakes and streams and ponds that may become stocked with fish from public waters or natural migration. A pond stocked by the department pursuant to section 481A.78 shall not be used for aquaculture purposes.

2. The following persons must obtain an aquaculture unit license:

a. A person who, for commercial purposes, rears or maintains live animals or plants for food, bait, or for stocking in waters of the state.

b. An owner or operator of a pond where guests or customers are allowed to fish for a fee, or allowed to take fish without regard to angling licenses, seasons, gear restrictions, or bag limits.

3. The cultivation and sale of tropical fish species or ornamental aquatic plants or animals, not utilized for human consumption or bait purposes, but maintained in closed systems and utilized by the pet industry or hobbyists are exempt from license requirements.

92 Acts, ch 1216, §3

481A.142 Licensed aquaculture units — activities allowed.

A holder of an aquaculture unit license may:

1. Possess, propagate, buy, sell, deal in, and transport the aquatic organisms produced from breeding stock legally acquired, including minnows.

2. Sell fish for stocking purposes within or outside the state. Fish which are nonindigenous to Iowa shall not be received or sold in the state unless the aquaculture unit has obtained an importation permit from the department. The department shall establish, by rule, requirements governing importation, and shall include a list of approved aquaculture

species. Failure to comply with this subsection will result in loss of license and a violator is subject to the scheduled fine provided in section 805.8B.

3. Hold, feed, and sell carp, buffalofish, and other fish legally taken by commercial fishers.

4. Harvest aquatic life on land under control of the aquaculture unit with commercial devices without obtaining any permits for the devices.

5. *a.* Sell bait, including minnows and frogs, propagated or raised within the licensed unit without having to obtain a bait dealer's license. However, aquaculture units wishing to take bait from areas other than their licensed units must also obtain a bait dealer's license.

b. A nonresident aquaculture unit licensee shall be limited to selling bait at wholesale unless the home state of the nonresident licensee allows residents of this state to sell bait at retail.

6. Take any gull, tern, or merganser within the bounds of the unit. An owner or operator of the licensed aquaculture unit, however, must first obtain a permit for this activity from the department or the United States fish and wildlife service. Each permittee shall file an annual report with the department which itemizes the birds taken during the period covered by the permit, and dispose of birds taken according to methods established by the department. The department shall not issue a subsequent permit to any person failing to file this report.

92 Acts, ch 1216, §4; 2001 Acts, ch 137, §5; 2004 Acts, ch 1029, §1; 2012 Acts, ch 1118, §8

Referred to in §805.8B(3)(d)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

481A.143 Licensed aquaculture units — requirements.

1. Each licensed aquaculture unit shall prepare an annual report of all fish bought, sold, and shipped. The records shall include species name as well as the weight, volume, or count of fish involved. Reports shall be filed on or before December 31 of each year for the preceding year. The department may refuse to renew a unit license if the annual report is not provided.

2. Each licensed aquaculture unit shall secure its breeding stock from licensed aquaculture units or licensed aquaculturists in the state or from lawful sources outside the state. An aquaculture unit shall not secure stock in any other manner.

3. A shipment of fish must be accompanied by a duplicate of the sales invoice showing the name and address of the producer, date of shipment, the species being transported, the weight, volume, or count of each species being shipped and the name and address of the consignee. A duplicate of the sales invoice must be retained by the aquaculture unit or aquaculturist for one year following the sale.

4. A licensed aquaculture unit shall comply with all state laws pertaining to possession, taking, or selling of bait which it handles. The director may revoke the unit license of any person violating this subsection or a rule adopted by the department.

5. Minnow and bait boxes and tanks within licensed aquaculture units shall be open for inspection by the department at all times.

6. Aquaculture units shall not import live fish, viable eggs, or semen of any species of the salmonid family (trout, salmon, or char) and ictalurid family (catfishes and bullheads), including hybrids, unless the owner or operator possesses a fish importation permit. For the species listed in this subsection only, importation permits shall not be issued unless the fish, eggs, or semen have been inspected by the department and found to be free of disease detrimental to the state's fishery resources. The owner or operator of an aquaculture unit must provide a statement certifying the fish listed in this subsection or their eggs or semen to be disease free, and include the date of inspection. Certification is not required for other fish species, but the department may require inspection at any time. The department shall establish, by rule, those diseases detrimental to the state's fishery resources and the location of authorized certified pathologists for inspection.

92 Acts, ch 1216, §5

481A.144 Licensed bait dealers — requirements.

1. A person shall not sell minnows, frogs, crayfish, or salamanders for fish bait without first obtaining a bait dealer's license from the department upon payment of the license fee. A licensee shall comply with all laws pertaining to taking, possessing, and selling of bait

handled by the licensee. If convicted of violating a provision of this chapter or a rule adopted pursuant to this chapter, a licensee shall forfeit the licensee's bait dealer license upon demand of the director.

2. When taking bait from lakes and streams, bait dealers shall take only the size of bait which they can use, and shall return all small minnows and frogs to the water immediately.

3. A minnow and bait box and a tank shall be open to inspection by the department at all times. A licensee shall have tanks and bait boxes of sufficient size and with proper aeration to keep the bait alive and prevent substantial loss.

4. A person shall not take or attempt to take minnows for commercial purposes from any waters of the state or shall not transport minnows without first obtaining a bait dealer's license. However, a person taking or transporting minnows for personal use is not required to have a bait dealer's license.

92 Acts, ch 1216, §6; 93 Acts, ch 99, §2; 2012 Acts, ch 1118, §9
Referred to in §805.8B(3)(k)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph k

481A.145 Taking and selling of minnows and other bait — regulations.

1. Except for species listed as threatened or endangered under chapter 481B, a licensed bait dealer may take sufficient bait from lakes and streams of this state that are not closed to the taking of bait, to supply the licensee's customers for hook and line fishing if the licensee is present while the bait is being taken.

2. Except as otherwise provided in this chapter, a person shall not carry, transport, ship, or cause to be carried, transported, or shipped, any minnows for the purpose of sale beyond the boundaries of the state. Minnows which are bred, hatched, propagated, or raised on a licensed aquaculture unit may be transported outside the state.

3. A person shall not transport, use, sell or offer to sell for bait or introduce into any inland waters of this state or into any waters from which the waters of the state may become stocked, any minnows or fish of the carp, quillback, gar, or dogfish species. Fish of the carp, quillback, gar, or dogfish species may be returned to the waters from which they are taken. A person shall not possess live gizzard shad at any lake in this state.

4. Minnow traps not exceeding thirty-six inches in length may be used when the taking of minnows is allowed. Each trap, when in use, shall have a metal tag attached plainly labeled with the owner's name and address.

5. A person shall not use a minnow dip net which exceeds four feet in diameter, a cast net which exceeds ten feet in diameter, or a minnow seine which exceeds twenty feet in length or has a mesh size smaller than one-quarter inch bar measure. Licensed bait dealers may obtain a permit from the department to use minnow seines longer than twenty feet, but not exceeding fifty feet in length.

6. The department may designate certain lakes and streams, and parts of them, from which minnow populations should be protected for the best management of the lakes or streams. If an investigation of a lake or stream or a portion of a lake or stream by the department indicates that the minnow population should be protected, the lake or stream or a portion of the lake or stream shall be closed to the taking of minnows for a period of time deemed advisable by the department.

92 Acts, ch 1216, §7; 93 Acts, ch 99, §3 – 5
Referred to in §805.8B(3)(c), 805.8B(3)(d), 805.8B(3)(k)
For applicable scheduled fines, see §805.8B, subsection 3, paragraphs c, d, and k

481A.146 Authority of the director.

The director may take any fish from the public waters of the state, at any time and in any manner, for the purpose of propagation or restocking other waters, or exchanging with fish and wildlife agencies of other states, the federal government, or licensed aquaculture units.

92 Acts, ch 1216, §8

481A.147 Theft of fish.

All fish in an aquaculture unit are private property and are not the property of the state, and the theft of fish from an aquaculture unit is punishable as provided in section 714.2.

92 Acts, ch 1216, §9

481A.148 through 481A.150 Reserved.

SUBCHAPTER XIV

POLLUTION — RESTITUTION

481A.151 Restitution for pollution causing injury to wild animals.

1. A person who is liable for polluting a water of this state in violation of state law, including this chapter, shall also be liable to pay restitution to the department for injury caused to a wild animal by the pollution. The amount of the restitution shall also include the department's administrative costs for investigating the incident. The administration of this section shall not result in a duplication of damages collected by the department under section 455B.392, subsection 1, paragraph "*a*", subparagraph (3).

2. The commission shall adopt rules providing for procedures for investigations and the administrative assessment of restitution amounts. The rules shall establish an opportunity to appeal a departmental action including by a contested case proceeding under chapter 17A. A final administrative decision assessing an amount of restitution may be enforced by the attorney general at the request of the director.

3. Rules adopted by the commission shall provide for methods used to determine the extent of an injury and the monetary values for the loss of injured wild animals based on species.

a. The rules shall provide for methods used to count dead fish and to calculate restitution values. The rules may incorporate methods and values published by the American fisheries society. To every extent practicable, the values shall be based on the estimates of lost recreational angler opportunities where applicable. As an alternative method of valuation, the rules may provide that for fish species that are protected by catch limits, possession limits, size limits, or closed seasons applicable to anglers, liquidated damages apply. The amount of the liquidated damages shall not exceed fifteen dollars per fish. For fish species that are classified by the commission as endangered or threatened, the rules may establish liquidated damages not to exceed one thousand dollars per fish.

b. The rules shall provide guidelines for estimating the extent of loss of a species that is affected by a pollution incident but which would not be practical to count in sample areas. The rules may establish liquidated damage amounts for species whose replacement cost is difficult to determine.

4. Moneys collected by the department in restitution shall be deposited into the state fish and game protection fund. The moneys shall be used exclusively to support restoration or improvement of fisheries, including but not limited to aquatic habitat improvement projects as provided in rules adopted by the commission. However, moneys collected from restitution paid for investigative costs shall be used as determined by the director.

2002 Acts, ch 1137, §58, 71

Referred to in §481A.130

CHAPTER 481B

ENDANGERED PLANTS AND WILDLIFE

Referred to in §232.8, 455A.4, 455A.5, 456A.14, 456A.24, 481A.1, 481A.130, 481A.134, 481A.135, 481A.145, 483A.32, 805.16, 903.1

This chapter not enacted as a part of this
title; transferred from chapter 109A in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

481B.1 Definitions.
481B.2 Cooperation with federal government.
481B.3 Investigations.
481B.4 Programs.
481B.5 Prohibitions.
481B.6 Species not on list.
481B.7 Special care to ensure survival.
481B.8 Damage to property or human life.
481B.9 Exemptions.
481B.10 Penalties.

481B.1 Definitions.

As used in this chapter:

1. *"Commission"* means the natural resource commission.
2. *"Director"* means the director of the department of natural resources.
3. *"Endangered species"* means any species of fish, plant life, or wildlife which is in danger of extinction throughout all or a significant part of its range. "Endangered species" does not include a species of insecta determined by the commission or the secretary of the United States department of interior to constitute a pest whose protection under this chapter would present an overwhelming and overriding risk to humans.
4. *"Fish or wildlife"* means any member of the animal kingdom, including any mammal, fish, amphibian, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring, or the dead body of parts thereof. Fish or wildlife includes migratory birds, nonmigratory birds, or endangered birds for which protection is afforded by treaty or other international agreement.
5. *"Import"* means to bring into, or introduce into, or attempt to bring into, or attempt to introduce into, any place subject to the jurisdiction of this state.
6. *"Person"* means person as defined in section 4.1, subsection 20.
7. *"Plant"* or *"plant life"* means any member of the plant kingdom, including seeds, roots, and other parts thereof.
8. *"Species"* includes any subspecies of fish, plant life, or wildlife and any other group of fish, plants, or wildlife of the same species or smaller taxa in common spatial arrangement that interbreed or cross-pollinate when mature.
9. *"Take"*, in reference to fish and wildlife, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect and it includes an attempt to engage in any such conduct.
10. *"Take"*, in reference to plants, means to collect, pick, cut, dig up or destroy in any manner.
11. *"Threatened species"* means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

[C77, 79, 81, §109A.1]
86 Acts, ch 1245, §1856, 1857
C93, §481B.1

481B.2 Cooperation with federal government.

The commission shall perform those acts necessary for the conservation, protection, restoration, and propagation of endangered and threatened species in cooperation with the federal government, pursuant to Pub. L. No. 93-205, and pursuant to rules promulgated by the secretary of the interior.

[C77, 79, 81, §109A.2]
C93, §481B.2
2006 Acts, ch 1010, §124

481B.3 Investigations.

The director shall conduct investigations on fish, plants, and wildlife in order to develop information relating to population, distribution, habitat needs, limiting factors, and other biological and ecological data to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of these determinations and other available scientific and commercial data, which may include consultation with scientists and others who may have specialized knowledge, learning, or experience, the commission shall pursuant to chapter 17A promulgate a rule listing those species of fish, plants, and wildlife which are determined to be endangered or threatened within the state.

The commission shall review the state list of endangered and threatened species at least every two years and may amend the list.

[C77, 79, 81, §109A.3]

C93, §481B.3

Referred to in §481B.4, 481B.5, 481B.6

481B.4 Programs.

The director shall establish programs, including acquisition of land or aquatic habitat, necessary for the management of endangered or threatened species.

In carrying out the programs authorized by this section, the commission may enter into cooperative agreements with federal and state agencies, political subdivisions of the state, or with private persons for the administration and management of any area or program established under this section or for investigation as outlined in section 481B.3.

[C77, 79, 81, §109A.4]

C93, §481B.4

481B.5 Prohibitions.

Except as otherwise provided in this chapter or by rule, a person shall not take, possess, transport, import, export, process, sell or offer for sale, buy or offer to buy, nor shall a common or contract carrier transport or receive for shipment, any species of fish, plants, or wildlife appearing on the following lists which shall be adopted by rule of the commission:

1. The list of fish, plants, and wildlife indigenous to the state determined to be endangered or threatened within the state pursuant to section 481B.3.
2. The United States list of endangered or threatened native fish and wildlife as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.
3. The United States list of endangered or threatened plants as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.
4. The United States list of endangered or threatened foreign fish and wildlife as contained in 50 C.F.R. pt. 17 as amended to December 30, 1991.

[C77, 79, 81, §109A.5]

92 Acts, ch 1133, §1, 2

C93, §481B.5

2003 Acts, ch 108, §89

Referred to in §805.8B(3)(e)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

481B.6 Species not on list.

The commission may, by rule, treat any species as an endangered species or threatened species even though it is not listed pursuant to section 481B.3 if it finds that the species so closely resembles in appearance a species which is listed pursuant to section 481B.3 and that enforcement personnel would have substantial difficulty in attempting to differentiate between the listed and unlisted species, and the effect of this substantial difficulty is an additional threat to an endangered or threatened species, or finds that the treatment of an unlisted species will substantially facilitate the enforcement and further the intent of this chapter.

[C77, 79, 81, §109A.6]

C93, §481B.6

481B.7 Special care to ensure survival.

The director may permit the taking, possession, purchase, sale, transportation, importation, exportation, or shipment of endangered or threatened species which appear on the state list for scientific, zoological, or educational purposes, for propagation in captivity of such fish, plants, or wildlife, to ensure their survival.

[C77, 79, 81, §109A.7]
C93, §481B.7

481B.8 Damage to property or human life.

Upon good cause shown and where necessary to reduce damage to property or to protect human health, endangered or threatened species found on the state list may be removed, captured, or destroyed, but only pursuant to a permit issued by the director.

[C77, 79, 81, §109A.8]
C93, §481B.8

481B.9 Exemptions.

A species of fish, plant, or wildlife appearing on any of the lists of endangered species or threatened species which enters the state from another state or from outside the territorial limits of the United States may enter, be transported, possessed, and sold in accordance with rules adopted by the commission.

[C77, 79, 81, §109A.9]
92 Acts, ch 1133, §3
C93, §481B.9

481B.10 Penalties.

Whoever violates any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §109A.10]
C93, §481B.10

CHAPTER 481C

WILD ANIMAL DEPREDATION PROCEDURES

481C.1 Wild animal depredation unit.
481C.2 Duties.
481C.2A Deer depredation management program — licenses and permits.
481C.3 Funding.

481C.1 Wild animal depredation unit.

A wild animal depredation unit is established within the department of natural resources. The unit shall be comprised of two wild animal depredation biologists.

97 Acts, ch 180, §2; 2002 Acts, ch 1162, §72
Referred to in §481C.3

481C.2 Duties.

1. The director of the department of natural resources shall enter into a memorandum of agreement with the United States department of agriculture, animal damage control division. The wild animal depredation unit shall serve and act as the liaison to the department for the producers in the state who suffer crop, horticultural product, tree, or nursery damage due to wild animals.

2. The department shall issue depredation permits to any landowner who incurs crop, horticultural product, tree, or nursery damage of one thousand dollars or more due to wild animals.

3. The criteria for issuing depredation licenses and permits shall be established in

administrative rules in consultation with the farmer advisory committee created in section 481A.10A. The administrative rules adopted pursuant to this section shall not require a producer to erect or maintain fencing at a cost exceeding one thousand dollars as a requisite for receiving a depredation license or permit or for participation in a depredation plan.

97 Acts, ch 180, §3; 98 Acts, ch 1203, §4; 2008 Acts, ch 1037, §2, 6
Referred to in §481C.2A

481C.2A Deer depredation management program — licenses and permits.

1. Deer depredation licenses shall be available for issuance as follows:

a. Deer depredation licenses shall be available for issuance to resident hunters.

b. Depredation licenses issued pursuant to this subsection shall be valid to harvest antlerless deer only. Depredation licenses that are issued to a landowner and family members as defined in section 483A.24 shall be in addition to the number of free licenses that are available for issuance to such persons under section 483A.24. A landowner or a family member may obtain one free depredation license for each deer hunting season that is established by the commission. Deer may be harvested with a rifle pursuant to a depredation license in any area and in any season where the commission authorizes the use of rifles.

c. Licenses issued pursuant to this subsection may be issued at any time to a resident hunter who has permission to hunt on the land for which the license is valid pursuant to this subsection.

d. A producer who enters into a depredation agreement with the department of natural resources shall be issued a set of authorization numbers. Each authorization number authorizes a resident hunter to obtain a depredation license that is valid only for taking antlerless deer on the land designated in the producer's depredation plan. A producer may transfer an authorization number issued to that producer to a resident hunter who has permission to hunt on the land for which the authorization number is valid. An authorization number shall be valid to obtain a depredation license in any season. The provisions of this paragraph shall be implemented by August 15, 2008. A transferee who receives an authorization number pursuant to this paragraph *"d"* shall be otherwise qualified to hunt deer in this state, purchase a hunting license that includes the wildlife habitat fee, and pay the one dollar fee for the purpose of the deer herd population management program.

2. Deer shooting permits shall be available for issuance as follows:

a. Deer shooting permits shall be available for issuance to landowners who incur crop, horticultural product, tree, or nursery damage as provided in section 481C.2 and shall be available for issuance for use on areas where public safety may be an issue.

b. Deer shooting permits issued pursuant to this subsection shall be valid and may be used outside of established deer hunting seasons.

3. Notwithstanding section 481C.2, subsection 3, a producer shall not be required to erect or maintain fencing as a requisite for receiving a deer depredation permit or for participation in a deer depredation plan pursuant to this section.

4. A person who harvests a deer with a deer depredation license or a deer shooting permit issued pursuant to this section shall utilize the deer harvest reporting system set forth in section 483A.8A and shall not be subject to different disposal or reporting requirements than are applicable to the harvest of deer pursuant to other deer hunting licenses except that any antlers on a deer taken pursuant to a shooting permit shall be delivered to the local conservation officer for disposal.

5. The department shall administer and enforce the administrative rules concerning deer depredation, including issuance of deer depredation licenses and deer shooting permits, that are established by the commission.

6. The department shall make educational materials that explain the deer depredation management program available to the general public, and available specifically to farmers and farm and commodity organizations, in both electronic and brochure formats.

7. The department shall conduct outreach programs for farmers and farm and commodity organizations that explain the deer depredation management program. The department shall develop, by rule, a master hunter program and maintain a list of master hunters who are

available to assist producers in the deer depredation management program by increasing the harvest of antlerless deer on the producer's property.

2008 Acts, ch 1037, §3, 6; 2011 Acts, ch 34, §109; 2012 Acts, ch 1096, §4, 23

481C.3 Funding.

The revenue from nonresident deer and wild turkey hunting licenses shall be used to pay the salaries, support, and maintenance of the wild animal depredation unit established pursuant to section 481C.1.

97 Acts, ch 180, §4; 2000 Acts, ch 1154, §33

CHAPTER 482

COMMERCIAL FISHING

Referred to in §456A.14, 456A.24, 481A.1, 481A.130, 481A.134, 481A.135, 483A.32

This chapter not enacted as a part of this title;
transferred from chapter 109B in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

482.1 Authority of the commission.
482.2 Definitions.
482.3 Commercial fishing — where permitted.
482.4 Commercial licenses and gear tags.
482.5 Commercial gear.
482.6 Tagging of commercial gear.
482.7 Gear attendance.
482.8 Baits.
482.9 Unlawful methods.
482.10 Commercial fishing licenses.
482.11 Turtles and turtle eggs.
482.12 Freshwater mussels. Repealed by 2009 Acts, ch 144, §48.
482.13 Reciprocity for commercial fishing and commercial turtle fishing.
482.14 Reports and records required — inspections.
482.15 Penalties.

482.1 Authority of the commission.

1. The natural resource commission shall observe, administer, and enforce this chapter. The natural resource commission may adopt and enforce rules under chapter 17A as necessary to carry out this chapter.

2. The natural resource commission may:

a. Remove or cause to be removed from the waters of the state any aquatic species that in the judgment of the commission is an underused renewable resource or has a detrimental effect on other aquatic populations. All proceeds from a sale of these aquatic organisms shall be credited to the state fish and game protection fund.

b. Issue to any person a permit or license authorizing that person to take, possess, and sell underused, undesirable, or injurious aquatic organisms from the waters of the state. The person receiving a permit or license shall comply with the applicable provisions of this chapter.

c. Authorize the director to enter into written contracts for the removal of underused, undesirable, or injurious organisms from the waters of the state. The contracts shall specify all terms and conditions desired. A person who enters into such a contract with the director, and any subcontractor under such a contract, shall have an appropriate valid commercial license under section 482.4. However, other persons assisting with performance of the contract or subcontract may be unlicensed.

d. Prohibit, restrict, or regulate commercial fishing and commercial turtle harvesting in any waters of the state.

e. Revoke the license of a licensee for up to one year if the licensee has been convicted of a violation of chapter 481A, 482, or 483A. A licensee shall not continue commercial fishing while a license issued by the natural resource commission or issued by another state is under revocation or suspension.

f. Regulate the numbers of commercial fishers and commercial turtle harvesters and the amount, type, seasonal use, mesh size, construction and design, manner of use, and other criteria relating to the use of commercial gear for any body of water or part thereof.

g. Establish catch quotas, seasons, size limits, and other regulations for any species of commercial fish or turtles for any body of water or part thereof.

h. Designate by listing species as commercial fish or turtles.

i. Designate any body of water or its part as protected habitat and restrict, prohibit, or otherwise regulate the taking of commercial fish and turtles in protected habitat areas.

3. Employees of the department may lift and inspect any commercial gear at any time and may inspect commercial catches, commercial markets, and landings, and examine sale and purchase records of commercial fishers, commercial turtle harvesters, commercial roe harvesters, commercial turtle buyers, and commercial roe buyers upon demand.

4. Employees of the department may seize and retain as evidence any illegal fish or turtles, or any illegal commercial gear, or any other personal property used in violation of any provision of the Code, and may confiscate any untagged or illegal commercial gear as contraband.

86 Acts, ch 1141, §1
C87, §109B.1
87 Acts, ch 115, §19
C93, §482.1
2009 Acts, ch 144, §21; 2019 Acts, ch 102, §1, 2
Referred to in §481A.67
2019 amendment to subsection 2, paragraph c applies to contracts becoming effective on and after January 1, 2020; 2019 Acts, ch 102, §2
Subsection 2, paragraph c amended

482.2 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Boundary waters"* means the waters of the Mississippi, Missouri, and Big Sioux rivers.

2. *"Commercial fish helper"* means a person who is licensed by the state to assist a commercial fisher or a commercial roe harvester in operating commercial gear or in taking, attempting to take, possessing, or transporting commercial fish, roe species, roe, or turtles.

3. *"Commercial fisher"* means a person who is licensed by the state to take, attempt to take, possess, transport, sell, barter, or trade turtles or turtle eggs, commercial fish except roe species, or fish parts except roe.

4. *"Commercial fishing"* means taking, attempting to take, possessing, or transporting of commercial fish or turtles for the purpose of selling, bartering, trading, offering, or exposing for sale.

5. *"Commercial gear"* means the capturing equipment used by commercial fishers, commercial roe harvesters, and commercial turtle harvesters.

6. *"Commercial roe buyer"* means a person who is licensed by the state to engage in the business of buying, selling, bartering, or trading of roe and roe species.

7. *"Commercial roe harvester"* means a person who is licensed by the state to engage in the harvest and sale, barter, or trade of roe and roe species.

8. *"Commercial species"* means species of fish and turtles which may be lawfully taken and sold by commercial fishers, commercial roe harvesters, and commercial turtle harvesters, as established by rule by the commission.

9. *"Commercial turtle buyer"* means a person who is licensed by the state to engage in the business of buying, selling, bartering, or trading commercial turtles or turtle eggs.

10. *"Commercial turtle harvester"* means a person who is licensed by the state to take, attempt to take, possess, transport, and sell, barter, or trade commercial turtles or turtle eggs.

11. *"Commercial turtle harvesting"* means taking, attempting to take, possessing, or transporting of commercial turtles or turtle eggs for the purpose of selling, bartering, trading, offering, or exposing for sale.

12. *"Commercial turtle helper"* means a person who is licensed by the state to assist a commercial turtle harvester in operating commercial gear, or in taking, attempting to take, possessing, or transporting commercial turtles or turtle eggs.

13. *"Constant attendance"* means the presence of a commercial fisher whenever commercial gear is in use.

14. *"Director"* means the director of the department of natural resources, and the director's duly authorized assistants, deputies, or agents.

15. *"Game fish"* means all species and size categories of fish not included as "commercial species" or minnows.

16. *"Inland waters of the state"* means all public waters of the state excluding the boundary waters of the Mississippi, Big Sioux, and Missouri rivers.

17. *"Licensed commercial gear"* means any commercial gear that is licensed as provided in this chapter and that, when in use, has the proper tags attached as provided by this chapter.

18. *"Nonresident or alien"* means a person who does not qualify as a resident as defined in section 483A.1A.

19. *"Resident"* means a person as defined in section 483A.1A.

20. *"Roe"* means fish eggs.

21. *"Roe species"* means fish harvested for their eggs. Roe species include but are not limited to shovelnose sturgeon and bowfin and any other fish defined as roe species by the commission by rule.

22. *"Waters of the state"* means all of the waters under the jurisdiction of the state.

86 Acts, ch 1141, §2
C87, §109B.2
91 Acts, ch 170, §1
C93, §482.2
2009 Acts, ch 144, §22

482.3 Commercial fishing — where permitted.

It is unlawful to use commercial gear in the taking of commercial fish, turtles, and mussels from the waters of the state, except as otherwise provided by statute or administrative rules of the commission.

86 Acts, ch 1141, §3
C87, §109B.3
C93, §482.3
Referred to in §805.8B(3)(e)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph e

482.4 Commercial licenses and gear tags.

1. A person shall not use or operate commercial gear unless an individual is at the site where the commercial gear is being operated who possesses an appropriate valid commercial license. A commercial license is valid from the date of issue to January 10 of the succeeding calendar year.

2. A commercial roe harvester shall possess a valid commercial fishing license and a valid commercial roe harvester license.

3. Commercial fishers and commercial turtle harvesters shall provide and affix weather-resistant gear tags to each piece of gear in use. Each weather-resistant gear tag shall plainly show the name, address, and commercial license number of the licensee and whether the gear is fish or turtle gear.

4. Annual license fees are as follows:

a. Commercial fisher, resident ..... $ 200.00
b. Commercial fisher, nonresident ..... $ 400.00
c. Commercial fish helper, resident ..... $ 50.00
d. Commercial fish helper, nonresident ..... $ 100.00
e. Commercial roe buyer, resident ..... $ 250.00
f. Commercial roe buyer, nonresident ..... $ 500.00
g. Commercial roe harvester, resident ..... $ 100.00
h. Commercial roe harvester, nonresident $3,500.00
i. Commercial turtle buyer, resident ..... $ 200.00
j. Commercial turtle buyer, nonresident ..... $ 400.00

k. Commercial turtle harvester, resident ..... $ 100.00
l. Commercial turtle harvester, nonresident ..... $ 400.00
m. Commercial turtle helper, resident ..... $ 50.00
n. Commercial turtle helper, nonresident ..... $ 100.00

5. Commercial fish and turtle gear tags are required on the following units of commercial gear:

a. Seine.
b. Trammel net.
c. Gill net.
d. Entrapment nets.
e. Commercial trotline.
f. Commercial turtle trap.

86 Acts, ch 1141, §4
C87, §109B.4
89 Acts, ch 119, §1; 89 Acts, ch 192, §1, 2; 91 Acts, ch 170, §2, 3
C93, §482.4
2009 Acts, ch 144, §23; 2012 Acts, ch 1118, §10 – 13
Referred to in §452A.17, 482.1, 805.8B(3)(m)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph m

482.5 Commercial gear.

It is lawful for a person who is legally licensed to harvest commercial fish or commercial turtles to use commercial gear of a design, construction, size, season, and all other criteria established by the commission for taking those species of fish and turtles designated by the commission by rule.

86 Acts, ch 1141, §5
C87, §109B.5
C93, §482.5
2009 Acts, ch 144, §24
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

482.6 Tagging of commercial gear.

Each trotline shall have the tags affixed to one end. Each hoop net, slat net, trap net, and turtle trap shall have the appropriate tag affixed to the end nearest the pot. Each gill net and each trammel net shall have the tags affixed to the float line nearest the shore stake, but when fished under ice, the tags shall be affixed to the float line nearest the take-out hole. Each seine shall have the tags affixed to one end.

86 Acts, ch 1141, §6
C87, §109B.6
C93, §482.6
Referred to in §805.8B(3)(b)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph b

482.7 Gear attendance.

1. A commercial fisher, commercial turtle harvester, or commercial roe harvester licensee must be present when commercial gear is operated. A commercial fish helper or commercial turtle helper shall not operate commercial gear except under the direct supervision of a commercial fisher, commercial turtle harvester, or commercial roe harvester. A nonresident commercial turtle helper is licensed only to assist a licensed nonresident commercial turtle harvester. Commercial gear shall be lifted and emptied of catch as provided by the rules of the commission. Constant attendance by the commercial fisher of seines, trammel nets, and gill nets is required when the gear is fished by driving, drive-seining, seining, floating, or drifting methods. Officers of the commission may grant a reasonable extension of gear attendance intervals only upon the request of a commercial fisher, commercial turtle harvester, or commercial roe harvester specifying why such an extension is necessary.

2. For the purposes of this section, *"direct supervision"* means that a commercial fisher, commercial turtle harvester, or commercial roe harvester must be in the same boat, within

hand-signal distance, or within vocal communication distance, without the help of any electronic or amplifying device, of the commercial fish helper or commercial turtle helper being supervised.

86 Acts, ch 1141, §7
C87, §109B.7
C93, §482.7
2009 Acts, ch 144, §25
Referred to in §482.9, 805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

482.8 Baits.

1. It is lawful for licensed commercial fishers, commercial turtle harvesters, and commercial roe harvesters to pursue, take, possess, and transport any commercial fish or their parts, bait fish, turtles, frogs, salamanders, leeches, crayfish, or any other aquatic invertebrates for bait unless otherwise prohibited by law.

2. It is lawful to use any member of the following families as bait fish in boundary waters: Cyprinidae, the minnows; Catostomidae, the suckers; Umbridae, the mudminnows; Clupeidae, the herrings; Hiodontidae, the mooneyes; Amiidae, the bowfin unless otherwise prohibited by law.

3. It is lawful to use green sunfish, Lepomis cyanellus, and orange-spotted sunfish, Lepomis humilis, for bait fish.

4. It is lawful to use minnow seines for taking bait in the boundary waters. Minnow seines may not exceed fifty feet in length and eight feet in depth.

86 Acts, ch 1141, §8
C87, §109B.8
C93, §482.8
2009 Acts, ch 144, §26
Referred to in §805.8B(3)(d)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph d

482.9 Unlawful methods.

It is unlawful:

1. To use commercial gear which is not in accordance with this chapter or the rules of the commission.

2. To use commercial gear within nine hundred feet from a navigation dam on the boundary waters.

3. To use commercial gear within three hundred feet from the mouth of a tributary stream emptying into the boundary waters.

4. For a person to lift or to fish licensed commercial gear of another person, except when under the direct supervision of the licensee as provided in section 482.7.

5. To employ chemicals, electricity, or explosives into the water for taking fish, turtles, or freshwater mussels except as authorized by the director.

6. To have in one's possession game fish or other fish, turtles, or mussels deemed illegal by other provisions of law while engaged in commercial activities. A fish caught in commercial fishing that is not lawful to possess shall be handled with wet hands and immediately released under water with as little injury as possible.

7. To block or inhibit navigation through channels with commercial gear unless a minimum of three feet of water depth is maintained over float lines of any entanglement gear or leads to trap nets. Gear shall not block over one-half the width of a navigable channel if there is less than three feet of water over the gear.

86 Acts, ch 1141, §9
C87, §109B.9
C93, §482.9
2009 Acts, ch 144, §27; 2011 Acts, ch 34, §110
Referred to in §805.8B(3)(e)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph e

482.10 Commercial fishing licenses.

1. All persons who commercially take, attempt to take, possess, transport, sell, barter, trade, or buy commercial fish or their parts shall possess an appropriate, valid commercial fishing license. This subsection does not apply to an individual who buys commercial fish or their parts from a commercial fisher for personal consumption.

a. A commercial fisher license is required to operate commercial gear and to take, attempt to take, possess, process, transport, or sell any commercial fish, commercial turtles, or turtle eggs.

b. A commercial fish helper license is required to assist a commercial fisher or commercial roe harvester in operating commercial gear and in taking, attempting to take, possessing, or transporting commercial fish, roe species, roe, commercial turtles, or turtle eggs. A commercial fish helper is not permitted to buy, sell, barter, or trade commercial fish, roe species, roe, commercial turtles, or turtle eggs. A commercial fish helper license is not required for a person under sixteen years of age to assist a commercial fisher as provided in this paragraph *"b"*.

c. A commercial roe harvester license is required to harvest, possess, transport, or sell roe or roe species or their parts. A commercial roe harvester is not permitted to buy, barter, or trade roe or roe species unless in possession of a valid roe buyer license. A commercial roe harvester shall sell roe or roe species only to a commercial roe buyer licensed in this state.

d. A commercial roe buyer license is required to buy, barter, or trade roe or roe species for resale.

2. All intrastate and interstate shipments of commercial fish, turtles, turtle eggs, or roe or roe species, must be accompanied by a receipt which shows the name and address of the seller, date of sale, and the species, numbers, and pounds of the fish, roe species, roe, turtles, or turtle eggs being sold.

86 Acts, ch 1141, §10
C87, §109B.10
C93, §482.10
2009 Acts, ch 144, §28; 2011 Acts, ch 34, §111
Referred to in §805.8B(3)(d)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

482.11 Turtles and turtle eggs.

1. All persons who commercially take, attempt to take, possess, transport, or sell turtles or turtle eggs shall possess an appropriate, valid commercial license. This subsection does not apply to an individual who buys turtles or turtle eggs from a commercial fisher or a commercial turtle harvester for personal consumption.

a. A commercial turtle harvester license is required to operate commercial gear and to take, attempt to take, possess, transport, sell, barter, or trade commercial turtles or turtle eggs. Nonresident commercial turtle harvesters shall harvest commercial turtles only from the boundary waters.

b. A commercial turtle helper license is required to assist a commercial turtle harvester in operating commercial gear, and in taking, attempting to take, possessing, or transporting commercial turtles or turtle eggs. A commercial turtle helper is not permitted to buy, sell, barter, or trade commercial turtles or turtle eggs. A commercial turtle helper license is not required for a person under sixteen years of age to assist a commercial turtle harvester as provided in this paragraph *"b"*.

c. A commercial turtle buyer license is required to engage in the business of buying, bartering, or trading commercial turtles or turtle eggs.

d. A commercial fisher license entitles commercial fishers to operate any licensed commercial gear and to take, attempt to take, possess, and sell, barter, or trade turtles or turtle eggs taken with such commercial gear.

2. It is unlawful to take, possess, or sell any species of turtles except those designated by the commission by rule.

86 Acts, ch 1141, §11
C87, §109B.11

89 Acts, ch 192, §3
C93, §482.11
2009 Acts, ch 144, §29, 30
Referred to in §805.8B(3)(n)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph n

482.12 Freshwater mussels. Repealed by 2009 Acts, ch 144, §48. See §483A.28.

482.13 Reciprocity for commercial fishing and commercial turtle fishing.

1. Reciprocal commercial fishing and commercial turtle fishing privileges are contingent upon a grant of similar privileges by the appropriate state to residents of this state.
2. The commission may negotiate commercial reciprocity agreements with other states.

86 Acts, ch 1141, §13
C87, §109B.13
91 Acts, ch 170, §5, 6
C93, §482.13

482.14 Reports and records required — inspections.

1. All commercial fishers, commercial turtle harvesters, commercial turtle buyers, commercial roe harvesters, and commercial roe buyers shall submit a monthly report supplying all information requested on forms furnished by the department. Reports must be received by the department no later than the fifteenth day of the following month.
2. Commercial fishers shall utilize a dated receipt with at least two parts, with one original and one copy of each receipt, that contains the species, number, and pounds of fish or turtles sold, bartered, or traded. Commercial fishers shall retain a copy of each receipt for five years following the transaction. A purchaser of commercial fish or turtles shall retain a copy of the receipt for as long as the purchaser is in possession of the fish or turtles.
3. Commercial turtle harvesters shall utilize a dated receipt with at least two parts, with one original and one copy of each receipt, that contains the species, number, and pounds of turtles sold, bartered, or traded. Commercial turtle harvesters shall retain a copy of each receipt for five years following the transaction. A purchaser of commercial turtles shall retain a copy of the receipt for as long as the purchaser is in possession of the turtles.
4. Commercial turtle buyers shall maintain accurate records of all transactions. The records shall contain the date, number, weight, and species of turtles purchased, the name and address of the seller, and the county or pools where the turtles were taken. The records shall be updated monthly. Such records shall be available for examination by employees of the department upon request. A commercial turtle buyer shall only purchase turtles from a licensed commercial fisher or commercial turtle harvester.
5. Commercial roe buyers shall utilize a receipt with at least two parts, with one original and at least one copy of each receipt, for each purchase of commercial roe species and roe. The original of the receipt shall be kept by the commercial roe buyer and a copy of the receipt shall be given to the commercial roe harvester selling the commercial roe species or roe. Commercial roe buyers and commercial roe harvesters shall retain such receipts for five years following the date of the transaction.
6. Facilities and records of commercial fish buyers, commercial turtle buyers, commercial roe harvesters, and commercial roe buyers shall be open at all reasonable times for inspection by any conservation officer.

86 Acts, ch 1141, §14
C87, §109B.14
91 Acts, ch 170, §7
C93, §482.14
2009 Acts, ch 144, §31

482.15 Penalties.

A person who violates this chapter or a rule issued under this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph *"e"*. However, the scheduled fine specified in section 805.8B, subsection 3,

paragraph *"e"*, does not apply to a violation of this chapter or a rule for which another scheduled fine is specified in section 805.8B, subsection 3.

86 Acts, ch 1141, §15
C87, §109B.15
C93, §482.15
2000 Acts, ch 1203, §23; 2001 Acts, ch 130, §1; 2001 Acts, ch 137, §5
Referred to in §805.8B(3)(e)

CHAPTER 483

RESERVED

CHAPTER 483A

FISHING AND HUNTING LICENSES, CONTRABAND, AND GUNS

Referred to in §142C.2, 232.8, 321K.1, 350.5, 455A.4, 455A.5, 456A.14, 456A.24, 481A.1, 481A.6A, 481A.134, 481A.135, 482.1, 484B.3, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 110 in Code 1993
See §481A.134 and 481A.135 for point system and additional penalties

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SUBCHAPTER I

GENERAL PROVISIONS

483A.1 Licenses — fees — rules.

1. Except as otherwise provided in this chapter, a person shall not fish, trap, hunt, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or a part of any wild animal, bird, game, turtle, or fish, the protection and regulation of which is desirable for the conservation of resources of the state, without first obtaining a license for that purpose, and the payment of a fee as established by rules adopted by the commission pursuant to chapter 17A.

2. *a.* The fees established by rule pursuant to subsection 1 shall be periodically evaluated by the department, but not less often than once every three years, to ensure that the fees paid are sufficient to meet the needs of natural resource management and the public.

b. By December 15 of each year on and after December 15, 2019, that an evaluation of the license fees is completed, the department shall file a written report with the commission and the general assembly which shall include the evaluation and recommendations for changes, if any. Any fee increase proposed in such a report shall not take effect until on or after December 15 of the year succeeding the report and an individual license fee shall not be increased in any calendar year in an amount that exceeds five percent.

[S13, §2563-a2, -o, -p; SS15, §2547-a, 2562-b, 2563-a1; C24, §1706, 1718, 1719, 1748, 1752, 1756, 1779; C27, §1706, 1718, 1719, 1719-a1, 1748, 1752, 1756, 1779; C31, §1706, 1718, 1718-c1, 1719, 1719-a1, 1748, 1752, 1756, 1766-c3, 1779; C35, §1794-e1; C39, §**1794.082;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §110.1]

84 Acts, ch 1199, §2; 84 Acts, ch 1260, §2; 86 Acts, ch 1114, §1; 86 Acts, ch 1141, §17; 86 Acts, ch 1240, §1; 89 Acts, ch 90, §2; 89 Acts, ch 237, §1; 89 Acts, ch 238, §1; 91 Acts, ch 237, §3; 92 Acts, ch 1216, §10, 11

C93, §483A.1

95 Acts, ch 12, §1; 95 Acts, ch 46, §2; 98 Acts, ch 1199, §5, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 137, §5; 2001 Acts, ch 148, §1 – 3, 9; 2002 Acts, ch 1141, §1; 2003 Acts, ch 120, §1 – 4, 6; 2003 Acts, ch 152, §1 – 3, 6; 2005 Acts, ch 139, §3; 2007 Acts, ch 194, §1, 2; 2009 Acts, ch 144, §32, 33; 2009 Acts, ch 179, §147, 214, 215, 217; 2012 Acts, ch 1096, §5, 23; 2012 Acts, ch 1118, §14; 2013 Acts, ch 62, §1; 2014 Acts, ch 1058, §1, 2; 2018 Acts, ch 1159, §1, 28

Referred to in §331.605, 481A.93, 483A.1A, 483A.3, 483A.6B, 483A.7, 483A.8, 483A.9A, 483A.17, 483A.24, 483A.28, 717F.7, 805.8B(3)(o)

Commercial fishing licenses, see §482.4

For applicable scheduled fines, see §805.8B, subsection 3, paragraph o

Changes made to fees and terms of licenses by 2018 Acts, ch 1159, do not affect the validity of a license issued prior to December 15, 2018; 2018 Acts, ch 1159, §28

483A.1A Definitions.

As used in this chapter unless the context otherwise requires:

1. *"Boundary waters"* means the waters of the Mississippi, Missouri, and Big Sioux rivers.
2. *"Commission"* means the natural resource commission.
3. *"Department"* means the department of natural resources created under section 455A.2.
4. *"Director"* means the director of the department.
5. *"License"* means a privilege granted by the commission to fish, hunt, fur harvest, pursue, catch, kill, take in any manner, use, have possession of, sell, or transport all or part of a wild animal, bird, game, or fish, including any privilege related to a license granted by issuance of a stamp or a payment of a fee.
6. *"License agent"* means an individual, business, or governmental agency authorized to sell a license.
7. *"License document"* means an authorization, certificate, or permit issued by the department or a license agent that lists and confers one or more license privileges.
8. *"Nonresident"* means a person who is not a resident as defined in subsection 10.
9. *"Principal and primary residence or domicile"* means the one and only place where a person has a true, fixed, and permanent home, and to where, whenever the person is briefly and temporarily absent, the person intends to return. Relevant factors in determining a person's principal and primary residence or domicile include but are not limited to proof of place of employment, mailing address, utility records, land ownership records, vehicle registration, and address listed on the person's state and federal income tax returns. A person shall submit documentation to establish the person's principal and primary residence or domicile to the department or its designee upon request. The department or its designee shall keep confidential any document received pursuant to such a request if the document is required to be kept confidential by state or federal law.
10. *"Resident"* means a natural person who meets any of the following criteria during each year in which the person claims status as a resident:

a. Has physically resided in this state as the person's principal and primary residence or domicile for a period of not less than ninety consecutive days immediately before applying for or purchasing a resident license, tag, or permit under this chapter and has been issued an Iowa driver's license or an Iowa nonoperator's identification card. A person is not considered a resident under this paragraph if the person is residing in the state only for a special or temporary purpose including but not limited to engaging in hunting, fishing, or trapping.

b. Is a full-time student at either of the following:

(1) An accredited educational institution located in this state and resides in this state while attending the educational institution.

(2) An accredited educational institution located outside of this state, if the person is under the age of twenty-five and has at least one parent or legal guardian who maintains a principal and primary residence or domicile in this state.

c. Is a student who qualifies as a resident pursuant to paragraph *"b"* only for the purpose of purchasing any resident license specified in rules adopted pursuant to section 483A.1.

d. Is a nonresident under eighteen years of age whose parent is a resident of this state.

e. Is a member of the armed forces of the United States who is serving on active duty, claims residency in this state, and has filed a state individual income tax return as a resident pursuant to chapter 422, division II, for the preceding tax year, or is stationed in this state.

86 Acts, ch 1245, §1858

C87, §110.1A

C93, §483A.1A

95 Acts, ch 76, §1; 2000 Acts, ch 1116, §3 – 5; 2000 Acts, ch 1175, §1, 2; 2001 Acts, ch 134, §3; 2003 Acts, ch 37, §1; 2009 Acts, ch 144, §34, 35; 2011 Acts, ch 34, §112; 2018 Acts, ch 1159, §15, 28

Referred to in §321G.1, 321I.1, 482.2, 483A.2

483A.2 Dual residency.

A resident license shall be limited to persons who do not claim any resident privileges, except as defined in section 483A.1A, subsection 10, paragraphs *"b"*, *"c"*, *"d"*, and *"e"*, in

another state or country. A person shall not purchase or apply for any resident license or permit if that person has claimed residency in any other state or country.

2000 Acts, ch 1116, §6; 2009 Acts, ch 144, §36

483A.3 Wildlife habitat fee.

1. *a.* A resident or nonresident person required to have a hunting or fur harvester license shall not hunt or trap unless the person purchases a hunting or fur harvester license that includes the wildlife habitat fee, in an amount established by rules adopted by the commission pursuant to section 483A.1.

b. Residents who have permanent disabilities or who are younger than sixteen or older than sixty-five years of age may purchase a hunting or fur harvester license that does not include the wildlife habitat fee.

c. All wildlife habitat fees shall be administered in the same manner as hunting and fur harvester licenses except all revenue derived from wildlife habitat fees shall be used within the state of Iowa for habitat development and shall be deposited in the state fish and game protection fund, except as provided in subsection 2. The revenue may be used for the matching of federal funds. The revenues and any matched federal funds shall be used for acquisition of land, leasing of land, or obtaining of easements from willing sellers for use as wildlife habitats. Notwithstanding the exemption provided by section 427.1, any land acquired with the revenues and matched federal funds shall be subject to the full consolidated levy of property taxes, which shall be paid from the income generated from those lands or, if no such income is generated, from the wildlife habitat fee revenues. In addition the revenue may be used for the development and enhancement of wildlife lands and habitat areas.

d. Not less than three dollars from each wildlife habitat fee shall be allocated as specified in section 483A.3B and not less than fifty percent of the balance of each fee shall be used by the commission to enter into agreements with county conservation boards or other public agencies in order to carry out the purposes of this section. However, the state share of funding of those agreements provided by the revenue from wildlife habitat fees shall not exceed seventy-five percent.

2. Up to sixty percent of the revenues from wildlife habitat fees which are not required under subsection 1 to be used by the commission to enter into agreements with county conservation boards or other public agencies may be credited to the wildlife habitat bond fund as provided in section 483A.53.

3. Notwithstanding subsections 1 and 2, any increase in wildlife habitat fee revenues collected on or after December 15, 2018, pursuant to this section as a result of wildlife habitat fee increases established by rules adopted pursuant to section 483A.1, shall be used by the commission for any of the purposes set forth in this section or in section 483A.3B, except that such increases in revenues collected shall not be used by the commission for the purpose of land acquisition. The commission shall not reduce on an annual basis for these purposes the amount of other funds being expended as of December 15, 2018.

4. A multi-year hunting license purchased pursuant to section 483A.9A, includes the payment of a wildlife habitat fee for each of the years for which the license is valid and those fees shall be used as provided in this section.

[C79, 81, §110.3]

84 Acts, ch 1260, §3; 86 Acts, ch 1114, §2; 86 Acts, ch 1231, §1

C93, §483A.3

96 Acts, ch 1129, §98; 98 Acts, ch 1199, §6, 27; 98 Acts, ch 1223, §30; 2007 Acts, ch 194, §3; 2012 Acts, ch 1096, §6, 23; 2018 Acts, ch 1159, §2 – 5, 28

Referred to in §427.1(24)(a), 483A.3B, 805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

483A.3A Fish habitat development funding.

Three dollars from each resident and nonresident annual and seven-day fishing license and nine dollars from each resident multi-year fishing license sold shall be deposited in the state fish and game protection fund and shall be used within this state for fish habitat development.

Not less than fifty percent of this amount shall be used by the commission to enter into agreements with county conservation boards to carry out the purposes of this section.

2001 Acts, ch 148, §4, 9; 2003 Acts, ch 152, §4, 6; 2012 Acts, ch 1096, §7, 23; 2018 Acts, ch 1159, §6, 28

483A.3B Game bird habitat development programs.

1. *Allocation of revenue — accounts.* All revenue collected from wildlife habitat fees as provided in section 483A.3, subsection 1, paragraph *"d"*, that is deposited in the state fish and game protection fund and that is allocated pursuant to this section shall be allocated as follows:

a. Not less than two dollars of each wildlife habitat fee collected shall be allocated to the game bird wetlands conservation account.

b. Not less than one dollar of each wildlife habitat fee collected shall be allocated to the game bird buffer strip assistance account.

c. Notwithstanding section 12C.7, subsection 2, interest or earnings on moneys collected from wildlife habitat fees that are deposited in each account created under this section shall be credited to that account. Notwithstanding section 8.33 or section 456A.17, moneys credited to each account created under this section shall not revert to the state general fund at the close of a fiscal year.

d. All revenue collected from wildlife habitat fees as provided in section 483A.3, subsection 1, paragraph *"d"*, that is allocated pursuant to this section shall be used as provided in this section, except for that part which is specified by the department for use in paying administrative expenses as provided in section 456A.17.

2. *Game bird wetlands conservation program.*

a. All moneys allocated to the game bird wetlands conservation account shall be used by the department only to carry out the purposes of the game bird wetlands conservation program and shall be used in addition to funds already being expended by the department each year for wetlands conservation purposes.

b. The purpose of the game bird wetlands conservation program is to create a sustained source of revenue to be used by the department to qualify for federal matching funds that are available for wetlands conservation and to undertake projects in conjunction with soil and water conservation districts, county conservation boards, and other partners that will aid in wetlands and associated habitat conservation in the state, including the acquisition, restoration, maintenance, or preservation of wetlands and associated habitat.

c. (1) All moneys that are allocated to the game bird wetlands conservation account shall accumulate in the account until the account balance is equal to one million dollars or an amount sufficient to be used by the department to qualify for federal matching funds. Each time the account balance reaches an amount sufficient to be used by the department to qualify for federal matching funds, the department shall apply for such matching funds, and upon obtaining such funds, shall expend the state and federal revenues available at that time to undertake projects as set forth in paragraph *"b"*.

(2) Additional moneys that are generated by game bird wildlife habitat fees and allocated to the game bird wetlands conservation account shall again accumulate in the account, and each time the account balance is equal to one million dollars or an amount sufficient to be used by the department to qualify for federal matching funds, the department shall again apply for federal matching funds, and upon obtaining such funds, shall expend the state and federal revenues available at that time to undertake projects as set forth in paragraph *"b"*.

d. The department shall use all state revenue and federal matching funds obtained under the federal North American Wetlands Conservation Act to undertake the purposes of the game bird wetlands conservation program as set forth in paragraph *"b"*. State revenue allocated to the account shall be used by the department only for projects that increase public recreational hunting opportunities in the state and shall not be used for projects on private land that is not accessible to the public for recreational hunting.

3. *Game bird buffer strip assistance program.*

a. All moneys allocated to the game bird buffer strip assistance account shall be used by the department only to carry out the purposes of the game bird buffer strip assistance

program and shall be used in addition to funds already being expended by the department each year for such purposes. The department shall not reduce the amount of other funds being expended for these purposes as of July 1, 2007.

b. The purpose of the game bird buffer strip assistance program is to increase landowner participation in federally funded conservation programs that benefit game birds and to increase opportunities for recreational hunting on private lands. To the extent possible, moneys allocated to the game bird buffer strip assistance account shall be used in conjunction with and to qualify for additional funding from private conservation organizations and other state and federal agencies to accomplish the purposes of the program. The funds may be used to provide private landowners with cost-sharing assistance for habitat improvement practices on projects that are not eligible for federal programs or where federal funding for such projects is not adequate. The department may utilize the funds to provide marketing and outreach efforts to landowners in order to maximize landowners' use of federal conservation programs. The department may coordinate such marketing and outreach efforts with soil and water conservation districts and other partners.

c. (1) All moneys that are allocated to the game bird buffer strip assistance account shall accumulate in the account for a period of three years. At the end of the three-year period, the moneys in the account shall be used by the department to carry out the purposes of the game bird buffer strip assistance program as set forth in paragraph *"b"*. The department shall, by rule pursuant to chapter 17A, establish eligibility requirements for the program and procedures for applications for and approval of projects to be funded under the program. The department shall expend moneys from the account only for projects on private land that is accessible to the public for recreational hunting.

(2) Additional moneys that are generated by game bird wildlife habitat fees and allocated to the game bird buffer strip assistance account shall accumulate in the account and shall be used by the department every three years as set forth in subparagraph (1).

2007 Acts, ch 194, §4; 2018 Acts, ch 1159, §7, 28

Referred to in §483A.3

483A.4 "Permanent disability" defined.

For the purpose of obtaining a license, a person has a *"permanent disability"* if any of the following apply:

1. The person has been found under the provisions of the federal Social Security Act, Tit. II, or any other public or private pension system to have a total, permanent physical or mental condition which prevents that person from engaging in the person's occupation or qualifies that person for retirement.

2. The person has a severe physical disability and has qualified for a special license under section 483A.24.

[C79, 81, §110.4]
84 Acts, ch 1260, §4
C93, §483A.4
96 Acts, ch 1129, §99; 2010 Acts, ch 1061, §180

483A.5 Fur harvester license.

A fur harvester license is required to hunt and to trap any fur-bearing animal. A hunting license is not required when hunting furbearers with a fur harvester license. However, coyote and groundhog may be hunted with a hunting or a fur harvester license.

84 Acts, ch 1260, §12
C85, §110.5
85 Acts, ch 10, §2; 86 Acts, ch 1114, §3
C93, §483A.5
98 Acts, ch 1199, §7, 27; 98 Acts, ch 1223, §30

483A.6 Trout fishing fee.

Any person required to have a fishing license shall not fish for or possess trout unless that person has paid the trout fishing fee. The proceeds from the fee shall be used exclusively for

the trout program designated by the commission. The commission may grant a permit to a community event in which trout will be stocked in water which is not designated trout water and a person may catch and possess trout during the period and from the water covered by the permit without having paid the trout fishing fee.

[C62, 66, 71, 73, 75, 77, §110.1; C79, 81, §110.6]
86 Acts, ch 1240, §2; 86 Acts, ch 1245, §1877
C93, §483A.6
98 Acts, ch 1199, §8, 27; 98 Acts, ch 1223, §30; 2003 Acts, ch 152, §5, 6
Referred to in §805.8B(3)(b)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph b
Special licenses, see §483A.24

483A.6A Paddlefish fishing license and tag.

1. A resident fishing for paddlefish on the Missouri or Big Sioux river who is required to have a fishing license must purchase a paddlefish fishing license, in addition to a resident fishing license.

2. A nonresident fishing for paddlefish on the Missouri or Big Sioux river is required to have a fishing license that is valid in Iowa and, in addition, purchase a nonresident paddlefish fishing license.

3. The commission shall establish the number of annual paddlefish fishing licenses that may be issued pursuant to section 481A.39 for use on the Missouri or Big Sioux river. A paddlefish fishing license shall be accompanied by a tag designed to be used only once. If a paddlefish is taken pursuant to a paddlefish fishing license, the paddlefish shall be tagged immediately and the tag shall be dated.

2014 Acts, ch 1058, §3
Referred to in §805.8B(3)(c)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph c
Special licenses, see §483A.24

483A.6B Nonresident five-day hunting license — fee.

1. A nonresident may be issued a five-day hunting license that costs an amount as set by rules adopted pursuant to section 483A.1, including the wildlife habitat fee. A nonresident hunting with a license issued under this section shall be otherwise qualified to hunt in this state.

2. This section is repealed on December 15, 2021.

2018 Acts, ch 1159, §8, 28

483A.7 Wild turkey hunting license and tag.

1. A resident hunting wild turkey who is required to have a license must purchase a resident hunting license that includes the wildlife habitat fee in addition to the wild turkey hunting license. Upon application and payment of the required fees for archery-only licenses, a resident archer shall be issued two wild turkey licenses for the spring season.

2. The wild turkey hunting license shall be accompanied by a tag designed to be used only once. If a wild turkey is taken, the wild turkey shall be tagged and the tag shall be dated.

3. *a.* A nonresident wild turkey hunter is required to purchase a nonresident hunting license that includes the wildlife habitat fee and a nonresident wild turkey hunting license. The commission shall annually limit to two thousand three hundred licenses the number of nonresidents allowed to have wild turkey hunting licenses. Of the two thousand three hundred licenses, one hundred fifty licenses shall be valid for hunting with muzzle loading shotguns only. The commission shall allocate the nonresident wild turkey hunting licenses issued among the zones based on the populations of wild turkey. A nonresident applying for a wild turkey hunting license must exhibit proof of having successfully completed a hunter education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

b. The commission shall assign one preference point to a nonresident whose application for a nonresident wild turkey hunting license is denied due to limitations on the number of nonresident wild turkey hunting licenses available for issuance that year. An additional preference point shall be assigned to that person each subsequent year the person's license

application is denied for that reason. A nonresident may purchase additional preference points pursuant to rules adopted pursuant to section 483A.1. The first nonresident wild turkey hunting license drawing each year shall be made from the pool of applicants with the most preference points and continue to pools of applicants with successively fewer preference points until all available nonresident wild turkey hunting licenses have been issued. If a nonresident applicant receives a wild turkey hunting license, all of the applicant's assigned preference points at that time shall be removed.

4. A person who is issued a youth spring wild turkey hunting license and does not take a wild turkey during the youth spring wild turkey hunting season may use the wild turkey hunting license and unused tag during any other wild turkey hunting season that is established by the commission.

86 Acts, ch 1240, §3

C87, §110.7

89 Acts, ch 237, §2; 90 Acts, ch 1003, §1

C93, §483A.7

94 Acts, ch 1111, §1; 98 Acts, ch 1199, §9, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §4; 2001 Acts, ch 148, §5, 9; 2002 Acts, ch 1119, §63; 2009 Acts, ch 144, §37; 2009 Acts, ch 179, §147; 2012 Acts, ch 1096, §8, 9, 23; 2014 Acts, ch 1015, §1, 2; 2015 Acts, ch 26, §1; 2018 Acts, ch 1159, §16, 28

Referred to in §483A.24, 805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

Special licenses, see §483A.24

483A.8 Deer hunting license and tag.

1. A resident hunting deer who is required to have a hunting license must purchase a resident hunting license that includes the wildlife habitat fee, in addition to the deer hunting license. In addition, a resident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

2. *a.* The deer hunting license shall be accompanied by a tag designed to be used only once. When a deer is taken, the deer shall be tagged and the tag shall be dated. The tag shall be attached to the carcass of a deer taken within fifteen minutes of the time the deer carcass is located after being taken, or before the carcass is moved to be transported by any means from the place where the deer was taken, whichever occurs first. For each antlered deer taken, the tag shall be affixed to the deer's antlers.

b. For purposes of the tagging requirements in this subsection, a deer carcass may be moved away from an obstacle, entanglement, waterway, or any other area, including but not limited to a roadway, if tagging the carcass at that location would be a safety hazard to the hunter or a third person, before the tag is attached to the carcass. However, the carcass shall not be moved from the immediate vicinity of where the deer was taken, shall be moved only so far as is necessary to avoid the obstacle, entanglement, waterway, or other safety hazard, and shall be tagged immediately upon being so moved and before being moved to be transported.

3. *a.* A nonresident hunting deer is required to purchase a nonresident annual hunting license that includes the wildlife habitat fee and a nonresident deer hunting license. In addition, a nonresident who purchases a deer hunting license shall pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

b. A nonresident who purchases an antlered or any sex deer hunting license pursuant to rules adopted pursuant to section 483A.1, is required to purchase an antlerless deer only deer hunting license at the same time, pursuant to rules adopted pursuant to section 483A.1.

c. The commission shall annually limit to six thousand the number of nonresidents allowed to have antlered or any sex deer hunting licenses. Of the six thousand nonresident antlered or any sex deer hunting licenses issued, not more than thirty-five percent of the licenses shall be bow season licenses. After the six thousand antlered or any sex nonresident deer hunting licenses have been issued, all additional licenses shall be issued for antlerless

deer only. The commission shall annually determine the number of nonresident antlerless deer only deer hunting licenses that will be available for issuance.

d. The commission shall allocate all nonresident deer hunting licenses issued among the zones based on the populations of deer. However, a nonresident applicant may request one or more hunting zones, in order of preference, in which the applicant wishes to hunt. If the request cannot be fulfilled, the applicable fees shall be returned to the applicant. A nonresident applying for a deer hunting license must exhibit proof of having successfully completed a hunter education program as provided in section 483A.27 or its equivalent as determined by the department before the license is issued.

e. The commission shall assign one preference point to a nonresident whose application for a nonresident antlered or any sex deer hunting license is denied due to limitations on the number of nonresident antlered or any sex deer hunting licenses available for issuance that year. An additional preference point shall be assigned to that person each subsequent year the person's license application is denied for that reason. A nonresident may purchase additional preference points pursuant to rules adopted pursuant to section 483A.1. The first nonresident antlered or any sex deer hunting license drawing each year shall be made from the pool of applicants with the most preference points and continue to pools of applicants with successively fewer preference points until all available nonresident antlered or any sex deer hunting licenses have been issued. If a nonresident applicant receives an antlered or any sex deer hunting license, all of the applicant's assigned preference points at that time shall be removed.

4. The commission may provide, by rule, for the issuance of an additional antlerless deer hunting license to a person who has been issued an antlerless deer hunting license. The rules shall specify the number of additional antlerless deer hunting licenses which may be issued, and the season and zone in which the license is valid. The fee for an additional antlerless deer hunting license shall be an amount established by rules adopted pursuant to section 483A.1 for residents.

5. A nonresident owning land in this state may apply for a nonresident antlered or any sex deer hunting license, and the provisions of subsection 3 shall apply. However, if a nonresident owning land in this state is unsuccessful in obtaining one of the nonresident antlered or any sex deer hunting licenses, the landowner shall be given preference for one of the antlerless deer only nonresident deer hunting licenses available pursuant to subsection 3. A nonresident owning land in this state shall pay the fee for a nonresident antlerless only deer hunting license and the license shall be valid to hunt on the nonresident's land only. If one or more parcels of land have multiple nonresident owners, only one of the nonresident owners is eligible for a nonresident antlerless only deer hunting license. If a nonresident jointly owns land in this state with a resident, the nonresident shall not be given preference for a nonresident antlerless only deer hunting license. The department may require proof of land ownership from a nonresident landowner applying for a nonresident antlerless only deer hunting license.

6. The commission shall provide by rule for the annual issuance to a nonresident of a nonresident antlerless deer hunting license that is valid for use only during the period beginning on December 24 and ending at sunset on January 2 of the following year and costs an amount established by rules adopted pursuant to section 483A.1. A nonresident hunting deer with a license issued under this subsection shall be otherwise qualified to hunt deer in this state and shall purchase a nonresident annual hunting license that includes the wildlife habitat fee, and pay the one dollar fee for the purpose of deer herd population management as provided in subsection 3. Pursuant to this subsection, the commission shall make available for issuance only the remaining nonresident antlerless deer hunting licenses allocated under subsection 3 that have not yet been issued for the current year's nonresident antlerless deer hunting seasons.

7. A person who is issued a youth deer hunting license may use the deer hunting license and tag during any established deer hunting season using the method of take authorized by rule for each season being hunted. If the tag is filled during one of the seasons, the license will not be valid in subsequent seasons.

8. The commission shall adopt a rule permitting a resident to use a crossbow for taking

deer during the late season that is designated for taking deer by muzzleloading rifle or muzzleloading pistol.

[C79, 81, §110.8]

86 Acts, ch 1240, §4; 89 Acts, ch 237, §3; 90 Acts, ch 1003, §2

C93, §483A.8

94 Acts, ch 1111, §2; 98 Acts, ch 1199, §10, 27; 98 Acts, ch 1203, §5 – 7; 98 Acts, ch 1223, §28 – 30; 2001 Acts, ch 134, §5; 2001 Acts, ch 148, §6, 7, 9; 2002 Acts, ch 1119, §64; 2003 Acts, ch 85, §1; 2005 Acts, ch 139, §4; 2005 Acts, ch 179, §132; 2007 Acts, ch 129, §1; 2008 Acts, ch 1158, §1; 2009 Acts, ch 144, §38; 2009 Acts, ch 179, §216, 217; 2011 Acts, ch 103, §1; 2012 Acts, ch 1096, §10 – 12, 23; 2014 Acts, ch 1100, §1; 2015 Acts, ch 26, §2; 2017 Acts, ch 48, §1; 2018 Acts, ch 1159, §9, 17, 18, 28

Referred to in §483A.24, 805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

Special licenses, see §483A.8B, 483A.8C, 483A.24

483A.8A Deer and wild turkey harvest reporting system.

1. The commission shall provide, by rule, for the establishment of a deer and wild turkey harvest reporting system for the purpose of collecting information from hunters concerning the deer and wild turkey population in this state. Each person who is issued a deer or wild turkey hunting license in this state shall report such information pursuant to this section. Information collected by the commission pursuant to the deer and wild turkey harvest reporting system from a hunter who takes a deer or wild turkey shall be limited to the following:

a. The county where the deer or wild turkey was taken.

b. The season during which the deer or wild turkey was taken.

c. The sex of the deer or wild turkey taken.

d. The age of the deer or wild turkey taken.

e. The type of weapon used.

f. The hunting license number of the hunter.

g. The number of days the hunter hunted.

h. The total number of deer or wild turkey taken by the hunter.

2. The deer and wild turkey harvest reporting system established by the commission shall utilize and is limited to utilizing one or more of the following methods of reporting deer or wild turkey taken by hunters:

a. A toll-free telephone number.

b. A postcard.

c. Reporting at an electronic licensing location.

d. Electronic internet communication.

2005 Acts, ch 139, §5; 2009 Acts, ch 144, §39

Referred to in §481C.2A, 805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

483A.8B Senior crossbow deer hunting licenses.

1. A person who is a resident and who is seventy years of age or older may be issued one special senior statewide antlerless deer only crossbow deer hunting license to hunt deer during bow season as established by rule by the commission. A person who obtains a license to hunt deer under this section is not required to pay the wildlife habitat fee but shall be otherwise qualified to hunt deer in this state and shall purchase a resident hunting license that does not include the wildlife habitat fee.

2. A person may obtain a license under this section in addition to a statewide antlered or any sex deer hunting bow season license. Season dates, shooting hours, limits, license quotas, and other regulations for this license shall be the same as set forth by the commission by rule for bow season deer hunts.

2006 Acts, ch 1064, §1; 2012 Acts, ch 1096, §13, 23

483A.8C Nonambulatory persons — deer hunting licenses.

1. A nonambulatory person who is a resident may be issued one any sex deer hunting license to hunt deer during any established deer hunting season using the method of take

authorized by rule for each season being hunted. If the tag is filled during one of the seasons, the license will not be valid in subsequent seasons. A person who applies for a license pursuant to this section shall complete a form, as required by rule, that is signed by a physician who verifies that the person is nonambulatory.

2. A person who obtains a deer hunting license under this section is not required to pay the wildlife habitat fee but shall purchase a deer hunting license and hunting license that does not include the wildlife habitat fee, be otherwise qualified to hunt, and pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

3. A person may obtain a license under this section in addition to any other deer hunting licenses for which the person is eligible.

4. For the purposes of this section, "*nonambulatory person*" means an individual who has received a nonambulatory person's permit from the department as provided by rule, and at a minimum has one or more of the following conditions:

a. Paralysis of the lower half of the body, usually due to disease or a spinal cord injury.

b. Loss or partial loss of both legs.

c. Any other physical affliction which makes it impossible for the person to ambulate successfully.

2009 Acts, ch 83, §1; 2012 Acts, ch 1096, §14, 23; 2019 Acts, ch 70, §1
Subsection 1 amended

483A.9 Blanks.

The director shall provide blanks for, and determine the method, means, and requirements of issuing licenses including the issuance of licenses by electronic means.

[S13, §2563-a3; C24, 27, 31, §1722; C35, §1794-e2; C39, §**1794.083;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.2; C79, 81, §110.9]

86 Acts, ch 1245, §1878

C93, §483A.9

98 Acts, ch 1199, §11, 27; 98 Acts, ch 1223, §30

483A.9A Combination packages of licenses.

1. The commission is authorized, pursuant to rules adopted under chapter 17A, to develop combination packages of licenses in order to offer incentives to residents to purchase additional licenses or for the specific purpose of increasing sales of licenses that will help to recruit or retain hunters, anglers, and trappers in the state.

2. The total cost of each combination package of licenses offered shall be less than the total cost of the licenses if each were purchased separately.

3. The commission shall offer to residents a combination package of an annual fishing license and an annual hunting license, as provided in rules adopted pursuant to section 483A.1, the cost of which includes the wildlife habitat fee.

2009 Acts, ch 144, §40; 2012 Acts, ch 1096, §15, 23; 2018 Acts, ch 1159, §19, 28
Referred to in §483A.3

483A.10 Issuance of licenses.

1. The licenses and combination packages of licenses issued pursuant to this chapter shall be issued by the department or the license agents as specified by rules of the commission. A county recorder may issue licenses or combination packages of licenses subject to the rules of the commission.

2. The rules shall include the application procedures as necessary. The licenses and combination packages of licenses shall show the total cost of the license or combination package of licenses, including a writing fee to be retained by the license agent and any administrative fees to be forwarded to the department, if applicable. A person authorized to issue a license or combination package of licenses or collect a fee pursuant to this chapter or chapter 484A shall charge the fee specified in this chapter or chapter 484A only plus a writing fee and administrative fee, if applicable.

3. An application for a hunting, fishing, or fur harvester license shall include a section

where an applicant may request that the applicant's license include a symbol that indicates that the applicant is a donor under the revised uniform anatomical gift Act as provided in chapter 142C.

[SS15, §2563-a4; C24, 27, 31, §1724; C35, §1794-e3; C39, §**1794.084;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.3; C79, 81, §110.10]

84 Acts, ch 1260, §5

C93, §483A.10

98 Acts, ch 1199, §12, 27; 98 Acts, ch 1223, §30; 2000 Acts, ch 1019, §3; 2001 Acts, ch 134, §6; 2009 Acts, ch 144, §41; 2019 Acts, ch 86, §10

Referred to in §331.602, 483A.18

NEW subsection 3

483A.11 License agents.

The director may designate license agents for the sale of licenses, but in so doing the interest of the state shall be fully protected.

[C31, §1724-c1; C35, §1794-e4; C39, §**1794.085;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.4; C79, 81, §110.11]

84 Acts, ch 1260, §6

C93, §483A.11

98 Acts, ch 1199, §13, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §7

Referred to in §321G.4A, 321G.6, 321I.5, 321I.7

483A.12 License agent responsibilities — fees and unused blanks — writing fee.

1. The license agent shall be responsible for all fees for the issuance of hunting, fishing, and fur harvester licenses and combination packages of licenses sold by the license agent. All unused license blanks shall be surrendered to the department upon the department's demand.

2. A license agent shall retain a writing fee of fifty cents from the sale of each license or combination package of licenses except that the writing fee for a free deer or wild turkey hunting license as authorized under section 483A.24, subsection 2, shall be one dollar. If a county recorder is a license agent, the writing fees retained by the county recorder shall be deposited in the general fund of the county.

[C31, §1724-c1; C35, §1794-e5; C39, §**1794.086;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.5; C79, 81, §110.12]

83 Acts, ch 123, §56, 209; 84 Acts, ch 1260, §7

C93, §483A.12

98 Acts, ch 1199, §14, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §8; 2009 Acts, ch 144, §42; 2011 Acts, ch 34, §113

Referred to in §331.427, 331.602, 331.605

483A.13 Destroyed license blanks — accountability.

When license blanks in the possession of a license agent are accidentally destroyed, the holder of the blanks shall only be relieved from accountability upon the presentation of satisfactory explanation and the filing of a bond to the director that the blanks have actually been so destroyed. The commission may determine by rule what shall constitute a satisfactory explanation of the occurrence.

[C35, §1794-e6; C39, §**1794.087;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.6; C79, 81, §110.13]

C93, §483A.13

2001 Acts, ch 134, §9

Referred to in §331.602

483A.14 Duplicate licenses and permits.

When any license for which a fee has been set has been lost, destroyed, or stolen, the director or a license agent may issue a replacement license, if evidence is available to demonstrate issuance of the original license and a fee of two dollars is paid, to be placed in the fish and game protection fund. If, on examination of the evidence, the director or the license agent, as the case may be, is satisfied that the license has been lost, destroyed, or stolen, the director or the license agent shall issue a duplicate license which shall be plainly

marked "duplicate" and the duplicate shall serve in lieu of the original license and it shall contain the same information and signature as the original. The license agent shall charge a writing fee of one dollar and the departmental administrative fee for each duplicate license issued pursuant to this section. The license agent shall retain the writing fee.

[C39, §**1794.088;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.7; C79, 81, §110.14]

C93, §483A.14

98 Acts, ch 1199, §15, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §10

Referred to in §331.602

483A.15 Accounting.

The director shall establish, by rule, specific requirements for remittance of funds, and the necessary accounting and reporting for all types of licenses issued based on the manner and location of the issuance.

[SS15, §2563-a4; C24, 27, 31, §1725; C35, §1794-e7; C39, §**1794.089;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.8; C79, 81, §110.15]

C93, §483A.15

98 Acts, ch 1199, §16, 27; 98 Acts, ch 1223, §30

Referred to in §331.602

483A.16 Duplicate issuance. Repealed by 98 Acts, ch 1199, §26, 27; 98 Acts, ch 1223, §30.

483A.17 Tenure of license.

Every license, except as otherwise provided in this chapter, is valid from the date issued to January 10 of the succeeding calendar year for which it is issued. A license shall not be issued prior to December 15 for the subsequent calendar year except for a multi-year fishing license or a multi-year hunting license issued to a resident pursuant to rules adopted pursuant to section 483A.1.

[S13, §2563-a8; C24, 27, 31, §1727; C35, §1794-e9; C39, §**1794.091;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.10; C79, 81, §110.17]

84 Acts, ch 1260, §8

C93, §483A.17

95 Acts, ch 46, §3; 2001 Acts, ch 134, §11; 2012 Acts, ch 1096, §16, 23; 2018 Acts, ch 1159, §10, 28

Changes made to fees and terms of licenses by 2018 Acts, ch 1159, do not affect the validity of a license issued prior to December 15, 2018; 2018 Acts, ch 1159, §28

483A.18 Form of licenses.

1. All hunting, fishing, and fur harvester licenses shall contain a general description of the licensee. Such licenses shall be upon such forms as the commission shall adopt. The address and the signature of the applicant and all signatures and other required information shall be in writing. All licenses shall clearly indicate the nature of the privilege granted.

2. Upon request of an applicant pursuant to section 483A.10, the department shall indicate on the license that the applicant is a donor under the revised uniform anatomical gift Act as provided in chapter 142C.

[S13, §2563-a3, -a8; C24, 27, 31, §1722, 1727; C35, §1794-e10; C39, §**1794.092;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.11; C79, 81, §110.18]

84 Acts, ch 1260, §9

C93, §483A.18

2016 Acts, ch 1037, §1; 2017 Acts, ch 29, §137; 2019 Acts, ch 86, §11

Section amended

483A.19 Showing license document to officer.

Every person shall, while fishing, hunting, or fur harvesting, show the person's license document to any peace officer or the owner or person in lawful control of the land or water upon which licensee may be hunting, fishing, or fur harvesting when requested by the persons to do so. Any failure to so carry or refusal to show or so exhibit the person's license document shall be a violation of this chapter. However, except for possession and exhibition of deer licenses and tags or wild turkey licenses and tags, a person charged with violating this section

shall not be convicted if the person produces in court, within a reasonable time, a license document for hunting, fishing, or fur harvesting issued to that person and valid when the person was charged with a violation of this section.

[C39, §**1794.093;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.12; C79, 81, §110.19]

C93, §483A.19

96 Acts, ch 1034, §46; 98 Acts, ch 1199, §17, 27; 98 Acts, ch 1223, §30; 2001 Acts, ch 134, §12

Referred to in §805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

483A.20 Reciprocity.

Licenses for bait dealers or for fishing, hunting, or fur harvesting shall not be issued to residents of states that do not sell similar licenses or certificates to residents of Iowa. However, this requirement is not applicable to the licensing of nonresident wholesale bait dealers who sell to licensed wholesale bait dealers in Iowa for resale.

86 Acts, ch 1141, §16

C87, §110.20

C93, §483A.20

96 Acts, ch 1034, §47; 2003 Acts, ch 120, §5, 6; 2004 Acts, ch 1105, §1, 2

483A.21 Revocation or suspension.

1. Upon the conviction of a licensee of any violation of chapter 481A, or of this chapter, or of any administrative order adopted and published by the commission, the magistrate may, as a part of the judgment, revoke one or more license privileges of the licensee, or suspend the privileges for any definite period.

2. The magistrate shall revoke the hunting license or suspend the privilege of procuring a hunting license for a period of one year of any person who has been convicted twice within a year of trespassing while hunting. If any of the license privileges of a licensee who purchased more than one license privilege is revoked, the remaining license privileges of the licensee shall still be valid and the magistrate shall enter on the license document the privilege that is revoked. A person shall not purchase a license for a privilege that was revoked or suspended during the period of revocation or suspension.

3. In addition to other civil and criminal penalties imposed for illegally taking or possessing an elk, antelope, buffalo, or moose, the court shall revoke the hunting license of a violator. The violator shall not be allowed to procure a hunting license for the next two calendar years.

[S13, §2563-a9; C24, 27, 31, §1729; C35, §1794-e12; C39, §**1794.095;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.14; C79, 81, §110.21]

86 Acts, ch 1245, §1877; 90 Acts, ch 1142, §2

C93, §483A.21

2001 Acts, ch 134, §13; 2018 Acts, ch 1041, §127

483A.22 Record of revocation.

When a license is revoked, the date, cause, and tenure of such revocation shall be kept on file with the license records of the commission. The commission may refuse the issuance of a new license to any person whose license has been revoked.

[S13, §2563-a7; C24, 27, 31, §1726; C35, §1794-e13; C39, §**1794.096;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.15; C79, 81, §110.22]

C93, §483A.22

2001 Acts, ch 134, §14

Referred to in §331.602

483A.22A Sale of license lists.

The department may establish, by rule, fees for lists of licensees. Notwithstanding section 22.3, the fee for a list of licensees may exceed the cost of preparing the list and providing the copying service.

98 Acts, ch 1199, §18, 27; 98 Acts, ch 1223, §30

483A.23 Game birds or animals as pets.

Any person may possess not more than two game birds or fur-bearing animals confined as pets without being required to purchase a license as a game breeder, but the person shall not be allowed to increase the person's stock beyond the original number nor shall the person be allowed to kill or sell such stock. Game birds or animals confined as authorized in this section must be obtained from a licensed game breeder or a legal source outside of this state.

[C24, 27, 31, §1720; C35, §1794-e14; C39, §**1794.097;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.16; C79, 81, §110.23]

C93, §483A.23

Referred to in §805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

483A.24 When license not required — special licenses.

1. Owners or tenants of land, and their minor children, may hunt, fish or trap upon such lands and may shoot by lawful means ground squirrels, gophers, or woodchucks upon adjacent roads without securing a license so to do; except, special licenses to hunt deer and wild turkey shall be required of owners and tenants but they shall not be required to have a special wild turkey hunting license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

2. *a.* As used in this subsection:

(1) *"Family member"* means a resident of Iowa who is the spouse or child of the owner or tenant and who resides with the owner or tenant.

(2) *"Farm unit"* means all parcels of land which are certified by the commission pursuant to rule as meeting all of the following requirements:

(a) Are in tracts of two or more contiguous acres.

(b) Are operated as a unit for agricultural purposes.

(c) Are under the lawful control of the owner or the tenant.

(3) (a) *"Owner"* means an owner of a farm unit who is a resident of Iowa and who is one of the following:

(i) Is the sole operator of the farm unit.

(ii) Makes all of the farm operation decisions but contracts for custom farming or hires labor for all or part of the work on the farm unit.

(iii) Participates annually in farm operation decisions or cropping practices on specific fields of the farm unit that are rented to a tenant.

(iv) Raises specialty crops on the farm unit including but not limited to orchards, nurseries, or tree farms that do not always produce annual income but require annual operating decisions about maintenance or improvement.

(v) Has all or part of the farm unit enrolled in a long-term agricultural land retirement program of the federal government.

(b) An *"owner"* does not mean a person who owns a farm unit and who employs a farm manager or third party to operate the farm unit, or a person who owns a farm unit and who rents the entire farm unit to a tenant who is responsible for all farm operations. However, this subparagraph division does not apply to an owner who is a parent of the tenant and who resides in this state.

(4) *"Tenant"* means a person who is a resident of Iowa and who rents and actively farms a farm unit owned by another person. A member of the owner's family may be a tenant. A person who works on the farm for a wage and is not a family member does not qualify as a tenant.

b. Upon written application on forms furnished by the department, the department shall issue annually without fee one wild turkey license to the owner of a farm unit or to a member of the owner's family, but not to both, and to the tenant or to a member of the tenant's family, but not to both. The wild turkey hunting licenses issued shall be valid only on the farm unit for which an applicant qualifies pursuant to this subsection and shall be equivalent to the least restrictive license issued under section 481A.38. The owner or the tenant need not reside on the farm unit to qualify for a free license to hunt on that farm unit. The free turkey hunting

licenses issued pursuant to this paragraph shall be valid and may be used during any bow or firearm turkey hunting season.

c. Upon written application on forms furnished by the department, the department shall issue annually without fee two deer hunting licenses, one antlered or any sex deer hunting license and one antlerless deer only deer hunting license, to the owner of a farm unit or a member of the owner's family, but only a total of two licenses for both, and to the tenant of a farm unit or a member of the tenant's family, but only a total of two licenses for both. The deer hunting licenses issued shall be valid only for use on the farm unit for which the applicant applies pursuant to this paragraph. The owner or the tenant need not reside on the farm unit to qualify for the free deer hunting licenses to hunt on that farm unit. The free deer hunting licenses issued pursuant to this paragraph shall be valid and may be used during any bow or firearm deer hunting season. The licenses may be used to harvest deer in two different seasons. In addition, a person who receives a free deer hunting license pursuant to this paragraph shall pay a one dollar fee for each license that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

d. In addition to the free deer hunting licenses received pursuant to paragraph "*c*", an owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may purchase a deer hunting license for any option offered to paying deer hunting licensees. An owner of a farm unit or a member of the owner's family and the tenant or a member of the tenant's family may also purchase two additional antlerless deer hunting licenses which are valid only on the farm unit for a fee established by rules adopted pursuant to section 483A.1.

e. If the commission establishes a deer hunting season to occur in the first quarter of a calendar year that is separate from a deer hunting season that continues from the last quarter of the preceding calendar year, each owner and each tenant of a farm unit located within a zone where a deer hunting season is established, upon application, shall be issued a free deer hunting license for each of the two calendar quarters. Each license is valid only for hunting on the farm unit of the owner and tenant.

f. (1) A deer hunting license or wild turkey hunting license issued pursuant to this subsection shall be attested by the signature of the person to whom the license is issued and shall contain a statement in substantially the following form:

By signing this license I certify that I qualify as an owner or tenant
under Iowa Code section 483A.24.

(2) A person who makes a false attestation under this paragraph "*f*" is guilty of a simple misdemeanor. In addition, the person's hunting license shall be revoked and the person shall not be issued a hunting license for a period of one year.

3. The director shall provide up to seventy-five nonresident deer hunting licenses for allocation as provided in this subsection.

a. Fifty of the nonresident deer hunting licenses shall be allocated as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the economic development authority, or their designees. The licenses provided pursuant to this subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.8. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon purchase of a nonresident annual hunting license that includes the wildlife habitat fee and the purchase of a nonresident deer hunting license. The licenses are valid in all zones open to deer hunting. The hunter education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

b. Twenty-five of the nonresident deer hunting licenses shall be allocated as provided in subsection 5.

4. The director shall provide up to seventy-five nonresident wild turkey hunting licenses for allocation as provided in this subsection.

a. Fifty of the nonresident wild turkey hunting licenses shall be allocated as requested by a majority of a committee consisting of the majority leader of the senate, speaker of the house of representatives, and director of the economic development authority, or their designees. The licenses provided pursuant to this subsection shall be in addition to the number of nonresident licenses authorized pursuant to section 483A.7. The purpose of the special nonresident licenses is to allow state officials and local development groups to promote the state and its natural resources to nonresident guests and dignitaries. Photographs, videotapes, or any other form of media resulting from the hunting visitation shall not be used for political campaign purposes. The nonresident licenses shall be issued without application upon purchase of a nonresident annual hunting license that includes the wildlife habitat fee and the purchase of a nonresident wild turkey hunting license. The licenses are valid in all zones open to wild turkey hunting. The hunter education certificate requirement pursuant to section 483A.27 is waived for a nonresident issued a license pursuant to this subsection.

b. Twenty-five of the nonresident wild turkey hunting licenses shall be allocated as provided in subsection 5.

5. Twenty-five of the nonresident deer hunting licenses and wild turkey hunting licenses allocated under subsections 3 and 4 shall be available for issuance to nonresidents who have served in the armed forces of the United States on active federal service and who were disabled during the veteran's military service or who are serving in the armed forces of the United States on active federal service and have been disabled during military service to enable the disabled person to participate in a hunt that is conducted by an organization that conducts hunting experiences in this state for disabled persons. The licenses shall be issued as follows:

a. The department shall prepare an application to be used by a person requesting a special license under this subsection.

(1) The department shall verify that the license will be used by the applicant in connection with a hunt conducted by an approved organization that conducts hunting experiences in this state for disabled veterans and members of the armed forces serving on active federal service who have been disabled during military service. The department shall specify, by rules adopted under chapter 17A, what requirements an organization must meet in order to be approved to conduct hunts for disabled persons who obtain licenses under this subsection.

(2) The department of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, *"disabled"* means entitled to a service connected rating under 38 U.S.C. ch. 11 with a degree of disability of thirty percent or more.

b. A license issued under this subsection shall be in addition to the number of nonresident wild turkey hunting licenses authorized pursuant to section 483A.7 and nonresident deer hunting licenses authorized pursuant to section 483A.8. However, a nonresident who obtains a license pursuant to this subsection is not eligible to obtain a nonresident deer hunting license or wild turkey hunting license under any other provision of law.

c. A disabled person who receives a special license under this subsection shall purchase a hunting license that includes the wildlife habitat fee, and a wild turkey hunting license or a deer hunting license, if applicable, all for the same fees that are charged to resident hunters. If hunting deer, the disabled person shall also pay a one dollar fee that shall be used and is appropriated for the purpose of deer herd population management, including assisting with the cost of processing deer donated to the help us stop hunger program administered by the commission.

d. A special hunting license that includes the wildlife habitat fee shall be available for issuance under this subsection to a disabled veteran or disabled member of the armed forces serving on active federal service for the same fee that is charged to a resident hunter to enable such a disabled person to participate in a hunt conducted by an organization approved under this subsection for which only a hunting license is required.

e. A disabled person who receives a special license under this subsection shall complete the hunter education course.

f. A license issued under this subsection is valid for use only on a hunt conducted by an organization approved under this subsection.

g. The commission shall adopt rules under chapter 17A for the administration of this subsection.

6. A resident or nonresident of the state under sixteen years of age is not required to have a license to fish in the waters of the state. However, residents and nonresidents under sixteen years of age must pay the trout fishing fee to possess trout or they must fish for trout with a licensed adult who has paid the trout fishing fee and limit their combined catch to the daily limit established by the commission. A resident or nonresident of the state under sixteen years of age is required to have a paddlefish fishing license to fish for paddlefish on the Missouri or Big Sioux river.

7. A license shall not be required of minor pupils of the state school for the blind, state school for the deaf, or of minor residents of other state institutions under the control of an administrator of a division of the department of human services. In addition, a person who is on active duty with the armed forces of the United States, on authorized leave from a duty station located outside of this state, and a resident of the state of Iowa shall not be required to have a license to hunt or fish in this state. The military person shall carry the person's leave papers and a copy of the person's current earnings statement showing a deduction for Iowa income taxes while hunting or fishing. In lieu of carrying the person's earnings statement, the military person may also claim residency if the person is registered to vote in this state. If a deer or wild turkey is taken, the military person shall immediately contact a state conservation officer to obtain an appropriate tag to transport the animal. A license shall not be required of residents of county care facilities or any person who is receiving supplementary assistance under chapter 249.

8. A resident of the state under sixteen years of age is not required to have a hunting license to hunt game if accompanied by the minor's parent or guardian or in company with any other competent adult with the consent of the minor's parent or guardian, if the person accompanying the minor possesses a valid hunting license; however, there must be one licensed adult accompanying each person under sixteen years of age. The minor must have a deer hunting license to hunt deer and a wild turkey hunting license to hunt wild turkey.

9. A resident of the state under sixteen years of age is not required to have a fur harvester license to accompany the minor's parent or guardian, or any other competent adult with the consent of the minor's parent or guardian, while the parent or guardian or other adult is hunting raccoons so long as the minor is not hunting and does not carry or use a firearm or any other weapon.

10. A person having a dog entered in a licensed field trial is not required to have a hunting license or fur harvester license to participate in the event or to exercise the person's dog on the area on which the field trial is to be held during the twenty-four-hour period immediately preceding the trial.

11. The commission shall issue without charge a special fishing license to residents of Iowa sixteen years or more of age who the commission finds have severe mental or physical disabilities. The commission is hereby authorized to prepare an application to be used by the person requesting the special license, which would require that the person's attending physician sign the form declaring that the person has a severe mental or physical disability and is eligible for exempt status.

12. The commission shall issue a special turkey hunting license or any sex deer hunting license to a nonresident twenty-one years of age or younger who the commission finds has a severe physical disability or has been diagnosed with a terminal illness. The licenses shall be issued as follows:

a. The commission may prepare an application to be used by the person requesting the special license, which requires that the person's attending physician sign the form declaring that the person has a severe physical disability or has been diagnosed with a terminal illness and is eligible for the special license.

b. The licenses provided pursuant to this subsection shall be in addition to the number of

nonresident turkey hunting licenses authorized pursuant to section 483A.7 and nonresident deer hunting licenses authorized pursuant to section 483A.8.

c. The turkey hunting licenses are valid in all zones open to turkey hunting and shall be available for issuance and use during any turkey hunting season. The deer hunting licenses are valid in all zones open to deer hunting and shall be available for issuance and use during any deer hunting season.

d. A nonresident who receives a special license pursuant to this subsection shall purchase a hunting license that includes the wildlife habitat fee and the applicable nonresident turkey or deer hunting license, but is not required to complete the hunter education course if the person is accompanied and aided by a person who is at least eighteen years of age. The accompanying person must be qualified to hunt and have a hunting license that includes the wildlife habitat fee. During the hunt, the accompanying adult must be within arm's reach of the nonresident licensee.

e. The commission shall adopt rules under chapter 17A for the administration of this subsection.

13. No person shall be required to have a special wild turkey license to hunt wild turkey on a hunting preserve licensed under chapter 484B.

14. A lessee of a camping space at a campground may fish on a private lake or pond on the premises of the campground without a license if the lease confers an exclusive right to fish in common with the rights of the owner and other lessees.

15. The department may issue a permit, subject to conditions established by the department, which authorizes patients of a substance abuse facility, residents of health care facilities licensed under chapter 135C, tenants of elder group homes licensed under chapter 231B, tenants of assisted living program facilities licensed under chapter 231C, participants who attend adult day services programs licensed under chapter 231D, participants in services funded under a federal home and community-based services waiver implemented under the medical assistance program as defined in chapter 249A, and persons cared for in juvenile shelter care homes as provided for in chapter 232 to fish without a license as a supervised group. A person supervising a group pursuant to this subsection may fish with the group pursuant to the permit and is not required to obtain a fishing license.

16. Upon payment of the fee established by rules adopted pursuant to section 483A.1 for a lifetime fishing license or lifetime hunting and fishing combined license, the department shall issue a lifetime fishing license or lifetime hunting and fishing combined license to a resident of Iowa who has served in the armed forces of the United States on federal active duty and who was disabled or was a prisoner of war during that veteran's military service. The department shall prepare an application to be used by a person requesting a lifetime fishing license or lifetime hunting and fishing combined license under this subsection. The department of veterans affairs shall assist the department in verifying the status or claims of applicants under this subsection. As used in this subsection, *"disabled"* means entitled to a service connected rating under 38 U.S.C. ch. 11.

17. The department shall issue without charge a special annual fishing or combined hunting and fishing license to residents of this state who have permanent disabilities and whose income falls below the federal poverty guidelines as published by the United States department of health and human services or residents of this state who are sixty-five years of age or older and whose income falls below the federal poverty guidelines as published by the United States department of health and human services. The commission shall provide for, by rule, an application to be used by an applicant requesting a special license. The commission shall require proof of age, income, and proof of permanent disability.

18. The department may issue a permit, subject to conditions established by the department, which authorizes a student sixteen years of age or older attending an Iowa public or accredited nonpublic school who is participating in the Iowa department of natural resources fish Iowa! basic spincasting module to fish without a license as part of a supervised school outing.

[S13, §2563-a3; C24, 27, 31, §1720, 1723; C35, §1794-e15; C39, §**1794.098;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §110.17; C79, 81, §110.24; 82 Acts, ch 1260, §16]

83 Acts, ch 96, §59, 159; 84 Acts, ch 1260, §10; 85 Acts, ch 10, §3; 85 Acts, ch 67, §15; 86 Acts, ch 1240, §5 – 7; 86 Acts, ch 1245, §1877; 88 Acts, ch 1216, §42; 89 Acts, ch 74, §1; 89 Acts, ch 87, §2, 3; 90 Acts, ch 1178, §1, 2; 91 Acts, ch 237, §4, 5; 92 Acts, ch 1140, §12

C93, §483A.24

94 Acts, ch 1018, §1; 94 Acts, ch 1023, §58; 96 Acts, ch 1129, §100; 96 Acts, ch 1172, §1; 97 Acts, ch 180, §6; 98 Acts, ch 1199, §19, 20, 27; 98 Acts, ch 1223, §30; 99 Acts, ch 180, §20; 2000 Acts, ch 1175, §3; 2001 Acts, ch 134, §15; 2001 Acts, ch 148, §8, 9; 2005 Acts, ch 115, §35, 40; 2005 Acts, ch 139, §6 – 10; 2005 Acts, ch 172, §24; 2006 Acts, ch 1010, §125; 2006 Acts, ch 1026, §1; 2006 Acts, ch 1043, §1; 2006 Acts, ch 1108, §1; 2007 Acts, ch 66, §1; 2008 Acts, ch 1032, §65; 2008 Acts, ch 1036, §1; 2008 Acts, ch 1161, §18; 2010 Acts, ch 1061, §63, 64; 2011 Acts, ch 25, §143; 2011 Acts, ch 118, §85, 89; 2012 Acts, ch 1021, §93, 94; 2012 Acts, ch 1072, §38; 2012 Acts, ch 1096, §17 – 19, 23; 2013 Acts, ch 61, §1, 2; 2014 Acts, ch 1058, §4; 2015 Acts, ch 26, §3 – 6; 2018 Acts, ch 1159, §11, 20 – 23, 28

Referred to in §481A.123, 481C.2A, 483A.4, 483A.12, 805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

483A.24A License refunds — military service.

Notwithstanding any provision of this chapter to the contrary, a service member deployed for military service, as defined in section 29A.1, subsection 3, shall receive a refund of that portion of any license fee paid by the service member representing the service member's period of military service.

2010 Acts, ch 1170, §5; 2011 Acts, ch 47, §10; 2011 Acts, ch 131, §67, 158

483A.24B Special deer hunts.

1. The commission may establish a special season deer hunt for antlerless deer in those counties where paid antlerless only deer hunting licenses remain available for issuance.

2. Antlerless deer may be taken by shotgun, muzzleloading rifle, muzzleloading pistol, handgun, or bow during the special season as provided by the commission by rule.

3. Prior to December 15, a resident may obtain up to three paid antlerless only deer hunting licenses for the special season regardless of how many paid or free gun or bow deer hunting licenses the person may have already obtained. Beginning December 15, a resident or nonresident may purchase an unlimited number of antlerless only deer hunting licenses for the special season.

4. All antlerless deer hunting licenses issued pursuant to this section shall be included in the quotas established by the commission by rule for each county and shall be available in each county only until the quota established by the commission for that county is filled.

5. The daily bag and possession limit during the special season is one deer per license. The tagging requirements are the same as for the regular gun season.

6. A person who receives a license pursuant to this section shall be otherwise qualified to hunt deer in this state and shall purchase a hunting license that includes the wildlife habitat fee.

7. A person violating a provision of this section or a rule adopted pursuant to this section is guilty of a simple misdemeanor punishable as a scheduled violation as provided in section 483A.42.

2005 Acts, ch 139, §11; 2012 Acts, ch 1096, §20, 23

483A.24C Deer depredation management agreements — permits. Repealed by 2008 Acts, ch 1037, §5, 6. See §481C.2A.

483A.25 Pheasant and quail restoration program — appropriations. Repealed by 2009 Acts, ch 144, §48.

483A.26 False claims.

A nonresident shall not obtain a resident license by falsely claiming residency in the state. The use of a license by a person other than the person to whom the license is issued is unlawful and nullifies the license.

[82 Acts, ch 1013, §1]
C83, §110.26
84 Acts, ch 1260, §11; 90 Acts, ch 1216, §8
C93, §483A.26
95 Acts, ch 76, §2
Referred to in §805.8B(3)(p)
For applicable scheduled fines, see §805.8B, subsection 3, paragraph p

483A.27 Hunter education program — license requirement.

1. A person born after January 1, 1972, shall not obtain a hunting license unless the person has satisfactorily completed a hunter education course approved by the commission. A person who is eleven years of age or more may enroll in an approved hunter education course, but a person who is eleven years of age and who has successfully completed the course shall be issued a certificate of completion which becomes valid on the person's twelfth birthday. A certificate of completion from an approved hunter education course issued in this state, or a certificate issued by another state, country, or province for completion of a course that meets the standards adopted by the international hunter education association — United States of America, is valid for the requirements of this section.

2. *a.* A certificate of completion shall not be issued to a person who has not satisfactorily completed an approved hunter education course. The department shall establish the curriculum based on the standards adopted by the international hunter education association — United States of America for the approved hunter education course. The curriculum shall include instruction relating to making an anatomical gift, including of an organ, an eye, or tissue, under the revised uniform anatomical gift Act as provided in chapter 142C. Upon completion of the course, each person shall pass an individual oral test or a written test provided by the department. The department shall establish the criteria for successfully passing the tests. Based on the results of the test and demonstrated safe handling of a firearm, the instructor shall determine the persons who shall be issued a certificate of completion.

b. Notwithstanding paragraph "*a*", a resident who is eighteen years of age or older may obtain a certificate of completion without demonstrating the safe handling of a firearm.

3. The department shall provide a manual regarding hunter education which shall be used by all instructors and persons receiving hunter education training in this state. The department may produce the manual in a print or electronic format accessible from a computer, including from a data storage device or the department's internet site.

4. The department shall provide for the certification of persons who wish to become hunter education instructors. A person shall not act as an instructor in hunter education as provided in this section without first obtaining an instructor's certificate from the department.

5. An officer of the department or a certified instructor may issue a certificate to a person who has not completed the hunter education course but meets the criteria established by the commission.

6. A public or private school accredited pursuant to section 256.11 or an organization approved by the department may cooperate with the department in providing a course in hunter education or shooting sports activities as provided in this section.

7. A hunting license obtained under this section by a person who gave false information or presented a fraudulent certificate of completion shall be revoked and a new hunting license shall not be issued for at least two years from the date of conviction. A hunting license obtained by a person who was born after January 1, 1972, but has not satisfactorily completed the hunter education course or has not met the requirements established by the commission, shall be revoked.

8. The commission shall adopt rules in accordance with chapter 17A as necessary to carry out the administration of this section.

9. The initial hunter education certificate shall be issued without cost. A duplicate certificate shall be issued upon payment of the writing fee and administrative fee, if applicable.

10. A person under eighteen years of age who is required to exhibit a valid hunting license shall also exhibit a valid certificate of completion from a state approved hunter education course upon request of an officer of the department. A failure to carry or refusal to exhibit the certificate of completion as provided in this subsection is a violation of this chapter. A violator is guilty of a simple misdemeanor as provided in section 483A.42.

11. An instructor certified by the department shall be allowed to conduct a department-approved hunter education course or shooting sports activities course on public school property with the approval of a majority of the board of directors of the school district. Conducting an approved hunter education course or shooting sports activities course is not a violation of any public policy, rule, regulation, resolution, or ordinance which prohibits the possession, display, or use of a firearm, bow and arrow, or other hunting weapon on public school property or other public property in this state.

[82 Acts, ch 1035, §1]

C83, §110.27

85 Acts, ch 104, §1; 86 Acts, ch 1240, §8; 86 Acts, ch 1245, §1877; 91 Acts, ch 235, §1, 2

C93, §483A.27

97 Acts, ch 96, §1, 2; 2001 Acts, ch 176, §43; 2007 Acts, ch 28, §19; 2008 Acts, ch 1161, §19; 2009 Acts, ch 133, §159; 2013 Acts, ch 75, §1; 2015 Acts, ch 26, §7; 2019 Acts, ch 86, §12

Referred to in §483A.7, 483A.8, 483A.24, 483A.27A, 724.9, 805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

Subsection 2, paragraph a amended

483A.27A Apprentice hunters.

1. Notwithstanding section 483A.27, a person who is sixteen years of age or older may purchase a hunting license with an apprentice hunter designation on the license without first completing a hunter education course if the person meets all the requirements of this section.

2. If the apprentice hunter is a minor, the person must be accompanied and aided while hunting by a mentor who is the person's parent or guardian, or be accompanied and aided by any other competent adult mentor with the consent of the minor's parent or guardian. If the apprentice hunter is not a minor, the apprentice hunter must be accompanied and aided while hunting by a competent adult mentor.

3. The mentor and the apprentice hunter must have valid hunting licenses that include the wildlife habitat fee and that are valid for the same seasons to hunt game.

a. A resident mentor and a resident apprentice hunter must also purchase deer hunting licenses and tags to hunt deer and wild turkey hunting licenses and tags to hunt wild turkey. Deer hunting licenses and tags purchased by a resident mentor and a resident apprentice hunter must be valid for the same seasons and zones. When hunting wild turkey, a resident mentor having a license valid for one of the spring wild turkey hunting seasons may accompany and aid a resident apprentice hunter who has a valid wild turkey hunting license for any of the spring seasons as provided by rule. When hunting wild turkey in the fall, a resident mentor and a resident apprentice hunter must each have a fall wild turkey hunting license valid for the current year. A transportation tag issued to a resident apprentice hunter shall not be used to tag a deer or wild turkey taken by another person.

b. A nonresident apprentice hunter is not entitled to purchase a deer hunting license to hunt deer or a wild turkey hunting license to hunt wild turkey, or to participate in a hunt for deer or wild turkey.

4. While hunting, the apprentice hunter must be under the direct supervision of the mentor. For the purposes of this subsection, "*direct supervision*" means the mentor must maintain constant direction and control of the apprentice hunter and stay within a distance from the apprentice hunter that enables the mentor to give uninterrupted, unaided visual and auditory communications to the apprentice hunter. There must be one licensed mentor in direct supervision of each apprentice hunter.

5. A hunting license with an apprentice hunter designation issued pursuant to this section is valid from the date issued to January 10 of the succeeding calendar year for which it is issued. A hunting license with an apprentice hunter designation shall contain the address, signature, and a general description of the licensee.

6. A person is eligible to obtain a hunting license with an apprentice hunter designation pursuant to this section only two times. Subsequently, the person must meet the requirements of section 483A.27 in order to obtain a hunting license.

7. The commission shall adopt rules pursuant to chapter 17A to administer this section.

2015 Acts, ch 26, §8

Referred to in §805.8B(3)(b)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph b

483A.28 Noncommercial harvest of aquatic species.

1. A boundary waters sport trotline license entitles the licensee to use a maximum of four trotlines with two hundred hooks in the aggregate and only on boundary waters. All boundary waters sport trotlines shall be tagged with the name and address of the licensee on a weather-resistant tag provided by the licensee and affixed above the waterline. A boundary waters sport trotline licensee is not permitted to sell, barter, or trade fish or turtles taken pursuant to the license.

2. A valid fishing license issued pursuant to this chapter entitles the licensee to take and possess a maximum of one hundred pounds of live turtles or fifty pounds of dressed turtles. Any unattended fishing gear used to take turtles pursuant to a fishing license shall be tagged with the name and address of the licensee on a weather-resistant tag provided by the licensee and affixed above the waterline. A fishing licensee is not permitted to sell, barter, or trade live or dressed turtles taken pursuant to the license.

3. A valid fishing license issued pursuant to this chapter entitles the licensee to take and possess a maximum amount of mussels or shells daily as authorized by rule under the authority of sections 456A.24, 481A.38, and 481A.39. A fishing licensee shall not sell, barter, or trade freshwater mussels or shells taken pursuant to the fishing license.

4. Any person who is issued a valid fishing license pursuant to this chapter may fish with a third line as provided in section 481A.72 only upon the annual purchase of a third line fishing permit as provided in rules adopted pursuant to section 483A.1.

2009 Acts, ch 144, §43; 2012 Acts, ch 1096, §21, 23; 2018 Acts, ch 1159, §24, 28

Referred to in §481A.67, 805.8B(3)(c)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph c

Commercial harvest, see chapter 482.

483A.29 Reserved.

483A.30 Nonresident deer and turkey license fees. Repealed by 97 Acts, ch 180, §7.

483A.31 Reciprocal privileges authorized.

1. Reciprocal fishing, hunting, or trapping privileges are contingent upon a grant of similar privileges by another state to residents of this state.

2. The commission may negotiate fishing, hunting, or trapping reciprocity agreements with other states.

3. When another state confers upon fishing, hunting, or trapping licensees of this state reciprocal rights, privileges, and immunities, a fishing, hunting, or trapping license issued by that state entitles the licensee to all rights, privileges, and immunities in the public waters or public lands of this state enjoyed by the holders of equivalent licenses issued by this state, subject to duties, responsibilities, and liabilities imposed on licensees of this state by the laws of this state.

90 Acts, ch 1178, §3

C91, §110.31

C93, §483A.31

2008 Acts, ch 1161, §17; 2011 Acts, ch 34, §114

Referred to in §481A.19

SUBCHAPTER II

SEIZURE OF CONTRABAND PROPERTY — CONDEMNATION

483A.32 Public nuisance.

1. Subject to subsection 2, any device, contrivance, or material used to violate a rule adopted by the commission, or any other provision of this chapter or chapter 481A, 481B, 482, 484A, or 484B, is a public nuisance and may be condemned by the state. The director, the director's officers, or any peace officer, shall seize the devices, contrivances, or materials used as a public nuisance, without warrant or process, and deliver them to a magistrate having jurisdiction. An automobile shall not be construed to be a public nuisance under this section.

2. The state may only condemn property seized as a public nuisance if the person from whom the property was seized is convicted of the violation for which the property was seized as a public nuisance.

3. If the person from whom the property was seized is not convicted of the violation for which the property was seized, the department, law enforcement agency, or other governmental agency in possession of the seized property shall return the seized property to the person within thirty days of any of the following:

a. The date the person is found not guilty of the violation.

b. The date the action involving the violation is dismissed.

c. The date the statute of limitations expires for the alleged violation for which the property was seized.

4. For purposes of this section, *"convicted"* means the same as in section 481A.13A, subsection 3.

[C73, §4052; C97, §2540; SS15, §2539, 2540; C24, 27, 31, §1715; C35, §1794-e16; C39, §**1794.099;** C46, 50, 54, 58, 62, 66, §110.18; C71, 73, 75, 77, §110.19; C79, 81, §110.32]

86 Acts, ch 1240, §9; 86 Acts, ch 1245, §1878

C93, §483A.32

98 Acts, ch 1125, §1; 2018 Acts, ch 1150, §5

Referred to in §462A.27, 483A.33

Nuisances in general, chapter 657

Nonpermanent structure on public land as public nuisance, see §462A.27

483A.33 Disposition of property seized as public nuisance.

The disposition of property seized pursuant to section 483A.32 shall be conducted as follows:

1. The officer taking possession of property seized as a public nuisance shall make a written inventory of the property and deliver a copy of the inventory to the person from whom the property was seized. The inventory shall include the name of the person taking custody of the seized property, the date and time of seizure, location of the seizure, and the name of the seizing public agency. Property which has been seized shall be safely secured and stored by the public agency which caused its seizure unless directed otherwise by the county attorney of the county where the property was seized or by the attorney general.

2. *a.* The county attorney or attorney general may file with the clerk of the district court for the county in which the property was seized a notice of condemnation which shall include a description of the property claimed to be condemned by the state, the grounds upon which the state claims that the property has been condemned, the date and place of seizure, and the name of the person from whom the property was seized.

b. The notice shall be filed not later than six months after the property was seized. Failure to file within the time limit terminates the state's right to claim a condemnation of the property.

c. The state shall give notice of condemnation to the person from whom the property was seized and any person identified as an owner or lien holder, by certified mail, personal service, or publication.

3. *a.* The person from whom the property was seized may make application for its return in the office of the clerk of the district court for the county in which the property was seized. The application shall be filed within thirty days after the receipt of the notice of condemnation

or the person is convicted of the violation for which the property was seized, whichever occurs later. Failure to file the application within this time period terminates the interest of the person and the ownership of the property shall be transferred to the state, except that a person who is not convicted of the violation for which the property was seized is not required to file an application and is entitled to the return of the property in accordance with section 483A.32.

b. The application for return of condemnable property shall be written and shall state the specific item or items sought, the nature and the source of the claimant's interest in the property, and the grounds upon which the claimant seeks to avoid condemnation. The ownership of property is not sufficient grounds for its return. The written application shall be specific and the claimant shall be limited at the judicial hearing to proof of the grounds set forth in the application for return. The fact that the property is inadmissible as evidence or that it may be suppressed is not grounds for its return. If specific grounds for return are not provided in the application for return, or the grounds are insufficient as a matter of law, the court may enter judgment on the pleadings without further hearing.

4. If an application for return of condemnable property is timely and of sufficient grounds, the claim shall be set for hearing. The hearing shall be held not less than ten nor more than thirty days after the claim is filed or the person is convicted for the violation for which the property was seized as a public nuisance, whichever occurs later. The proceeding shall be conducted by a magistrate or a district associate judge. All claims to the same property shall be heard in one proceeding unless it is shown that the proceeding would result in prejudice to one or more of the parties.

5. *a.* Upon a finding by the court that the property is condemnable, the court shall enter an order transferring title of the property to the state, and placed at the disposal of the director, who may use or sell the property, depositing the proceeds of the sale in the state fish and game protection fund.

b. Upon a finding by the court that the property should not be condemned, the property shall be returned to the person from whom it was seized. If the property is necessary for use as evidence in a criminal proceeding, the property shall not be returned until its use as evidence is no longer required.

c. On or before December 31, 2018, and on or before December 1 each year thereafter, the department shall report to the general assembly's standing committees on government oversight regarding the amount of the proceeds deposited to the state fish and game protection fund pursuant to this subsection. The report shall also contain all information recorded pursuant to paragraph "*d*".

d. A seizing public agency that has custody of any property that is seized pursuant to a provision of this subchapter shall adopt and comply with a written internal control policy that does all of the following:

(1) Provides for keeping detailed records as to the amount of property acquired by the agency and the date property was acquired.

(2) Provides for keeping detailed records of the disposition of the property, which shall include the manner in which the property was disposed, the date of disposition, and detailed financial records concerning any property sold. The records shall not identify or enable identification of the individual officer who seized any item of property or the name of any person or entity who received any item of property.

e. The records kept under the internal control policy shall be open to public inspection during the agency's regular business hours. The policy adopted under this section is a public record open for inspection under chapter 22.

6. *a.* An employee of the seizing public agency or a member of the immediate family of the employee shall not purchase a fish, fur, bird, animal, mussel, clam, or frog seized pursuant to section 481A.12, a device, contrivance, or material condemned pursuant to section 483A.32, or a weapon seized pursuant to section 483A.32 and disposed of pursuant to this section or section 809.21. For purposes of this subsection, "*member of the immediate family*" means a spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent of an employee of the seizing public agency who resides in the same household in the same principal residence of the employee of the seizing public agency.

b. The department shall provide a form on which a person purchasing property seized pursuant to section 481A.12 or 483A.32 shall declare that the person is not an employee of the seizing public agency or a member of the immediate family of an employee of the seizing public agency.

7. For purposes of this section, *"convicted"* means the same as in section 481A.13A, subsection 3.

[C35, §1794-e17,-e18; C39, §**1794.100, 1794.101;** C46, 50, 54, 58, 62, 66, §110.19, 110.20; C71, 73, 75, 77, §110.20, 110.21; C79, 81, §110.33]

C93, §483A.33

98 Acts, ch 1125, §2; 2018 Acts, ch 1150, §6 – 9

Referred to in §462A.27

483A.34 Right to appeal.

An appeal from a denial of an application for return of condemnable property, or from an order for return of condemnable property, shall be made within ten days after the entry of a judgment order and shall be conducted in the same manner as an appeal in a small claims action. The appellant, other than the state, shall post a bond of a reasonable amount as the court may fix and approve, conditioned to pay all costs of the proceedings if the appellant is unsuccessful on appeal.

[C35, §1794-e19; C39, §**1794.102;** C46, 50, 54, 58, 62, 66, §110.21; C71, 73, 75, 77, §110.22; C79, 81, §110.34]

C93, §483A.34

98 Acts, ch 1125, §3

Referred to in §462A.27

SUBCHAPTER III

GUNS

483A.35 "Gun" defined.

The word *"gun"* as used in this chapter shall include every kind of a gun or rifle, except a revolver or pistol, and shall include those provided with pistol mountings which are designed to shoot shot cartridges.

[C31, §1772-c1; C35, §1794-e20; C39, §**1794.103;** C46, 50, 54, 58, 62, 66, §110.22; C71, 73, 75, 77, §110.23; C79, 81, §110.35]

C93, §483A.35

483A.36 Manner of conveyance.

A person, except as permitted by law, shall not have or carry a gun in or on a vehicle on a public highway, unless the gun is taken down or totally contained in a securely fastened case, and its barrels and attached magazines are unloaded.

[C24, 27, 31, §1772; C35, §1794-e21; C39, §**1794.104;** C46, 50, 54, 58, 62, 66, §110.23; C71, 73, 75, 77, §110.24; C79, 81, §110.36]

86 Acts, ch 1240, §10

C93, §483A.36

2010 Acts, ch 1113, §1

Referred to in §805.8B(3)(q)

For applicable scheduled fines, see §805.8B, subsection 3, paragraph q

483A.37 Prohibited guns.

No person shall use a swivel gun, nor any other firearm, except such as is commonly shot from the shoulder or hand in the hunting, killing or pursuit of game, and no such gun shall be larger than number 10 gauge.

[C97, §2558; C24, 27, 31, §1771; C35, §1794-e22; C39, §**1794.105;** C46, 50, 54, 58, 62, 66, §110.24; C71, 73, 75, 77, §110.25; C79, 81, §110.37]

C93, §483A.37

Referred to in §805.8B(3)(d)

For applicable scheduled fine, see §805.8B, subsection 3, paragraph d

SUBCHAPTER IV

FISHING EVENTS

483A.38 Free fishing days.

The commission may designate one period of the year of not more than three days as free fishing days and during that period the residents may fish and lawfully possess fish without a license.

86 Acts, ch 1240, §11

C87, §110.38

C93, §483A.38

483A.39 Bass fishing tournaments.

1. *a.* For the purposes of this section, *"bass fishing tournament"* means an organized fishing event, except for a fishing event sponsored by the department for educational purposes, involving all of the following:

(1) An organized event occurring on public water for the purpose of fishing for bass.

(2) Participation of six or more vessels or twelve or more individuals in the event, except for an event on the waters of the Mississippi river, where the number of vessels participating shall be twenty or more and the number of participants shall be forty or more.

(3) The award of prizes or other inducements for participation in the event.

b. For the purposes of this section, *"bass fishing tournament"* also includes a planned event on public water for the purpose of fishing for bass.

2. A person shall apply for a permit to hold a bass fishing tournament. The commission shall, by rule, specify the requirements to obtain a permit including but not limited to the following:

a. Minimum requirements for weigh-in, handling, and release of live bass by tournament participants.

b. Measurement of bass to length and release from a vessel.

c. Allowance of up to five bass for weigh-in during the tournament.

d. Allowance of possession of bass of any length so long as the bass are kept alive and are released after weigh-in.

e. Cleaning of vessels used before and after the tournament in compliance with department guidelines to prevent the transportation of aquatic invasive species.

2017 Acts, ch 36, §1

483A.40 and 483A.41 Reserved.

SUBCHAPTER V

PENAL PROVISION

483A.42 Penalties.

A person who violates this chapter is guilty of a simple misdemeanor punishable as a scheduled violation under section 805.8B, subsection 3, paragraph *"e"*. However, the

scheduled fine specified in section 805.8B, subsection 3, paragraph *"e"*, does not apply to a violation of this chapter for which another scheduled fine is specified in section 805.8B, subsection 3.

[C46, 50, 54, 58, 62, 66, §110.25; C71, 73, 75, 77, §110.26; C79, 81, §110.42]
86 Acts, ch 1240, §12
C93, §483A.42
2000 Acts, ch 1203, §24; 2001 Acts, ch 130, §2; 2001 Acts, ch 137, §5
Referred to in §483A.24B, 483A.27, 805.8B(3)(e)

483A.43 through 483A.49 Reserved.

SUBCHAPTER VI

WILDLIFE HABITAT BONDS

483A.50 Definitions.

When used in this subchapter, unless the context otherwise requires:

1. *"Bonds"* means negotiable wildlife habitat bonds of the commission issued pursuant to this subchapter and includes all bonds, notes, and other obligations issued in anticipation of these bonds or as refunding bonds pursuant to this subchapter.
2. *"Treasurer"* means the treasurer of state of the state of Iowa.
3. *"Wildlife habitat bond fund"* means the fund created by section 483A.53.

86 Acts, ch 1231, §2
C87, §110.50
C93, §483A.50
2014 Acts, ch 1026, §143

483A.51 Bonds issued by the commission.

1. The commission may issue its negotiable bonds in principal amounts as, in the opinion of the commission, are necessary to provide funds for the acquisition of real property for the development and enhancement of wildlife lands and habitat areas, the payment of interest on its bonds and all other expenditures of the commission incident to and necessary or convenient to carry out the acquisition. However, the commission shall not have a total principal amount of bonds outstanding at any time in excess of eight million dollars. The bonds shall be deemed to be investment securities and negotiable instruments within the meaning of and for all purposes of chapter 554, the uniform commercial code.
2. Bonds issued by the commission are payable solely and only from the revenues credited to the wildlife habitat bond fund. Taxes or appropriations shall not be pledged for the payment of the bonds. Bonds are not an obligation of this state or any political subdivision of this state other than the commission within the meaning of any constitutional or statutory debt limitations, but are special obligations of the commission payable solely and only from the sources provided in this subchapter, and the commission shall not pledge the general credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the wildlife habitat bond fund.
3. Bonds must be authorized by a resolution of the commission. However, a resolution authorizing the issuance of obligations may delegate to an officer of the commission the power to negotiate and fix the details of an issue of bonds or notes by an appropriate certificate of the authorized officer.
4. The bond proceedings shall provide for the purpose of the bonds, principal amount and principal maturity or maturities, the interest rate or rates or the maximum interest rate, the date of the bonds and the dates of payment of interest on the bonds, their denomination, the terms and conditions upon which parity bonds may be issued, and the establishment within or without the state of a place or places of payment of principal of and interest on the bonds. The purpose of the bonds may be stated in the bond proceedings in terms describing the general purpose or purposes to be served. The commission may cause to be issued a

prospectus or official statement in connection with the offering of the bonds. Bonds may be issued in coupon or in registered form, or both. Provision may be made for the registration of bonds with coupons attached as to principal alone, or as to both principal and interest, their exchange for bonds so registered, and for the conversion or reconversion into bonds with coupons attached of any bonds registered as to both principal and interest, and for reasonable charges for registration, exchange, conversion, and reconversion. Bonds shall be sold in the manner and at the time determined by the commission. Chapter 75 and sections 73A.12 through 73A.16 do not apply to these bonds. The bonds are negotiable instruments. The bond proceedings may contain additional provisions as to:

a. The redemption of bonds prior to maturity at the option of the commission at the price and on the terms and conditions provided in the bond proceedings.

b. Other terms of the bonds and concerning execution and delivery of the bonds.

c. The delegation of responsibility for any act relating to the issuance, execution, sale, redemption, or other matter pertaining to the bonds to any other officer, agency of the state, or other person or body.

d. Additional agreements with the bondholders relating to the bonds.

e. Payment from the proceeds of the sale of the bonds of all legal and financial expenses incurred by the commission in the issuance, sale, delivery, and payment of the bonds.

f. Other matters, alike or different, which may in any way affect the security of the bonds and the protection of the bondholders.

5. The power to issue bonds includes the power to issue obligations in the form of bond anticipation notes or other forms of short-term indebtedness and to renew these notes by the issuance of new notes. The holders of notes or interest coupons of notes have a right to be paid solely from those revenues credited to the wildlife habitat bond fund which were pledged to the payment of the bonds anticipated, or from the proceeds of those bonds or renewal notes, or both, as the commission provides in the bond proceedings authorizing the notes. The notes may be additionally secured by covenants of the commission to the effect that the commission will do those acts authorized by this subchapter and necessary for the issuance of the bonds or renewal notes in appropriate amount, and either exchange the bonds or renewal notes for the notes, or apply the proceeds of the notes, to the extent necessary, to make full payment of the principal of and interest on the notes at the time contemplated, as provided in the bond proceedings. For this purpose, the commission may issue bonds or renewal notes in a principal amount and upon terms as authorized by this subchapter and as necessary to provide funds to pay when required the principal of and interest on the outstanding notes. All provisions for and references to bonds in this subchapter are applicable to notes authorized under this subsection to the extent not inconsistent with this subsection.

6. The commission may authorize and issue bonds for the refunding, including funding and retirement, and advance refunding with or without payment or redemption prior to maturity, of bonds previously issued by the commission. These bonds may be issued in amounts sufficient for payment of the principal amount of the prior bonds, any redemption premiums on the prior bonds, principal maturities of bonds maturing prior to the redemption of the remaining bonds on a parity with them, interest accrued or to accrue to the maturity date or dates of redemption of the bonds, and project costs including expenses incurred or to be incurred in connection with this issuance, refunding, funding, and retirement. Subject to the bond proceedings, the portion of proceeds of the sale of bonds issued under this subsection to be applied to principal of and interest on the prior bonds shall be credited to the appropriate account for the prior bonds. Bonds authorized under this subsection shall be deemed to be issued for those purposes for which the prior bonds were issued and are subject to the provisions of this subchapter pertaining to other bonds. Refunding bonds may be issued without regard to whether or not the bonds to be refunded are payable on the same date or different dates or due serially or otherwise.

86 Acts, ch 1231, §3
C87, §110.51
C93, §483A.51
2014 Acts, ch 1026, §143

483A.52 Additional powers of commission.

In connection with the issuance of the bonds or in order to secure the payment of the bonds and interest on the bonds, the commission may by resolution:

1. Provide that the bonds be secured by a first lien on the revenues and receipts received or to be received into the wildlife habitat bond fund from income from the investment of the wildlife habitat bond fund, from moneys received from the sale of bonds, and from any other moneys which are available for the payment of bond service charges.

2. Pledge for the benefit of the bondholders any part of the receipts in the wildlife habitat bond fund. The pledge shall be effective without physical delivery or further act and moneys in the fund may be applied for the purposes as pledged without the necessity of an Act of appropriation.

3. Establish, authorize, set aside, regulate, and dispose of reserves and sinking funds.

4. Provide that sufficient amounts of the proceeds of the sale of the bonds may be used to fully or partially fund any and all reserves or sinking funds set out by the bond resolution.

5. Prescribe the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of the bonds whose holders must consent thereto, and the manner in which the consent may be given.

6. Purchase bonds, out of funds available for that purpose, which shall be canceled, at a price not exceeding either of the following:

a. If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date.

b. If the bonds are not then redeemable, the redemption price applicable on the first date after the purchase upon which the bonds become subject to redemption plus accrued interest to that date.

86 Acts, ch 1231, §4
C87, §110.52
C93, §483A.52
Referred to in §483A.53

483A.53 Payment of bonds.

A wildlife habitat bond fund is created in the state treasury. At the direction of the commission as provided in the bond proceedings or pursuant to section 483A.52, subsection 1 or 2, and as certified by the director, the treasurer of state shall credit to the wildlife habitat bond fund from the revenues received from the sale of wildlife habitat stamps a sum at least sufficient to pay interest on the bonds in each fiscal year and principal on the bonds that mature during each fiscal year. In each fiscal year after July 1, 1986 and after bonds are issued, and until all the bonds issued have been retired, in order to provide for the payment of principal of the bonds issued and sold and the interest on them as the same become due and mature, there is pledged and annually appropriated out of the revenues to be credited to the wildlife habitat bond fund an amount sufficient to pay principal and interest on the bonds issued for each of the years the bonds are outstanding. The director shall annually certify to the treasurer the amount of funds required to pay interest on the bonds in the ensuing fiscal year and the principal on the bonds that mature during the ensuing fiscal year.

86 Acts, ch 1231, §5
C87, §110.53
C93, §483A.53
Referred to in §483A.3, 483A.50

483A.54 Nonliability of the state and its officials.

1. Bonds issued are special limited obligations of the commission and are not a debt or liability of the state or any other political subdivision within the meaning of any constitutional or statutory debt limitation and are not a pledge of the state's credit or taxing power within the meaning of any constitutional or statutory limitation or provision and, except as provided in this subchapter, an appropriation shall not be made, directly or indirectly, by the state or any political subdivision of the state for the payment of bonds. The bonds are special obligations of the commission payable solely from the wildlife habitat bond fund. Funds

from the general fund of the state shall not be used to pay interest or principal on the bonds if revenues deposited in the wildlife habitat bond fund are insufficient.

2. The members of the commission or other person executing the bonds is not personally liable for the payment of the bonds. The bonds are valid and binding obligations of the commission notwithstanding the fact that before the delivery of the bonds any of the officers whose signatures appear on the bonds cease to be officers of the state. From and after the sale and delivery of the bonds, they shall be incontestable by the commission.

86 Acts, ch 1231, §6
C87, §110.54
C93, §483A.54
2014 Acts, ch 1026, §112

483A.55 Bonds as legal investments.

Bonds are securities in which all public officers and bodies of the state and all municipalities and political subdivisions of this state, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, and savings associations, investment companies, and other persons carrying on a banking business, all administrators, guardians, executors, trustees, and other fiduciaries and all other persons who are now or may be authorized to invest in bonds or other obligations of this state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also securities which may be deposited with and may be received by all public officers and bodies of the state and all municipalities and legal subdivisions of this state for any purpose for which the deposit of bonds or other obligations of the state is now or may be authorized.

86 Acts, ch 1231, §7
C87, §110.55
C93, §483A.55
2012 Acts, ch 1017, §88

483A.56 Rights of bondholders.

The bond proceedings may provide that a holder of bonds or a trustee under the bond proceedings, except to the extent that the holder's rights are restricted by the bond proceedings, may by legal proceedings, protect and enforce any rights under the laws of this state or granted by the bond proceedings. These rights include the right to compel the performance of all duties of the commission required by this subchapter or the bond proceedings; to enjoin unlawful activities; and in the event of default with respect to the payment of any principal of or interest on bonds or in the performance of a covenant or agreement on the part of the commission in bond proceedings, to apply to a court to appoint a receiver to receive and administer the funds which are pledged to the payment of bonds or which are the subject of the covenant or agreement, with full power to pay and to provide for payment of any principal of or interest on bonds and with powers accorded receivers in general equity cases, excluding power to pledge additional funds or other income or moneys of the commission, the state, or governmental agencies of the state to the payment of the bonds.

86 Acts, ch 1231, §8
C87, §110.56
C93, §483A.56
2014 Acts, ch 1026, §143

CHAPTER 484

RESERVED

CHAPTER 484A

MIGRATORY GAME BIRDS

Referred to in §232.8, 331.602, 455A.4, 455A.5, 456A.14, 456A.24, 481A.1, 481A.134, 481A.135, 483A.10, 483A.32, 805.16, 903.1

This chapter not enacted as a part of this title;
transferred from chapter 110B in Code 1993
See §481A.134 and 481A.135 for point system and additional
penalties

484A.1 Definitions.
484A.2 Fee required.
484A.3 Repealed by 98 Acts, ch 1199, §26, 27; 98 Acts, ch 1223, §30.
484A.4 Use of revenue.
484A.5 Projects approved.
484A.6 Penalty.

484A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission.

2. *"Migratory game bird"* means any wild goose, brant, wild duck, snipe, rail, woodcock, or coot.

[C73, 75, 77, 79, 81, §110B.1]
86 Acts, ch 1245, §1860
C93, §484A.1
98 Acts, ch 1199, §21, 22, 27; 98 Acts, ch 1223, §30

484A.2 Fee required.

A person sixteen years of age or older shall not hunt or take any migratory game bird within this state without first paying a migratory game bird fee. The director shall determine the means and method of collecting the migratory game bird fees.

[C73, 75, 77, 79, 81, §110B.2]
C93, §484A.2
98 Acts, ch 1199, §23, 27; 98 Acts, ch 1223, §30
Referred to in §805.8B(3)(a)
For applicable scheduled fine, see §805.8B, subsection 3, paragraph a

484A.3 Repealed by 98 Acts, ch 1199, §26, 27; 98 Acts, ch 1223, §30.

484A.4 Use of revenue.

All revenue generated from the migratory game bird fee shall be used for projects approved by the commission for the purpose of protecting and propagating migratory game birds and for the acquisition, development, restoration, maintenance or preservation of wetlands, except for that part which is specified by the commission for use in paying administrative expenses as provided in section 456A.17.

The commission may enter into contracts with nonprofit organizations for the use of fifteen percent of such funds outside the United States if the commission finds that such contracts are necessary for carrying out the purposes of this chapter.

[C73, 75, 77, 79, 81, §110B.4]
C93, §484A.4
98 Acts, ch 1199, §24, 27; 98 Acts, ch 1223, §30

484A.5 Projects approved.

Before approving and allocating funds for a proposed project to be undertaken outside this state or outside the United States, the commission shall obtain evidence that the project is acceptable to the government agency having jurisdiction over the lands and waters affected by the project.

[C73, 75, 77, 79, 81, §110B.5]
C93, §484A.5

484A.6 Penalty.

Any person violating any of the provisions of this chapter shall be guilty of a simple misdemeanor.

[C77, 79, 81, §110B.6]

C93, §484A.6

CHAPTER 484B

HUNTING PRESERVES

Referred to in §232.8, 455A.4, 455A.5, 456A.14, 456A.24, 481A.1, 481A.6A, 481A.38, 481A.125A, 481A.134, 481A.135, 483A.24, 483A.32, 484C.5, 805.16, 903.1

See §481A.134 and 481A.135 for point system and additional penalties

484B.1 Definitions.
484B.2 Rules.
484B.3 Authority of the director — exceptions to chapter.
484B.4 Hunting preserve operator's license — application and requirements.
484B.4A Minimum enclosed acreage — exceptions.
484B.5 Boundaries signed — fenced.
484B.6 Game birds released.
484B.7 Records — reports — inspections.
484B.8 Game bird transportation tags — markings.
484B.9 Ungulate transportation tags — markings.
484B.10 Season — hunting preserve hunting license.
484B.11 Health requirements — game birds.
484B.12 Health requirements — ungulates.
484B.13 License refusal.
484B.14 Penalties.

484B.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.
3. *"Director"* means the director of the department.
4. *"Elk"* means an animal belonging to the cervidae family and classified as part of the canadensis species of the cervus genus.
5. *"Game birds"* means pen-reared birds of the family gallinae and mallard ducks.
6. *"Hunting preserve"* means property and facilities either privately owned or leased for holding, rearing, releasing, or processing captive-raised game for the purpose of hunting, for a fee, over an extended season.
7. *"Livestock"* means the same as defined in section 717.1.
8. *"Pen-reared"* means the propagation and holding of game birds and game animals whose origins are from captive populations.
9. *"Season"* means hunting preserve season.
10. *"Ungulate"* means hoofed nondomesticated mammal other than livestock.

92 Acts, ch 1160, §1; 2000 Acts, ch 1038, §2, 3; 2012 Acts, ch 1118, §15, 21

Referred to in §481A.21

484B.2 Rules.

The commission may adopt rules under chapter 17A as necessary to carry out this chapter.

92 Acts, ch 1160, §2

484B.3 Authority of the director — exceptions to chapter.

1. The director shall develop, administer, and enforce hunting preserve programs and requirements within the state which implement the provisions of this chapter and rules adopted by the commission pursuant to this chapter.

2. *a.* The chapter does not apply to keeping farm deer as regulated by the department of agriculture and land stewardship pursuant to chapter 170 or to preserve whitetail kept on a

hunting preserve as regulated by the department of natural resources pursuant to chapter 484C.

b. This chapter does not apply to an owner or tenant of land raising or releasing pen-reared pheasants on the owner's or tenant's land as provided in section 481A.6A, provided that a person taking a pen-reared pheasant complies with all requirements provided in chapters 481A and 483A.

92 Acts, ch 1160, §3; 2003 Acts, ch 149, §19, 23; 2005 Acts, ch 139, §13; 2010 Acts, ch 1180, §2

484B.4 Hunting preserve operator's license — application and requirements.

1. A person who owns or controls by lease or otherwise for five or more years, a contiguous tract of land having an area of not less than three hundred twenty acres, and who desires to establish a hunting preserve, to propagate and sell game birds and their young or unhatched eggs, and shoot game birds and ungulates on the land, under this chapter or the rules of the commission, shall make application to the department for an operator's license. The application shall be made under oath of the applicant or under oath of one of its principal officers if the applicant is an association or corporation. Under the authority of this license, any property or facilities to be used for propagating, holding, processing, or pasturing of game birds or ungulates shall not be required to be contained within the contiguous land area used for hunting purposes. The application shall be accompanied by an operator's license fee of two hundred dollars.

2. Upon receipt of an application, the department or its authorized agent shall inspect the proposed hunting preserve and facilities described in the application. If the department finds that the proposed hunting preserve meets the following requirements, the department may approve the application and issue a hunting preserve operator's license for the operation of the property and facilities described in the application with the rights and subject to the limitations in this chapter and the rules adopted by the commission:

a. The proposed hunting preserve contains at least three hundred twenty acres but not more than two thousand five hundred sixty acres.

b. The area of the proposed hunting preserve is contiguous.

c. The total area of all licensed hunting preserves and the proposed hunting preserve will not exceed three percent of the land area of the county.

d. The game birds or ungulates released on the preserve will not be detrimental to wildlife.

e. The proposed hunting preserve will not interfere with the normal activities of migratory birds.

3. All hunting preserve operator's licenses shall expire on March 31 of each year.

92 Acts, ch 1160, §4; 99 Acts, ch 208, §36; 2008 Acts, ch 1031, §54; 2008 Acts, ch 1032, §106
Referred to in §484B.4A

484B.4A Minimum enclosed acreage — exceptions.

A hunting preserve on which elk are kept must include at least three hundred twenty contiguous acres which are enclosed by a fence as required pursuant to section 484B.5. However, a person may keep elk only on a hunting preserve that includes a fewer number of enclosed acres if either of the following applies:

1. The commission grants a waiver for the hunting preserve according to terms and conditions required by the commission. The hunting preserve must include at least one hundred sixty contiguous acres.

2. *a.* The hunting preserve was operated as a business on January 1, 2005.

b. If the hunting preserve operated as a business on January 1, 2005, the landowner or the landowner's successor in interest may sell or otherwise transfer ownership of the hunting preserve to another person who may continue to operate the hunting preserve in the same manner as the landowner. However, this paragraph shall not apply if the owner of the hunting preserve or any successor in interest fails to meet the licensing requirements of section 484B.4 each year.

2012 Acts, ch 1118, §16, 21

484B.5 Boundaries signed — fenced.

Upon receipt of a hunting preserve operator's license, the licensee shall promptly sign the licensed property with signs prescribed by the department. A licensee holding and releasing ungulates shall construct and maintain boundary fences prescribed by the department so as to enclose and contain all released ungulates and exclude all ungulates which are property of the state from becoming a part of the hunting preserve enterprise.

92 Acts, ch 1160, §5; 2016 Acts, ch 1073, §138

Referred to in §484B.4A

484B.6 Game birds released.

The licensee of a licensed hunting preserve may take, or authorize to be taken within the season, the numbers of game birds as provided in this section:

1. A licensed hunting preserve may take up to eighty percent of the total number of pheasant and quail released. One hundred percent of all other game birds released may be taken.

2. A minimum of five hundred game birds shall be released during the hunting preserve season by each licensed hunting preserve authorized to release game birds.

3. A licensee operating two or more licensed hunting preserve areas shall release a cumulative minimum of eight hundred game birds during the hunting preserve season.

4. If hen ring-necked pheasants are shot on the licensed hunting preserve, no less than thirty-five percent of all ring-necked pheasants released shall be hens.

92 Acts, ch 1160, §6

484B.7 Records — reports — inspections.

1. Each hunting preserve licensee shall keep the records and make the reports required on forms prepared and provided by the department. All records shall be open for inspection at any reasonable time by the department or its authorized agents.

2. Each licensee shall file an annual report with the department on or before April 30. The report shall detail the hunting preserve operations during the preceding license year. The original report shall be forwarded to the department and a copy shall be retained in the hunting preserve's file for three years from the date of expiration of the hunting preserve's last license issued. Records required by this section shall be entered in the annual report record within twenty-four hours of the event. Failure to keep or submit the required records and reports is grounds for refusal to renew a license for the succeeding year. An on-site inspection of property and facilities shall be conducted by an authorized agent of the department prior to the initial issuance of a hunting preserve operator's license. The hunting preserve may be reinspected by an agent of the department at any reasonable time. A licensed hunting preserve shall maintain adequate facilities for all designated birds and ungulates held under the hunting preserve operator's license.

92 Acts, ch 1160, §7; 2017 Acts, ch 29, §138

484B.8 Game bird transportation tags — markings.

The department shall prepare transportation tags suitable for use upon the legs of game birds described in this chapter. The tags shall be of a type which are not removable without breaking and mutilating the tag. The tags shall be used to designate all game birds taken by hunters upon a licensed hunting preserve. The department shall provide licensees with the tags. All dead game birds removed from a licensed hunting preserve shall have a hunting preserve tag affixed to one leg prior to being transported from the licensed hunting preserve, except as otherwise provided by rule of the commission. All mallards released for hunting purposes shall be physically marked by the removal of the hind toe from the right foot at not more than four weeks of age, so as to provide for permanent identification. Game bird tags issued to a hunting preserve are not transferable.

92 Acts, ch 1160, §8

484B.9 Ungulate transportation tags — markings.

The department shall prepare transportation tags suitable for use upon the carcass of ungulates described in this chapter. The tags shall be used to designate all ungulates taken by hunters upon a licensed hunting preserve. The department shall provide licensees with the tags. All ungulates taken on a licensed hunting preserve shall be tagged with a numbered tag prior to being removed from the hunting preserve. The hunter shall tag the ungulate taken in accordance with the rules as determined by the department. The tag shall remain attached to the carcass of the dead ungulate until processed for consumption. The hunter shall be provided with a bill of sale by the licensee. The bill of sale shall remain in the possession of the hunter. Ungulate tags issued to a hunting preserve are not transferable.

92 Acts, ch 1160, §9

484B.10 Season — hunting preserve hunting license.

1. A person shall not take a game bird or ungulate upon a hunting preserve, by shooting in any manner, except during the established season or as authorized by section 481A.56. The established season shall be September 1 through March 31 of the succeeding year, both dates inclusive. The owner of a hunting preserve shall establish the hunting season for nonnative, pen-reared ungulates on the hunting preserve.

2. Waterfowl shall not be shot over any area where pen-reared mallards may serve as live decoys for wild waterfowl. All persons hunting game birds or ungulates upon a licensed hunting preserve shall secure a hunting license that includes the wildlife habitat fee in accordance with the game laws of Iowa, with the exception that an unlicensed person may secure an annual hunting preserve hunting license restricted to hunting preserves only for a license fee of five dollars. All persons who hunt on hunting preserves shall pay the wildlife habitat fee.

3. A nonresident youth under sixteen years of age may hunt game birds on a licensed hunting preserve upon securing an annual hunting preserve hunting license restricted to hunting preserves only for a license fee of five dollars and payment of the wildlife habitat fee. A nonresident youth is not required to complete the hunter education course to obtain a hunting preserve hunting license pursuant to this subsection if the youth is accompanied by a person who is at least eighteen years of age, is qualified to hunt, and possesses a valid hunting license that includes the wildlife habitat fee. During the hunt, the accompanying adult must be within arm's reach of the nonresident youth.

92 Acts, ch 1160, §10; 96 Acts, ch 1072, §1; 98 Acts, ch 1199, §25, 27; 98 Acts, ch 1223, §30; 2009 Acts, ch 144, §44; 2012 Acts, ch 1096, §22, 23; 2015 Acts, ch 26, §9; 2017 Acts, ch 29, §139

Remote control or internet hunting prohibited, see §481A.125A

484B.11 Health requirements — game birds.

All game birds, including breeders and nonbreeders; or their chicks or unhatched eggs either purchased, propagated, confined, released, or sold by a licensed hunting preserve shall be free of diseases considered significant for wildlife, poultry, or livestock and shall comply with all game bird, mallard, and turkey requirements as designated by the national poultry improvement plan (NPIP) and in accordance with the United States department of agriculture and requirements of the Iowa department of agriculture and land stewardship.

92 Acts, ch 1160, §11

484B.12 Health requirements — ungulates.

All ungulates which are purchased, propagated, confined, released, or sold by a licensed hunting preserve shall be free of diseases considered significant for wildlife, poultry, or livestock. The department of agriculture and land stewardship shall provide for the regulation of farm deer as provided in chapter 170.

92 Acts, ch 1160, §12; 2000 Acts, ch 1038, §4; 2003 Acts, ch 149, §20, 23

484B.13 License refusal.

The department may either refuse to issue, refuse to renew, or suspend or revoke a hunting preserve operator's license if the department finds that the licensed area or the operator or employees of the licensed area are not in compliance with this chapter, or that the property or area is operated in violation of this chapter or administrative rules adopted under this chapter.

92 Acts, ch 1160, §13; 2017 Acts, ch 29, §140

484B.14 Penalties.

A person who violates a provision of this chapter or a rule adopted under this chapter is guilty of a simple misdemeanor.

92 Acts, ch 1160, §14

CHAPTER 484C

PRESERVE WHITETAIL

Referred to in §170.1, 170.1A, 481A.125A, 484B.3

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484C.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Commission"* means the natural resource commission as created pursuant to section 455A.6.
2. *"Department"* means the department of natural resources as created pursuant to section 455A.2.
3. *"Documented event"* includes but is not limited to the birth, death, harvest, transfer for consideration, or release of preserve whitetail.
4. *"Elk"* means an animal belonging to the cervidae family and classified as part of the canadensis species of the cervus genus.
5. *"Fence"* means a boundary fence which encloses preserve whitetail within a landowner's property as required to be constructed and maintained pursuant to this chapter.
6. *"Hunting preserve"* means land where a landowner keeps preserve whitetail as part of a business, if the business's purpose is to provide persons with the opportunity to hunt the preserve whitetail.
7. *"Landowner"* means a person who holds an interest in land, including a titleholder.
8. *"Preserve whitetail"* means whitetail kept on a hunting preserve.
9. *"Whitetail"* means an animal belonging to the cervidae family and classified as part of the virginianus species of the odocoileus genus.

2005 Acts, ch 139, §14; 2012 Acts, ch 1118, §17, 21

Referred to in §423.1, 423.3, 481A.134, 481A.135, 716.7, 716.8

484C.2 Application of chapter.

1. A landowner shall not keep whitetail unless the whitetail are kept as preserve whitetail pursuant to this chapter or as farm deer pursuant to chapter 170.
2. This chapter authorizes the department of natural resources to regulate preserve

whitetail. However, the department of agriculture and land stewardship shall regulate whitetail kept as farm deer pursuant to chapter 170.

2005 Acts, ch 139, §15

484C.3 Rules.

The department shall adopt rules pursuant to chapter 17A as necessary to administer this chapter.

2005 Acts, ch 139, §16

Referred to in §484C.4

484C.4 Departmental programs and requirements.

The department shall develop, administer, and enforce hunting preserve programs and requirements, which implement the provisions of this chapter and rules adopted by the department pursuant to section 484C.3, regarding fencing, recordkeeping, reporting, and the tagging, transportation, testing, and monitoring for disease of preserve whitetail.

2005 Acts, ch 139, §17

484C.5 Minimum enclosed acreage — exceptions.

1. A hunting preserve must include at least three hundred twenty contiguous acres which are enclosed by a fence certified pursuant to section 484C.6. However, the hunting preserve may include a fewer number of enclosed acres if any of the following applies:

a. The commission grants a waiver for the hunting preserve according to terms and conditions required by the commission. The hunting preserve must include at least one hundred sixty contiguous acres.

b. (1) The hunting preserve was operated as a business on January 1, 2005.

(2) If the hunting preserve operated as a business on January 1, 2005, the landowner or the landowner's successor in interest may sell or otherwise transfer ownership of the hunting preserve to another person who may continue to operate the hunting preserve in the same manner as the landowner. However, this subparagraph shall not apply if the owner of the hunting preserve or any successor in interest fails to register with the department as provided in section 484C.7 for three or more consecutive years.

c. (1) The hunting preserve was not operated as a business on January 1, 2005, and all of the following apply:

(a) The hunting preserve has at least one hundred contiguous acres.

(b) The hunting preserve's fence is certified by the department not later than September 1, 2005.

(2) If the hunting preserve complies with subparagraph (1), the landowner or the landowner's successor in interest may sell or otherwise transfer ownership of the hunting preserve to another person who may continue to operate the hunting preserve in the same manner as the landowner. However, this subparagraph shall not apply if the owner of the hunting preserve or any successor in interest fails to register with the department as provided in section 484C.7 for three or more consecutive years.

2. Notwithstanding any other provision of this chapter or chapter 484B, a person may keep whitetail and elk together on a hunting preserve that includes less than three hundred twenty enclosed acres if the person receives a waiver as provided in subsection 1, paragraph *"a"* or meets the conditions specified in subsection 1, paragraph *"b"*.

2005 Acts, ch 139, §18; 2012 Acts, ch 1118, §18, 21

Referred to in §484C.6

484C.6 Fencing — certification.

1. A fence required to enclose preserve whitetail under section 484C.5 must be constructed and maintained as prescribed by rules adopted by the department and as certified by the department. The fence shall be constructed and maintained to ensure that the preserve whitetail are kept in the enclosure and all other whitetail are excluded from the enclosure.

2. A fence that was certified by the department of agriculture and land stewardship

pursuant to chapter 170 prior to July 1, 2005, shall be certified by the department of natural resources.

3. A fence shall be at least eight feet in height above ground level. The enclosure shall be posted with signs as prescribed by rules adopted by the department.

4. The department may require that the fence be inspected and approved by the department prior to certification. The department shall periodically inspect the fence at any reasonable time by appointment or by providing the landowner with at least forty-eight hours' notice.

2005 Acts, ch 139, §19
Referred to in §484C.5, 484C.8, 484C.13

484C.7 Registration and fee.

A landowner who keeps preserve whitetail shall annually register the landowner's hunting preserve with the department by June 30. The landowner shall pay the department a registration fee. The amount of the registration fee shall not exceed three hundred fifty dollars per fiscal year. The fee shall be deposited into the state fish and game protection fund.

2005 Acts, ch 139, §20
Referred to in §484C.5, 484C.9, 484C.13

484C.8 Requirements for releasing whitetail — property interests.

A person shall not release whitetail kept as preserve whitetail onto land unless the landowner complies with all of the following:

1. The landowner must notify the department at least thirty days prior to first releasing the preserve whitetail on the land. The notice shall be provided in a manner required by the department. The notice must at least provide all of the following:

a. A statement verifying that the fence which encloses the land is certified by the department pursuant to section 484C.6.

b. The landowner's name.

c. The location of the land enclosed by the fence.

2. The landowner shall cooperate with the department to remove any whitetail from the enclosed land. However, after the thirtieth day following receipt of the notice, the state shall relinquish its property interest in any remaining whitetail that the landowner and the department were unable to remove from the enclosed land. Any remaining whitetail existing at that time on the enclosed land, and any progeny of the whitetail, shall become preserve whitetail and property of the landowner.

3. A hunting preserve may include whitetail which were regulated as farm deer by the department of agriculture and land stewardship pursuant to chapter 170 and transported to the hunting preserve. The whitetail shall be considered farm deer until released onto the hunting preserve. Once released onto the hunting preserve, the whitetail and its progeny become preserve whitetail and are subject to regulation by the department of natural resources.

2005 Acts, ch 139, §21

484C.9 Documentation — inspections.

1. The department shall prepare forms for documents, including records and reports, and provide such forms to landowners in order to comply with this section. The department shall provide procedures for the receipt, filing, processing, and return of documents in an electronic format. The department shall provide for the authentication of the documents that may include electronic signatures as provided in chapter 554D. However, this subsection does not require a landowner to complete or receive a document in an electronic format.

2. A landowner who operates a hunting preserve shall do all of the following:

a. Keep records as required by the department. The records shall be open for inspection at any reasonable time by the department.

b. File an annual report with the department on or before June 30. The report shall describe the hunting preserve operations during the preceding twelve months. The original report shall be forwarded to the department and a copy shall be retained in the hunting

preserve's file for three years from the date of expiration of the landowner's last registration as provided in section 484C.7.

c. Keep a record of a documented event as required by the department. The record of the documented event shall be entered in the annual report required in this section. The record of the documented event shall be maintained by the landowner and submitted to the department. The entry of the documented event shall be made within twenty-four hours after its occurrence as prescribed by departmental rule.

2005 Acts, ch 139, §22
Referred to in §484C.13

484C.10 Taking preserve whitetail — transportation tags.

The department shall provide transportation tags to a landowner for use in identifying the carcass of preserve whitetail.

1. The tags shall be used to designate all preserve whitetail taken by persons on the hunting preserve. A person taking the preserve whitetail shall tag the preserve whitetail in accordance with the rules adopted by the department.

2. The preserve whitetail taken on a hunting preserve shall be tagged prior to being removed from the hunting preserve.

3. A tag shall remain attached to the carcass of the dead preserve whitetail until processed for consumption. The person taking the preserve whitetail shall be provided with a bill of sale by the landowner. The bill of sale shall remain in the possession of the person taking the preserve whitetail.

4. Preserve whitetail tags issued to a hunting preserve are not transferable.

2005 Acts, ch 139, §23

484C.11 Taking preserve whitetail — processing.

If preserve whitetail have been taken, the harvested preserve whitetail may be processed by the hunting preserve as prescribed by rules adopted by the department. The rules shall provide for the marking and shipment of meat.

2005 Acts, ch 139, §24

484C.12 Health requirements — chronic wasting disease.

1. Preserve whitetail that are purchased, propagated, confined, released, or sold by a hunting preserve shall be free of diseases considered reportable for wildlife, poultry, or livestock. The department may provide for the quarantine of diseased preserve whitetail that threaten the health of animal populations.

2. The landowner, or the landowner's veterinarian, and an epidemiologist designated by the department shall develop a plan for eradicating a reportable disease among the preserve whitetail population. The plan shall be designed to reduce and then eliminate the reportable disease, and to prevent the spread of the disease to other animals. The plan must be developed and signed within sixty days after a determination that the preserve whitetail population is affected with the disease. The plan must address population management and adhere to rules adopted by the department. The plan must be formalized as a memorandum of agreement executed by the landowner or landowner's veterinarian and the epidemiologist. The plan must be approved by the department.

2005 Acts, ch 139, §25

484C.13 Penalties.

1. A person who violates a provision of this chapter or a rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

2. A landowner who keeps preserve whitetail and who fails to register with the department as required in section 484C.7 is subject to a civil penalty of not more than two thousand five hundred dollars. The civil penalty shall be deposited in the state fish and game protection fund.

3. The department may suspend or revoke a fence certification issued pursuant to section 484C.6 if the department determines that a landowner has done any of the following:

a. Provided false information to the department in an application for fence certification pursuant to section 484C.6.

b. Failed to provide access to the department for an inspection as provided in this chapter.

c. Failed to maintain adequate records or to submit timely reports as provided in section 484C.9.

d. Failed to maintain a fence enclosing the land where preserve whitetail are kept as required by this chapter. The department shall not suspend or revoke a certification if the landowner remedies each item as provided in a notice of deficiency delivered to the landowner by the department. The remedies shall be completed within seven days from receipt of the notice. The notice shall be hand delivered or sent by certified mail.

2005 Acts, ch 139, §26

Remote control or internet hunting prohibited, see §481A.125A

CHAPTER 485

RESERVED